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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.02.2015
CORAM :
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition (MD) No.16119 to 16121 of 2013

1.P.Alamelu Ammal ... Petitioner in W.P.No.16119 of 2013
2.K.Gunasekaran ... Petitioner in W.P.No.16120 of 2013
3.M.Ganesan ... Petitioner in W.P.No.16121 of 2013

Vs.

1.The Government of Tamil Nadu,
rep by the Secretary,
Education Department,
Fort St., George,
Chennai 9.

2.The Director of Elementary Education,
DPI Compound,
College Road,
Chennai 6

3.The District Elementary Educational Officer,
Virudhunagar.

4.The Assistant Elementary Education Officer,
Kariapatti Panchayat Union,
Kariapatti. ... Respondents in all W.Ps

Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings in G.O.Ms.No.179 dated 6.9.2013 conducted by the 1st respondent and quash the same as illegal, arbitrary and consequently direct the 2nd respondent to take action on the proceedings in Na.Ka.No.13368/T4/2011, dated 6.5.2013 as per the Padivam-2 attached.

For Petitioner : Mr.V.Muniasamy
For Respondents :Mr.V.Muruganandham
(In all W.Ps) Additional Government Pleader.

COMMON ORDER

In all these writ petitions, the petitioners are aggrieved against the order issued by the first respondent in G.O.Ms.No.179, dated 06.09.2013. Consequently, they also seek for a direction to the second respondent to take action on the proceedings dated 06.05.2013 as per Form II attached.

2.The case of the petitioners is as follows:

The petitioner in W.P(MD)No.16119 of 2013 was appointed as Secondary Grade Teacher on 03.08.1962. The petitioner in W.P(MD)No.16120 of 2013 was appointed as Secondary Grade Teacher on 19.11.1982. The petitioner in W.P(MD)No.16121 of 2013 was appointed as Secondary Grade

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Teacher on 21.07.1981. Thereafter, the petitioners were transferred to other places and at the time of retirement, they were working as Headmaster of Panchayat Elementary School at different places. They seek benefit of selection grade and special grade as per G.O.Ms.No.216, School Education Department, dated 30.12.2011. It is their case that their names were included in Form II through proceedings dated 11.05.2013 issued by the third respondent. However, they were not provided the benefit of selection grade and special grade and on the other hand, the present impugned order is passed by stating that such benefit is available only to the persons who have approached this Court earlier.

3.The third respondent has filed counter affidavit reiterating the contention raised in the impugned order that the benefit of G.O.Ms.Nos.234, 270, and 216 were given only to the persons who have approached this Court.

4.Learned counsel for the petitioners submitted that the issue involved in this case is squarely covered by the order passed by a learned single Judge of this Court made in W.P(MD)No.14520 of 2011, dated 20.12.2011.

5.On the other hand, learned Additional Government Pleader for the respondents submitted that since the petitioners are not parties to the earlier proceedings and they have not approached this Court earlier, they cannot seek the benefit of G.O.Ms.Nos.234, 270, and 216.

6.It is not in dispute that these petitioners were appointed as Headmaster of Elementary School between the period 01.06.1988 and 31.12.1995. The said fact is made available in Form II. The only objection raised by the respondents is that the benefit would be given only to the persons those who have approached this Court earlier. Whether such objection is maintainable and acceptable or not has already been considered by this Court in W.A.Nos.815 of 2010 etc., dated 07.07.2011 wherein the Hon'ble Division Bench has observed that when it is found that the claim of the appellants therein was also covered by the issue decided in the Government Order in G.O.Ms.No.234, dated 10.09.2009, they should have been given similar treatment and that the Government should have extended the benefits to all the similarly placed servants without driving them to the Court and that too during their old age. The said observation made by the Hon'ble Division Bench was followed by the learned single Judge in W.P(MD)No.14520 of 2011, dated 20.12.2011 wherein the learned single Judge has observed as follows:

> *"3.When the matter stands as above, it has been brought to the notice of this Court by the learned Counsel appearing for the petitioner that the learned Single Judge by looking at the delay in approaching the High Court dismissed the writ petitions on the ground of laches. Challenging the said order passed by the Single Judge, Writ Appeals have been filed in W.A.Nos.815, 1531, 1691 to 1693 and 1165 of 2010 and the same were allowed by a Division Bench of this Court by common judgment dated 07.07.2011, wherein in paragraphs 20 and 22 it has been held as follows:*
>
> *"20. The appellants are all senior citizens and they have been corresponding with the Government to grant them similar relief. In fact, the cause of action is a continuing one. In*

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a matter like this, delay alone cannot be the determining factor to reject the claim. When it is found that the claim of the appellants are also covered by the issue decided in the Government Order in G.O.Ms.No.234, dated 10 September 2009, they should have been given similar treatment. Therefore, we are of the considered view that the learned Single Judge was not justified in dismissing the writ petitions solely on the ground of delay.

21. ...

22. In fact, the Government should have extended the benefits to all the similarly placed employees without driving them to the Court and that too during their old age."

4.When this Court has already come to the conclusion that the Government should have extended the benefit to all the similarly placed persons without driving them to the Court and that too during their old age, a similar order needs to be followed by this Court also.

5.However, the learned Government Advocate appearing for the respondents would submit that though the Government have issued G.O.Ms.No.234, School Education (G2) Department, dated 10.09.2009, in view of the financial crisis in extending the benefit to others who have not approached the Court, the Government have issued another G.O.Ms.No.270, School Education (G2) Department, dated 20.09.2010 restricting the benefit only to those Teachers who have obtained specific orders from the Court. On that basis, the learned Government Advocate appearing for the respondents justified in passing the Government Order in G.O.Ms.No.270, School Education (G2) Department, dated 20.09.2010, stating that when the Government is facing financial crisis, restricting the benefit of Selection Grade and Special Grade to retired Teachers cannot be found incorrect.

6.But, this Court is of the considered view that the stand taken by the learned Government Advocate cannot be accepted as the G.O.Ms.No.270, School Education (G2) Department, dated 20.09.2010, has not been issued in the light of the paragraphs 22 of the Common Judgment passed by the Division Bench of this Court on 07.07.2011 in W.A.Nos.815, 1531, 1691 to 1693 and 1165 of 2010. When this Court, by a detailed order considering the case of the similarly placed persons, has already passed an order that the Government should have extended the benefit to all the similarly placed employees without driving them to Court, that too, during their old age, I have no other option except to follow the said judgment by holding that the case of the petitioner is also covered by the earlier order passed by the Tribunal and subsequent judgment passed by this Court in W.A.Nos.815, 1531, 1691 to 1693 and 1165 of 2010, dated 07.07.2011. Accordingly, this writ petition shall stand allowed by directing the respondents herein to sanction and award Selection Grade and Special Grade to the petitioner in the post of Primary School Headmaster by reckoning and computing his service rendered in the cadres of Secondary Grade Teacher and Primary School Headmaster. No costs".

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7.It is submitted that the said order of the learned single Judge has not been challenged further and also the order made in W.A.(MD) No.815 of 2010 etc., dated 07.07.2011 has also become final and not challenged. When that being the factual position, I am of the view that these writ petitions are also to be allowed by following the earlier order of this Court as referred to *supra.*

8.Accordingly, the writ petitions are allowed and the impugned order is set aside. Consequently, the respondents are directed to award selection grade and special grade to the petitioners in the post of Primary School Headmaster by reckoning and computing their service rendered in the post of Secondary Grade Teacher and Primary School Headmaster. Such exercise shall be completed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

sms

To

1.The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St., George,
Chennai 9.

2.The Director of Elementary Education,
DPI Compound,
College Road,
Chennai 6

3.The District Elementary Educational Officer,
Virudhunagar.

4.The Assistant Elementary Education Officer,
Kariapatti Panchayat Union,
Kariapatti.

+1cc to Special Government Pleader Sr NO. 5461

+3cc to MR.V.Muniasamy, ADVOCATE IN SR NO. 5358

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