

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition No.17606 of 2013
and
M.P.No.1 of 2013

1.M.Sivasankaran
2.R.Gnanasekaran
3.M.Palaninathan
4.T.Duraikannu
5.T.K.Vijayalakshmi

... Petitioners

Vs.

1. The Government of Tamil Nadu,
rep by Secretary to the Government,
School Education Department,
Fort St., George,
Chennai 600 009.
2. The Director of Elementary Education,
College Road, Chennai 600 006.
3. The District Elementary Educational Officer,
Vellore District, Vellore.
4. The Assistant Elementary Educational Officer,
Kaniyampadi Panchayat Union,
Kaniyampadi, Vellore District.
5. The Additional Assistant Elementary
Educational Officer,
Kaniyampadi Panchayat Union,
Kaniyampadi, Vellore District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent issued in Na.Ka.No.2200/C2/2010, dated 23.07.2010 and quash the same insofar as it denies arrears of pay and issue a consequential direction to the respondents to grant arrears of pay in respect of pay fixation done under the G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008.

For Petitioners : Mr.R.Saseetharan
For Respondents : Mrs.M.E.Raniselvam,
Additional Government Pleader.

ORDER

Heard Mr.R.Saseetharan, learned counsel appearing for the petitioners and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents.

2.The short facts of the case reads as follows:-

The petitioners were promoted to the post of Primary School Headmaster after 01.06.1988 in Kaniyampadi Panchayat Union, Kaniyampadi, Vellore District. The Government of Tamil Nadu had issued G.O.Ms.No.207, School Education Department, dated 30.09.2008 stating that the pay of the Primary School Headmasters who were promoted after 01.06.1988 are entitled to fixation of pay without reference to G.O.Ms.No.38, dated 05.03.2001 but in accordance with G.O.Ms.No.185, dated 16.12.2002 and G.O.Ms.No.160, dated 23.08.2005. In other words, G.O.Ms.No.270, dated 30.09.2008 enables revision of pay of Primary School Headmasters promoted after 01.06.1988 by which it can be construed that the Government servant is entitled for arrears of pay as well as arrears of pension. The Director of School Education, in his proceedings dated 04.03.2010 has issued a general instructions stating that as per G.O.Ms.No.270, 30.09.2008 only arrears of pension has to be paid and arrears of pay cannot be granted to the Primary School Headmasters. Consequently, the Director of Elementary Education, by his proceedings dated 23.07.2010 has issued general instructions stating that as per G.O.Ms.No.270, dated 30.09.2008, the Headmasters who retired from service on 01.06.1988 alone are entitled to count their previous service for award of selection grade and special grade pay in the post of Primary School Headmaster and Middle School Headmaster and that they are entitled only for arrears of pension and not for arrears of pay. Aggrieved against the proceedings of the Director of School Education, dated 23.07.2010, the present writ petition has been filed.

3.When a question arose before this Court, in a batch of writ petitions in W.P.Nos.20706 of 2010 etc., dated 05.08.2011 as to whether the petitioners therein are entitled to seek the relief of fixation of arrears of pay as well as the arrears of pension in lieu of G.O.Ms.No.207, School Education Department dated 30.09.2008, the learned single Judge of this Court had set aside the general instructions issued by the Director of Elementary Education in his proceedings dated 23.07.2010 which is impugned in the present writ petition and consequently, directed him to consider the petitioners claim in

the light of G.O.Ms.No.207, dated 30.09.2008. The relevant portion of the order is extracted below:-

"6.In all these matters, the petitioners had served as Primary School Headmasters and retired from service. It is seen from the perusal of the G.O.Ms.No.207, School Education Department, dated 30.09.2008 that for the persons, who have been appointed as Primary School Headmasters after 01.06.1988, their pay scales have to be fixed pursuant to the fixation of pay in the selection and special grade. The said Headmasters are entitled to claim retiral monetary benefits and benefits of fixation of pay.

7.Therefore, this Court is of the considered view that the impugned orders of the Director of Elementary Education, Chennai, rejecting the claim of the petitioners that they are entitled only to receive the monetary benefits in respect of arrears of pension alone are unsustainable. Accordingly, the impugned orders are set aside. Consequently, the Director of Elementary Education, Chennai/the second respondent herein (first respondent in W.P.Nos.23639 to 23648 of 2010) is directed to consider the claim of the petitioners in the light of the G.O.Ms.No.207, School Education Department, dated 30.09.2008 as per para 7 and also in the light of the G.O.Ms.No.185, dated 16.12.2002, G.O.Ms.No.212, dated 07.08.2000 and G.O.Ms.No.238, dated 26.06.1998. It is made clear that the above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."

4.In another writ petition in W.P.No.11738 of 2011, a learned single Judge of this Court by an order dated 17.11.2011 had also taken a similar view which reads as follows:-

"9.However, the fourth respondent passed an order daed 28.01.2010, granting Selection Grade as well as Special Grade in the post of Primary School Headmaster to the petitioner with effect from 21.07.1997, but without granting monetary benefits from the said date. The said order is said to have been passed based on the circular dated 05.10.2010 of the second respondent. The fourth respondent failed to grant monetary benefits from 21.07.1997, the date on which Selection Grade and Special Grade was granted to the petitioner and the monetary benefit

was granted only with regard to the pensionary benefits. The petitioner retired from service on 31.07.2006, that is, Selection Grade/Special Grade in the post of Primary School Headmaster was given notionally and the same is taken into account for calculating the terminal benefits. This is done by the fourth respondent based on the circular dated 05.10.2010.

10.It is brought to my notice that, a similar circular dated 23.07.2010 issued by the Director of Elementary Education, was quashed by this Court in a batch of writ petitions by order dated 05.08.2011. In view of the same, the circular dated 05.10.2010 is also bad and the fourth respondent is not in correct following the same."

5.Since the order impugned in the present writ petition has already been set aside by this Court in in a batch of writ petitions in W.P.Nos.20706 of 2010 etc., dated 05.08.2011, the petitioners are entitled to succeed in the present writ petition. Consequently, the respondents are directed to grant arrears of pay in the light of G.O.Ms.No.207, dated 30.09.2008. The respondents shall ensure that the arrears of pay shall be disbursed to the petitioners, at least, within a period of six weeks from the date of receipt of a copy of this order.

6.The writ petition stands allowed accordingly. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

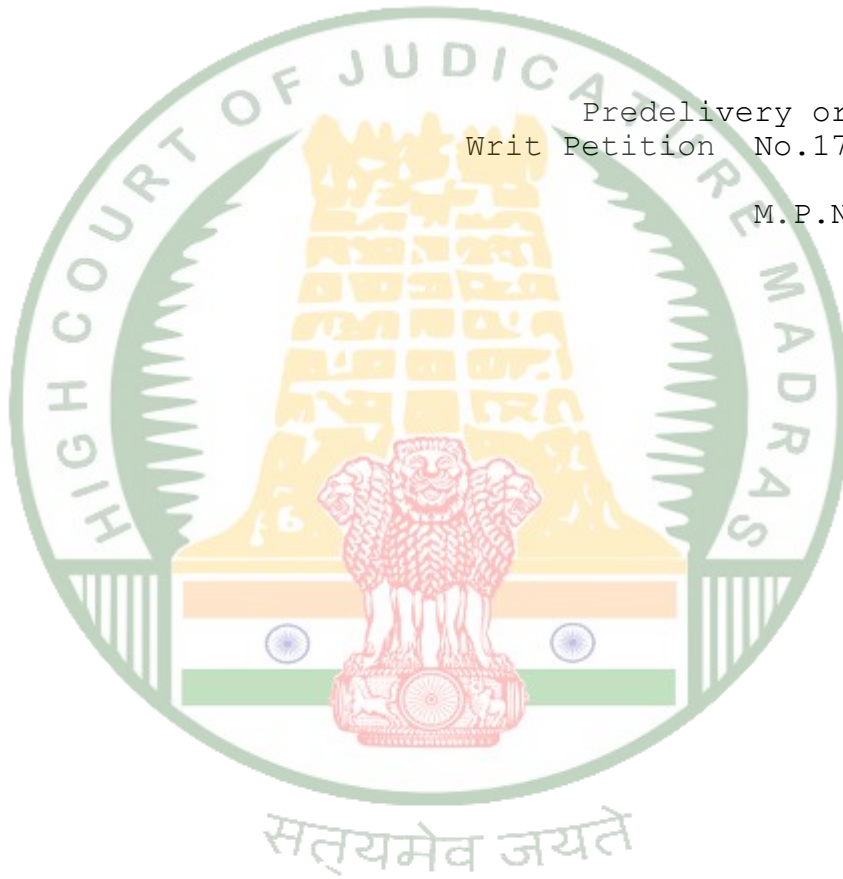
To

1. The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort St., George,
Chennai 600 009.
2. The Director of Elementary Education,
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3. The District Elementary Educational Officer,
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5. The Additional Assistant Elementary
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Kaniyampadi Panchayat Union,
Kaniyampadi, Vellore District.

Predelivery order made in
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and
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