

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.10.2017

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.19150 of 2011

1. A.Dhandapani
2. M.Seethapathi
3. C.Marimuthu
4. M.Marudhachalam
5. K.Kumarasamy
6. V.Maragathmani
7. S.Manonmani
8. D.Thiyagarajan
9. D.Perumalsamy
10. P.Krishnasamy
11. K.Kanagaraju
12. K.Rajammal
13. M.Andalammal
14. R.Balasubramanian
15. K.Durairajan
16. S.Ramasamy
17. S.Indiramani
18. C.Ramasamy
19. R.Somasundaram
20. A.P.Natarajan
21. N.Natarajan

.... Petitioners

Versus

1. The Government of Tamil Nadu,
represented by the 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,
Tiruppur, Tiruppur District.

4. The Accountant General (A&E),
Anna Salai, Chennai-600 018.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, to direct the respondents to pay the arrears of pay to the petitioners consequent on the re-fixation of their pay and pension as per G.O.Ms.No.207, School Education (G-2) Department, dated 30.9.2008 and grant them all consequential benefits.

For Petitioners : Mr.P.Rajendran

For Respondents : Mr.S.V.Duraisolaimalai, AGP
for R1 to R3
Mr.S.Balaji for R4

ORDER

The present writ petition has been filed, seeking for the following relief:

Issue Writ of Mandamus, to direct the respondents to pay the arrears of pay to the petitioners consequent on the re-fixation of their pay and pension as per G.O.Ms.No.207, School Education (G-2) Department, dated 30.9.2008 and grant them all consequential benefits.

2. The issue involved in the writ petition has a chequered history dating back to 1998 till the final Government Order was issued vide G.O.Ms.No.207 School Education (G2) Department dated 30.09.2008. The issue raised in the Writ Petition had given rise to passing of several Government Orders over a period of time and some of the G.Os. were subjected to litigation before the then Tamil Nadu Administrative Tribunal and before this Court. However, for the sake of clarity in regard to claim put forth by the petitioners, the facts are stated hereunder in brevity.

3. The petitioners were all appointed originally as Secondary Grade Teachers on various dates and their service details have been given in the following tabular column.

Name	Date of Appt. as Secondary Grade Teacher	Date of grant of Selection grade in Secondary Grade Post	Date of grant of Special Grade in Secondary Grade Post	Date of promotion as Primary School Headmaster	Date of Retirement and the School where last worked
A.Dhandapani	01-01-1971	01-01-1981	01-01-1991	09-07-1997	31-01-2007 as Primary School Headmaster Panchayat Union Elementary School.

Name	Date of Appt. as Secondary Grade Teacher	Date of grant of Selection grade in Secondary Grade Post	Date of grant of Special Grade in Secondary Grade Post	Date of promotion as Primary School Headmaster	Date of Retirement and the School where last worked
M.Seethapathi	04-09-1972	04-09-1982	04-09-1992	17-07-1998	31-03-2007 as Headmaster. Panchayat Union Elementary School. V.Vallakundapuram, Gudimangalam Block
C.Marimuthu	01-06-1974	01-06-1984	01-06-1994	06-07-1998	30-06-2008 as Headmaster. Panchayat Union Elementary School, Salavanaickenpatti Pudur
M.Marudhachalam	03-03-1972	03-03-1982	03-03-1992	03-07-1998	30-04-2008 as Headmaster Panchayat Union Elementary School, Ravanapuram, Gudimangalam Block
K.Kumarasamy	25-03-1972	25-03-1982	25-03-1992	18-06-2001	30-09-2008 as Headmaster. Panchayat Union Elementary School, Sindiluppu, Gudimangalam Block
V.Maragathamani	11-09-1973	11-09-1983	11-09-1993	29-06-1999	31-07-2007 as Headmaster, Panchayat Union Primary School, Kollupala

Name	Date of Appt. as Secondary Grade Teacher	Date of grant of Selection grade in Secondary Grade Post	Date of grant of Special Grade in Secondary Grade Post	Date of promotion as Primary School Headmaster	Date of Retirement and the School where last worked
S.Manonmani	29-07-1983	29-07-1993	29-07-2003	26-06-2006	31-01-2010 as Headmaster Panchayat Union Elementary School, Kollappalayam, Gudimangalam Block
D.Thiagarajan	03-02-1981	03-02-1991	03-02-2001	18-06-2001	12-02-2007 as Headmaster, Panchayat Union Middle School, Pookulam
D.Perumalsamy	23-11-1968	23-11-1978	23-11-1998	24-10-2004	30-06-2005 as Headmaster, Panchayat Union Middle School, A.Amma patti, Gudimangalam
P.Krishnasamy	01-01-1971	01-01-1981	01-01-1991	04-07-1997	28-02-2003 as Headmaster (Panchayat Union Elementary School, Sangamanaicken palayam V.Velur
K.Kanagaraju	01-01-1971	01-01-1981	01-01-1991	20-06-2001	30-06-2005 as Headmaster, Panchayat Union Elementary School, Virutapaatti
K.Rajammal	01-06-1974	01-06-1984	01-06-1994	06-07-1998	31-01-2006 as Headmaster, Panchayat Union Primary School, S.Valla kondapuram

Name	Date of Appt. as Secondary Grade Teacher	Date of grant of Selection grade in Secondary Grade Post	Date of grant of Special Grade in Secondary Grade Post	Date of promotion as Primary School Headmaster	Date of Retirement and the School where last worked
M.Andalammal	29-10-1973	03-06-1984	03-04-1994	26-06-1999	31-07-2007 as Headmaster, Panchayat Union Middle School, Kottamangalam Gudimangalam Block
R.Balasubramanian	06-08-1978	06-08-1988	06-08-1998	27-03-2003	30-09-2006 as Headmaster, Panchayat Union Elementary School, Kollu Palayam, Gudimangalam Block
K.Durairajan	27-06-1979	27-06-1989	27-06-1999	13-06-2000	28-02-2005 as Headmaster, Panchayat Union Elementary School, Chikanuthu
S.Ramasamy	16-10-1978	16-10-1988	16-10-1998	12-06-2000	31-01-2007 as Headmaster, Panchayat Union Elementary School, Velayutha gounden pudur
S.Indiramani	09-10-1972 as Part time PVI, 3-6-74 as Full time PVI, 18-07-1988 as Secondary Grade Teacher	18-07-1998	-	07-06-2002	28-02-2010 as Headmaster as P.U.Primary School, S.Vallakundapuram, Gudimangalam Block
C.Ramasamy	17-10-1978	17-10-1988	17-10-1998	10-06-2000	31.01.20007 as Headmaster, Panchayat Union Primary School, Velayutha gounden pudur

Name	Date of Appt. as Secondary Grade Teacher	Date of grant of Selection grade in Secondary Grade Post	Date of grant of Special Grade in Secondary Grade Post	Date of promotion as Primary School Headmaster	Date of Retirement and the School where last worked
R.Soma-sundaram	17-03-1982	17-03-1992	01-01-2002 (Spl Gr in HM Post)	01-01-2002	30-09-2008 as Headmaster (Sec Gr), Panchayat Union Elementary School, Athukinathupatti, Kudimangalam
A.P.Natarajan	01-09-1971	01-09-1981	01-09-1991	06-08-1997	31-05-2005 as Headmaster (Sec Gr), Panchayat School, Pottinaickanur
N.Natarajan	01-06-1977	01-06-1987	01-06-1997	18-06-2003	31-08-2008 as Headmaster (Sec Gr), Panchayat Union Elementary School, Mannampalayam, Kudimangalam

4. At the time of their appointment, the posts of Secondary Grade Teacher and the Primary School Headmaster were interchangeable since it carried the same pay scale. Since the posts were interchangeable, no seniority was followed in regard to appointment of Primary School Headmasters or posting of Secondary Grade teacher as the case may be. Such posting was not subject matter in issue since the pay scales for both the posts were one and the same. However, the above said position had undergone change after 1.6.1988 while the post of Primary School Headmaster was given a higher pay scale at Rs.1400-2600 as against the post of Secondary Grade Teacher in the pay scale of Rs.1200-2040. In G.O.Ms.No.1381 School Education Department dated 5.10.1990, the Government of Tamil Nadu directed that in case of persons who were in the position of Primary School Headmaster as on 1.6.1988, their entire service consisting of Secondary Grade Teacher and Primary School Headmaster should be counted for the purpose of granting selection/special grades in the post of Primary School Headmaster. However, this benefit was denied to the Primary School Headmasters who were promoted as such after 1.6.1988. This disparity which was sought to be drawn by the Government between Primary School Headmaster working as on 1.6.1988 and after 1.6.1988, was objected to, since many of the junior persons who were holding the post of Primary School Headmaster when the said post was not a

promotion post as on 1.6.1988, were granted selection and special grades in the post of Primary School Headmaster while the seniors who were not holding the post of Primary School Headmasters as on 1.6.1988 were denied the said benefit.

5. The above said anomaly between two sets of similarly placed persons gave rise to filing number of cases and several orders were passed by the then Administrative Tribunal and later by this Court and in pursuance of the said orders, several Government Orders were also issued over a period of time. However, for the purpose of adjudication of the issue on hand, all those G.Os. are not required to be referred to.

6. As far as the case on hand is concerned, the grievance of the petitioners is that though their main relief regarding parity in treatment in regard to grant of selection and special grades to the post of Primary School Headmasters who were appointed as on 1.6.1988 and after 1.6.1988, had been redressed vide G.O.Ms.No.207 School Education Department (G2) dated 30.09.2008, however, the benefit of arrears of pay consequent to such re-fixation of their pay, had been denied and only the benefit of such re-fixation had been granted in the pensionary benefits.

7. In the above circumstances, the petitioners had given a representation on 18.2.2011, seeking for payment of arrears of pay consequent to implementation of G.O.Ms.No.207 dated 30.09.2008 and since there was no reply to their representation and no action was taken towards grant of arrears of pay, the petitioners are before this Court, seeking to issue Writ of Mandamus.

8. At the outset, the learned counsel for the petitioners would submit that the issue raised in the Writ Petition is no more res integra in view of the decision of the learned Judge rendered in W.P.No.25001 of 2012, dated 11.11.2014. In the said decision, the learned Judge before this Court, while relying upon the earlier orders passed in the batch of Writ Petition on the same issue, allowed similar claim made therein as that of the present petitioners.

9. The learned counsel appearing for the petitioners would draw the attention of this Court to paragraphs 25 to 27, wherein, the learned Judge has referred to earlier order passed by this Court in a batch of writ petitions, viz., W.P.Nos.20706 of 2010 etc., which are extracted hereunder:

"25.While so, the Director of Elementary Education, issued the proceeding in Na.Ka.No.2200/C-2/2010 dated 23.07.2010 that no monetary benefits would be given pursuant to the grant of selection grade / special grade in the post of Primary School Headmaster and consequent pay fixation as per G.O.Ms.No.207, but only monetary benefits in respect of retiral benefits would alone be granted.

"26. Since the monetary benefits pursuant to the fixation of Selection Grade / Special Grade pay of Primary School Headmaster as per G.O.Ms.No.207 was not granted, this led to filing of a batch of writ petitions in W.P.Nos.20706 of 2010 etc. batch seeking to quash the proceeding dated 23.07.2010 of the Director of Elementary Education on the ground that the same is contrary to G.O.Ms.No.207.

"27. This Court allowed the aforesaid writ petitions in W.P.Nos.20706 of 2010 etc., batch on 05.08.2011 and quashed the proceeding of the Director of Elementary Education dated 23.07.2010 and held that the persons, who were promoted as Primary School Headmasters after 01.06.1988, are entitled to receive monetary benefits pursuant to their Selection Grade / Special Grade pay fixation of Primary School Headmaster, besides the monetary benefit in respect of retiral benefits. Para 6 and a passage in para 7 of the said judgment are extracted hereunder :

"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."

10. After relying upon the earlier orders passed by this Court in a batch of the writ petitions cited above, the learned single Judge went on to hold that the order passed by the authority dated 23.7.2010 in and by which, the denial of arrears of pay and allowances for the period in question, was liable to be quashed. Therefore, according to the learned counsel, there is no factual or legal impediment for allowing the present writ petition as allowed by the learned single Judge in the afore said Writ Petition.

11. Upon notice, Mr.S.V.Duraisolaimalai, learned Addl.Govt.Pleader entered appearance for the respondents 1 to 3 and attempted to draw distinction between the claim of the

petitioners herein and the employees who were covered in the above said writ petition, which was allowed by the learned single Judge. However, he was unable to point out as to what is the distinguishing factor to convince this Court to take a different stand in the matter. According to the learned Addl. Government Pleader, the petitioners have accepted the pensionary benefits on their re-fixation of pay, cannot now be heard to complain as against non-payment of actual arrears of pay and allowances. The above said contention put forth by the learned Addl. Government Pleader cannot be countenanced both in law and on facts for the simple reason, that there cannot be any estoppel against the constitutional right of the petitioners to be treated equally in terms of Articles 14 and 16 of the Constitution of India. Moreover, this Court has allowed similar claim in batch of Writ Petitions and the same was also followed by the learned single Judge in W.P.No.25001 of 2012 dated 11.11.2014, now this Court cannot take a different view, to reject the case of the petitioners.

12. In the above said circumstances, this Court has no hesitation in allowing the writ petition. Accordingly, the Writ Petition is allowed. There shall be a direction to the respondents to grant arrears of to pay to the petitioners consequent to re-fixation of their pay as per G.O.Ms.No.207 School Education (G2) Department, dated 30.09.2008 as directed by this Court in W.P.No.25001 of 2012, within a period of three months from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Secretary to the Government of Tamil Nadu,
to the Government,
School Education Department,
Fort St. George, Chennai-600 009.

2. The Director of Elementary Education,
College Road, Chennai-600 006.

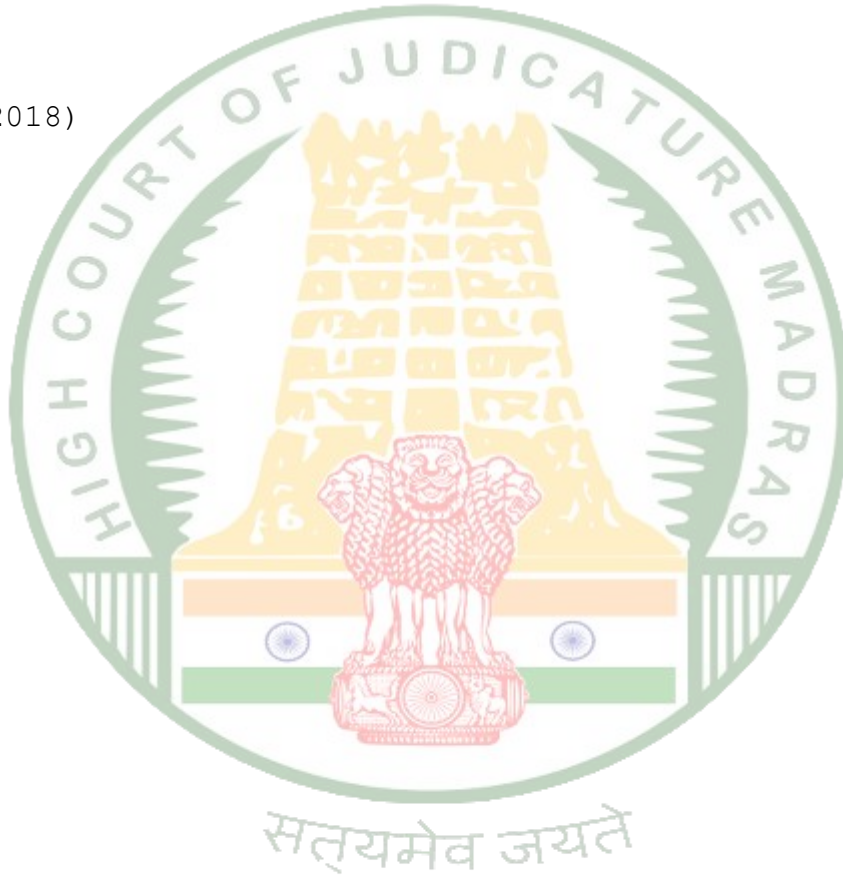
3. The District Elementary Educational Officer,
Tiruppur, Tiruppur District.

4. The Accountant General (A&E),
Anna Salai, Chennai-600 018.

+ 1 cc to Mr. P. Rajendran, Advocate sR.75539
+ 1 cc to Mr.S. Balaji, Advocate Sr.75125

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