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W.A.No.903 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.No.903 of 2021
and
C.M.P.No.5314 of 2021

The Accountant General of Tamilnadu
No.361, Anna Salai,
Teynampet, Chennai – 18.

.. Appellant

VS

- 1.The Secretary to Government,
School Education Department,
Fort St.George, Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Chief Educational Officer,
Nagapattinam.
- 4.The Head Master
Government Higher Secondary School
Tirukadiyur, Nagapattinam District.

5.G.Ramakrishnan

.. Respondents

Prayer : Appeal filed under Clause 15 of Letters Patent against Review
Application No.118/2020 in W.P.No.6211 of 2011 dated 15.12.2020.

For Appellant : Mr.V.Vijayashankar

For Respondents : Mr.J.C.Durairaj, AGP for R1 to R4
Mr.R.Prem Narayan for R5



WEB COPY



W.A.No.903 of 2021

JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

This appeal is filed by the Accountant General of Tamil Nadu challenging an order dated 08.06.2011 passed by the learned Single Judge in W.P.No.6211 of 2011. The writ petitioner is arrayed as R5 in the writ appeal and shall be referred to either as 'R5' or 'writ petitioner'. The appellant shall be referred to as 'AGOT' or 'appellant'.

2. R5 was employed as Tamil Pundit in the Government Higher Secondary School in Tirukadiyur. He attained superannuation on 30.11.2000. The service particulars of R5 have been supplied by the appellant and have been duly admitted by R5. They are as follows:-

Primary School Headmaster	04.08.1962 to 08.06.1967
Headmaster Middle School	09.06.1967 to 06.06.1969
Primary School Headmaster	09.06.1969 to 09.09.1971
Secondary Grade Assistant	10.09.1971 to 30.06.1976
Primary School Headmaster	01.07.1976 to 14.07.1977
Assistant	15.07.1977 to 07.09.1977
Primary School Headmaster	07.09.1977 to 27.06.1978
Assistant	28.06.1978 to 30.06.1978
Secondary Grade Assistant	01.07.1978 to 04.11.1980
Tamil Pandit	04.11.1980 to 30.11.2000
Date of Retirement	30.11.2000

3. Prior to filing of W.P.No.6211 of 2011, the petitioner had approached this Court in W.P.No.30282 of 2006 seeking a mandamus directing the respondents to restore fixation of salary at a sum of



W.A.No.903 of 2021

Rs.11,575/- per the fixation order issued by the Chief Educational Officer under proceedings Mu.Mu.6983/A3/97 dated 4.9.1997. Those proceedings read as follows:-

நாகப்பட்டினம் முதன்மைக் கல்வி அலுவலரின் செயல்முறைகள்.
மு.மு.6983 அ3/97 நாள் 4.9.1997.

பொருள்:-தமிழ்நாடு கல்வி சார்நிலைப்பணி -
திரு.ஜி.இராமகிருஷ்ணன் பள்ளி உதவியாசிரியர் (தமிழ்) அரசு உயர்நிலைப்பள்ளி, திருக்கடையூர் - நடுநிலைப்பள்ளி தலைமை ஆசிரியர் இனத்தில் சிறப்புநிலை வழங்குதல்.

பார்வை :-தலைமை ஆசிரியர், அரசு மேல்நிலைப்பள்ளி, வைத்தீஸ்வரன்கோவில் ந.க.96/97 நாள்: 15.5.97.
2)அரசாணை எண்.666 ஊதிய குழு நாள்:27.6.89.
3)அரசாணை எண்.304 ஊதியகுழு நாள்:28.3.90.
4)அரசாணை எண்.1178 கல்வி துறை நாள்:22.12.93.

கீழ்க்கண்ட முதல்நிலைத் தமிழாசிரியர் எதிரே குறிப்பிட்டுள்ளபடி நடுநிலைப்பள்ளி தலைமை ஆசிரியராகப் பணிபுரிந்துள்ளார்.

வ.எண்.	பெயர்	ஏற்கனவே நடுநிலைப் பள்ளி தலைமை ஆசிரியராகப் பணிபுரிந்த பள்ளி.	நடுநிலைப்பள்ளி தலைமை ஆசிரியராகப் பணிபுரிந்த காலம்.
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திரு.ஜி.இராமகிருஷ்ணன்,	ஊராட்சி ஒன்றிய	9.6.67 முதல்
முதல்நிலைத் தமிழாசிரியர்	நடுநிலைப் பள்ளி,	4.6.68 முடிய.
அரசு உயர்நிலைப்பள்ளி,	திருவிடைமருதூர்	
திருக்கடையூர்.	தலைஞாயிறு ஒன்றியம்.	

பார்வை 2,,3,4ல் கண்ட அரசாணைகளில் வழங்கப்பட்ட அறிவுரைகளுக்கேற்ப தகவலிலுள்ள முதன்நிலைத் தமிழாசிரியருக்கு நடுநிலைப்பள்ளி தலைமை ஆசிரியர் இனத்தில் 1.10.84 முற்பகல் முதல் சிறப்புநிலை வழங்கி அதன் பணப்பலன் (Monetary benefit) 1.4.86 முதல் அளித்து ஆணை பிறப்பிக்கப்படுகிறது.

மேற்கண்ட ஆசிரியருக்கு நடுநிலைப்பள்ளி தலைமை ஆசிரியர் இனத்தில் சிறப்புநிலை வழங்கிய விபரத்திற்கு அவரது பணிப்பதிவேட்டில் பதிவுகள் செய்து அவருக்கு நடுநிலைப் பள்ளி தலைமை ஆசிரியர் இடத்தில் சிறப்புநிலை ஊதியம் நிர்ணயம் செய்ய உரிய நடவடிக்கை மேற்கொள்ளுமாறு தலைமை ஆசிரியர் கேட்டுக் கொள்ளப்படுகிறார்.

முதன்மை கல்வி அலுவலருக்காக,
நாகப்பட்டினம்.

4. When that writ petition came to be disposed on 11.09.2008, the respondents in that writ petition, including the AGOT, who was arrayed as R4, were heard on oral instructions obtained by them and no counter had been filed.



W.A.No.903 of 2021

5. Jothimani.,J records in that order the following factual position that as on 01.10.1970, the writ petitioner was not actually holding the post of Middle School Headmaster. However, he holds that the writ petitioner may be eligible for Selection Grade and not Special Grade, since twenty years' experience had not been acquired. At paragraph 4, learned Judge leaves it open to the respondents to fix the pay of the petitioner in accordance with law and disposes the writ petition with a direction to the AGOT to fix the pay accordingly, bearing in mind the judgment of the Apex Court in *Sahib Ram v State of Haryana* [1995 Suppl. SCC 18]. He however makes it clear that the question of recovery would not arise and disposed the writ petition accordingly.

6. Proceedings dated 23.10.2006 was an order of recovery issued by the Treasury Officer, Erode that came to be challenged by the petitioner in W.P.No.47501 of 2006 with a consequential direction to the respondents to repay the amount recovered with interest. That Writ Petition came to be allowed on 08.12.2008 by referring to the order of the Supreme Court in *K.S.Kamalanathan v State of Tamil Nadu* [C.A.No.994 of 1980 dated 1.3.89], in terms of which, the petitioner had been sanctioned and paid pension in the scale of pay of Middle School Headmaster.

7. The narration of facts at paragraph 2 of that order are to the effect that he was appointed as a Middle School Headmaster on 02.06.1967 till 01.06.1971 and he was reverted to Elementary School Headmaster from 02.06.1971, retiring from service on 28.02.1989. There



W.A.No.903 of 2021

is some discrepancy in these dates when compared with the admitted service particulars set out at paragraph 2 of this order.

8. Additionally, the fourth respondent, vide proceedings dated 06.10.2009 has opined that the petitioner is not eligible to the benefit under G.O.No.1178 dated 22.12.1993 which had been invoked by the Chief Educational Officer to grant the petitioner certain pecuniary benefits.

9. Upon re-consideration of the matter and consequent to order dated 11.09.2008, the pay fixed by the AGOT initially at a sum of Rs.8,500/- (vis-a-vis Rs.11,575/- claimed by the writ petitioner) under proceedings dated 4.9.97, stood marginally enhanced to Rs.8,700/-.

10. Assailing the impugned orders, Mr.Vijayshankar, would argue that firstly, there is no reference therein to the order passed on 11.09.2008 which makes the factual position clear that as on 01.10.1970, the writ petitioner was not holding the post of Middle School Headmaster. This according to him is the first critical distinction.

11. Secondly, he would submit that the judgment of the Apex Court in the case of *K.S.Kamalanathan* was completely distinguishable insofar as it refers to the case of an employee who satisfied the conditions stipulated under G.O.1178 dated 22.12.1993. Thirdly, he would submit, taking us through relevant Government Orders, particularly, G.O.No.784 dated 14.05.1979 and G.O.1178 dated 22.12.1993, that the writ petitioner does not satisfy the conditions therein. He would hence submit that order dated 08.12.2008 contains a legal infirmity insofar as it has failed to note the aforesaid factors.



W.A.No.903 of 2021

12. Mr.R.Prem Narayan, learned counsel appearing, for the writ petitioner / R5 would however defend the order dated 08.06.2011 pointing out that the petitioner has put in sufficient service and that fixation of pay by the Chief Educational Officer under proceedings dated 4.9.97 was appropriate.

13. As far as the specific interpretation of G.O.1178 dated 22.11.1993 is concerned, he would submit that the Government Orders would support the claim of the writ petitioner and that, according to him, it would suffice that the petitioner had hold the post of Middle School Headmaster between 09.06.97 and 06.06.97 prior to 01.10.1970.

14. We have heard both learned counsel and have devoted anxious consideration to the facts and circumstances of the case, including the Government Orders, that have been supplied by the parties.

15. The first Government Order that has commanded our attention is G.O.No.784 dated 14.05.1979, which has been referred to at paragraph 7 of the judgment of the Apex Court in *K.S.Kamalanathan's* case. Paragraph 7 reads as follows:-

"7. In the light of the observations made by the High Court, Government Order No. 130 dated 25.1.1978 was issued but on reconsideration and after examining all the issues involved, the Government, in modification of all earlier orders, finally issued Government Order No. 784 dated 14th of May, 1979. This is the Government Order which is under attack in the present proceedings. The operative part of the Government Order is reproduced hereunder :

(I) the post of the middle school Headmaster and primary school Headmaster in Panchayat Union Schools should be treated as promotion posts for



WEB COPY



W.A.No.903 of 2021

the purpose of Rule 22(a) of the Tamil Nadu Panchayat Union Council, Establishment Rules 1964 with effect from 1.10.1970, the date on which the new scale of pay for Head masters of middle schools has been given effect. Hence 'Seniority' shall be the criterion for promotion of Secondary Grade Teachers as Head masters of middle schools and primary schools. However due to issue of various Government Orders regulating the promotion to the post of Headmasters, middle school and orders of the Court which resulted in promotion and reversion of both seniors and juniors from 1.10.1970, the Government have decided to give effect to the decision for following strictly seniority for promotion to the posts of Head master, middle school and primary school only with effect from 1.6.1979.

(II) The appointments made so far as Headmasters of middle schools from 1.10.1970 upto 31.7.78 shall be regulated as follows : Illustrations to regulate the pay of the teachers are given in the annexure to the G.O.

(a) A Secondary Grade Teacher who acted as Head master middle school on 1.10.1970 by virtue of seniority may be allowed to continue as Headmaster, middle school and his pay refixed in accordance with the order issued in the G.O. seventh read above.

(b) A Secondary Grade Teacher who acted as Headmaster middle school after 1.10.1970 by virtue of seniority and continued thereafter as Headmaster without reversion may be allowed to continue as Headmaster and his pay refixed according to the orders issued in the G.O. seventh read above, with effect from the date of his first promotion as middle school Headmaster.

(c) A Secondary Grade Teacher promoted as Headmaster middle school after 1.10 1970 by virtue of seniority but subsequently reverted with reference to Government Orders second and third read above may again be promoted on 1.6.1979. However, his pay be regulated as Headmaster middle school from the date of his first promotion



W.A.No.903 of 2021

as if he continued as Headmaster middle school according to the G.O. Seventh read above without any claim for arrears during the period he actually worked as Secondary Grade Assistant.

(d) A Secondary Grade Teacher who acted as Headmaster middle school on 1.10.1970 but not senior enough to be promoted as Headmaster middle school as on 1.10.1970 may be reverted as Headmaster primary school, or as Secondary Grade Assistant on 1.6.1979 according to seniority but he should be allowed to draw pay in the scale of pay admissible to the Headmaster middle school after his pay is regulated as per the G.O. seventh read above. However arrears of pay should be allowed only for the period during which he actually acted as Headmaster. He shall not be allowed to draw the special pay attached to the post of Headmaster middle school after reversion. The services put in by him as Headmaster and Selection Grade teacher in the Headmaster's scale of pay after reversion shall count as service in Selection Grade teacher's post for purposes of advancement to special grade."

16. That G.O., has dealt with specific situations, which admittedly the writ petitioner does not come within. There is no dispute on this position and learned counsel for the writ petitioner fairly does not labour on the applicability of G.O.No.784 dated 14.05.1979 to the case of the writ petitioner. The aforesaid G.O had come to be challenged before the Apex Court and was ultimately upheld.

17. In light of the admitted position that the writ petitioner does not fall within the situations adumbrated under G.O.784 dated 14.05.1979, the impugned order of the writ court proceeding on the basis that the ratio of the writ court in *K.S.Kamalanathan* (supra) would apply to the petitioner is clearly flawed. To this extent, we accept the case of the appellant.



W.A.No.903 of 2021

18. The next G.O. relevant to decide the entitlement or otherwise of the writ petitioner, would be G.O.No.1178 dated 22.12.1993, which reads as follows:-

"The Government have examined their request in consultation with the Director of Elementary Education. Many of the teachers here also obtained stay orders from the period and their pension regulated in the special grade pay. Further this is a dwindling category of teachers and most of them will retire in few years. The Government have therefore decided to accept the recommendation of the Director of Elementary Education, Madras. Accordingly in supersession of the instructions issued in Govt.Letter (Ms).No.523, Education, dt. 1.6.92, the Government direct that the Headmaster of Middle School is and the junior secondary Grade Teachers who acted as Headmaster Middle School on 1.10.1970 and subsequently reverted as Headmasters, Primary School or as Secondary Grade Teacher and who were allowed to retain the pay scale of Headmaster, Middle School based on Supreme Court Order to be allowed Selection Grade (720 – 1305/2000 – 3200) and Special Grade (905-1545/2200-4000). On completion of a minimum period of 10/20 years of service irrespective of whether 10 years of service in the Selection Grade is completed or not. Further, Headmasters, Middle School who were acting in the post of Headmaster, Middle School prior to and after 1.10.70 shall also be allowed above Selection Grade / Special Grade taking in to account the total service in the post of Headmaster.

This order issues with the concurrence of the Finance Department vide its U.O.No.114735/CMPC/93, dated 17.12.93."

19. A reading of the portion extracted above reveals two situations, one of which a candidate is expected to comply with in order to attract the benefit of G.O. 1178 dated 22.12.1993. The first is that Headmasters of Middle School and Junior Secondary Grade Teachers, who



W.A.No.903 of 2021

acted as Headmasters Middle School as on 01.10.1970 and subsequently were reverted as Headmasters Primary School or Secondary Grade Teacher and allowed to retain the pay scale of Headmaster Middle School based on the order of the Apex Court in the case of *Kamalanathan* (supra) were to be allowed Selection Grade and Special Grade on completion of minimum period 10 / 20 years of service, irrespective of whether 10 years of service had been completed.

20. The writ petitioner, admittedly does not fall within this category as he does not satisfy the specific stipulations set out in limb one of G.O.1178 dated 22.12.1993. There is no dispute on this count. The second limb relates to Headmasters Middle School, who are acting in the post of Headmaster Middle School '*prior to and after 1.10.1970*' who were also to be allowed Selection Grade / Special Grade taking into account their total service in the post of Headmaster.

21. In the present case, the service particulars that have been supplied by AGOT to which, the writ petitioner would concede, reveal that he held the post of Headmaster during the period 09.06.67 - 06.06.1969, which is prior to 1.10.1970. However, since he did not hold the requisite seniority thereafter, he did not hold the post of Headmaster Middle School at any period after 06.06.1969 and hence the second condition which requires the candidate to hold the post Headmaster Middle School post 01.10.1970 is not satisfied in the present case.

22. Learned counsel for the writ petitioner would make an attempt to connect the first and second limbs of G.O.1178 dated



W.A.No.903 of 2021

22.12.1993 pleading that part compliance would suffice. However, we are not persuaded to accept this argument, in view of the clear language which requires the candidate to have held the post of Headmaster Middle School both prior to and after 1.10.1970.

23. The admitted position that the writ petitioner had not held the post of Headmaster after 1.10.1970 and this is thus fatal to his case. The proceedings of the Chief Educational Officer dated 4.9.1997 which refer to G.O.1178 dated 22.12.1993 in the reference column and based on which the pay was fixed at a sum of Rs.11,575/- is clearly erroneous. These aspects of the matter had not been taken note of by the writ court in passing the impugned order and in light of the discussion as aforesaid, the order of the writ court is hence liable to be set aside and we do so.

24. One aspect remains. This writ appeal has some history in the sense that the AGOT had filed a review seeking to bring on record the facts noted in the paragraphs supra. That review petition was filed belatedly and came to be dismissed on the ground of delay by an order passed by the Court on 18.09.2014. An appeal was filed as against the same, which was decided by the Division Bench on 16.12.2014.

25. On a consideration of the merits, the Bench was of the view that the delay deserves to be condoned and hence order dated 18.09.2014 was set aside and the matter remanded to the writ court, soliciting a decision, in accordance with law. It is true that AGOT has done nothing further to bring the matter up and has rested content with the order passed in writ appeal.



W.A.No.903 of 2021

26. It was only when a contempt petition filed by the writ petitioner came up for hearing, that the AGOT awoke and brought the Review Application up for hearing before the learned Judge. We are of the considered view that the AGOT has failed to exercise diligence in bringing the Review Application up for hearing before the appropriate court.

27. Ultimately, when the matter was heard on 15.12.2020, the learned Judge has dismissed the same noting that there was a huge delay in not taking steps to number the review application from September, 2012 and it was only when the contempt petition had been brought up that steps had been taken to number the review application.

28. While we do agree that the AGOT ought to have been prompt and taken necessary steps in time, seeing as the delay had already been condoned by the Division Bench, there really remained nothing further in regard to condonation of delay. Hence, we are of the view that in disposing the review application, the learned Judge ought to have dealt with the same on merits. In any event, seeing as we have heard the matter on merits and bearing in mind the elapse of time in the interim, nothing further remains to be said on that score.

29. This writ appeal is allowed. Costs made easy. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
05.09.2024

Index:Yes
Neutral Citation:Yes
ssm



W.A.No.903 of 2021

WEB COPY To

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WEB COPY



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W.A.No.903 of 2021

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