



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.16968 of 2016

and

W.M.P (MD) No.12290 of 2016

J.Dharmaraj

: Petitioner

Vs.

1.State of Tamil Nadu rep. by its
Principal Secretary,
Department of School Education,
Fort St. George, Chennai - 9.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 6.

3.The Joint Director of School Education,
DPI Campus,
College Road, Chennai - 6.

4.The District Educational Officer,
O/o.the District Educational Officer,
Dindigul.

: Respondents

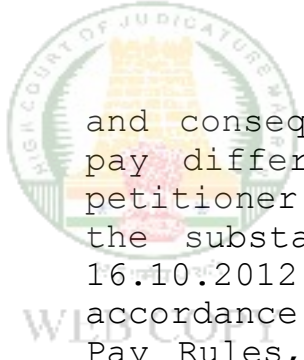
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in O.Mu.No.894/A1/2016 dated 31.08.2016 on the file of the fourth respondent and quash the same as illegal and consequently for a direction, directing the fourth respondent to rectify the pay difference by way of stepping up the scale of pay of the petitioner on par with the pay of Vocational Instructor, which was the substantive post held by the petitioner with effect from 16.10.2012 and disburse the monetary benefit along with arrears in accordance with the Rule 4(3) of The Tamil Nadu Revised Scale of Pay Rules, 1989 within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Kumar,
Additional Government Pleader.

O R D E R

<https://hcservices.courts.gov.in/hcservices/> Petition has been filed for issuance of a Writ of Certiorarified Mandamus seeking to quash the impugned order passed by the fourth respondent in O.Mu.No.894/A1/2016 dated 31.08.2016



and consequently to direct the fourth respondent to rectify the pay difference by way of stepping up the scale of pay of the petitioner on par with the pay of Vocational Instructor, which was the substantive post held by the petitioner, with effect from 16.10.2012 and disburse the monetary benefit along with arrears in accordance with the Rule 4(3) of The Tamil Nadu Revised Scale of Pay Rules, 1989 within the time period to be stipulated by this Court.

2.Mr.S.Kumar, learned Additional Government Pleader, takes notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4.0.It is the case of the petitioner that the petitioner is a M.Com., M.Phil. graduate and was initially appointed as double part-time Vocational Instructor on 26.08.1988 in Dudley Higher Secondary School, Dindigul, which is coming under the control of the fourth respondent and he was regularized in the post of Vocational Instructor (Accountancy & Auditing) on 16.10.1992. The requisite qualification for the said post is B.Com. Further, he was promoted to the post of P.G.Assistant (Commerce) in view of his higher qualification on 01.04.2005 and on 13.11.2009, he was further promoted to the post of Head Master, Higher Secondary School.

4.1.Since the Vocational Instructors (B.T. Cadre) are getting higher pay than the petitioner from 16.10.2012 and he is working as Higher Secondary School Headmaster, which is a two level higher promotion cadre, he sent a detailed representation dated 05.09.2015 to the respondents through the Correspondent of school, praying to re-fix his pay scale by way of stepping up pay in the officiating post i.e., Higher Secondary School Headmaster with that of pay which he would have been getting, if he had continued in the substantive post at the time of holding the post with effect from 16.10.2012, as per Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1989. But, the fourth respondent without considering the same has passed the impugned order dated 31.08.2016, stating that Rule 4(3) of the Rules cannot be applied in view of Sixth Pay Commission and ultimately rejected his claim. But, there is no specific impediment in the Rules as stated by the fourth respondent. Therefore, the petitioner has come up with the present writ petition.

5.The learned counsel for the petitioner would submit that in W.P.No.11677 of 2007 filed by a similarly placed employee, the

<https://hccorpus.gov.in/cases>

of this Court has passed the following order:

"11.This reason given is totally misconceived, as there is no necessity to pass any specific order under



Rule 4 (3) of the Tamil Nadu Revised Scales of Pay Rules 1989. The Rule, on being enforced, is binding on the employee as well as employer. No specific order is required to be passed to give benefit of the rules, to which the employee is entitled to under the rules.

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12. Once the rules are notified and enforced, the benefit flowing therefrom is to be granted automatically by way of administrative order, which can be said to be merely a ministerial act, which the employer is statutorily bound to pass.

13. The contention of learned Additional Government Pleader, that the writ is premature, as no adverse order against petitioner has been passed, as liberty has been granted to petitioner to approach the Government for passing of an order under Rule 4 (3), cannot be accepted. The petitioner was entitled to benefit under the rules, which were granted to petitioner and his pay was fixed in the post of Tamil Pandit by protecting his salary, as Headmaster Primary School, and consequential benefits were also granted.

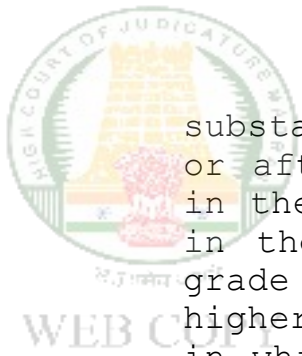
14. The impugned order takes away the right of petitioner to which he is entitled to under the rules, therefore, the writ cannot be said to be premature, as contended by learned Additional Government Pleader.

15. In view of what has been stated above, this writ petition is allowed. A writ in the nature of Certiorari is issued, quashing the impugned order, with direction to the respondents to grant of pensionary benefits to petitioner, by calculating it on last pay drawn by petitioner i.e. Rs.10,750/- (Rupees Ten Thousand Seven Hundred and Fifty only)".

6. The learned Additional Government Pleader would submit that Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1989 cannot be applied to the case of the petitioner in view of Sixth Pay Commission and therefore the fourth respondent has rightly passed the impugned order and the same requires no interference.

7. The impugned order passed by the fourth respondent dated 31.08.2016 would go to show that it has been passed without explaining how Rule 4(3) shall not be applicable to the case of the petitioner. Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1989 vide G.O.Ms.No.57, dated 28.01.1991 categorically provides as follows:

"Government after careful consideration direct that if at any point of time on or after 1.6.88, a Government servant would have drawn more pay in the revised pay scale in the substantive post had he continued in it than in the officiating post which he is actually working, his pay in the officiating post at a stage next above the pay in the



substantive post. Similarly, if at any point of time on or after 1.6.88, a Government Servant has drawn more pay in the revised scale in the lower officiating post either in the selection grade of lower post or in the special grade of lower post had he continued in it than in the higher officiating post or selection grade/special grade in which he is actually working, his pay in the scale of pay of higher officiating post or selection grade/special grade shall be refixed at a stage equal to the pay in the lower post/selection grade or special grade of lower post if there is a stage or at the next higher stage".

The learned counsel for the petitioner relied upon the Judgment of Principal Seat of this Court passed in W.P.No.11677 of 2007, dated 17.04.2012, where-under, such a request has been allowed by this Court. Therefore, the impugned order dated 31.08.2016, passed by the fourth respondent, is hereby set aside and the matter is remitted back to the fourth respondent and the fourth respondent shall consider the representation of the petitioner, dated 05.09.2015, seeking stepping up the scale of pay, in the light of the orders passed in W.P.No.11677 of 2007, dated 31.08.2016, and pass orders on merits and in accordance with law, within a period of four weeks, from the date of receipt of a copy of this order.

8.The writ petition is allowed with the above said directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary,
Department of School Education,
Government of Tamil Nadu, Fort St. George, Chennai - 9.
 - 2.The Director of School Education, DPI Campus,
College Road, Chennai - 6.
 - 3.The Joint Director of School Education, DPI Campus,
College Road, Chennai - 6.
 - 4.The District Educational Officer,
O/o.the District Educational Officer, Dindigul.
- +One cc to Mr.T.Lajapathi Roy, Advocate, SR.No.54676
+One cc to The Special Government Pleader, SR.No.54687

smn

RL/7C/2P/CK/1.11.2016

ORDER MADE IN

W.P (MD) No.16968 of 2016
and

W.M.P (MD) No.12290 of 2016
21.09.2016