

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.8648 of 2009
&
M.P.Nos.2 & 3 of 2009

Mrs.S.Sugunabharathi

.. Petitioner

Vs.

- 1.The Government of Tamilnadu,
rep. by its Principal Secretary,
School Education Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Elementary Education,
College Road,
Nungambakkam,
Chennai- 600 006.
- 3.The District Elementary
Educational Officer,
Tuticorin.
- 4.The Assistant Elementary
Educational Officer,
Thiruchendur,
Tuticorin 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 relating to the proceedings of the second respondent in Na.Ka.No.4845/L2/2009 dated 27.02.2009 and quash the same and direct the 3rd and 4th respondents to pay the arrears of annual increments and all the monetary benefits for the period from 01.06.1988 to 31.12.2000 which was sanctioned pursuant to G.O.Ms.No.202 of 2008 dated 24.09.2008.(prayer amended as per the order of this court dated 31.03.2010 in MP.No.4 of 2009 in W.P.No.8648 of 2009).

For Petitioner .. Mr.J.Antony Jesus
For Respondents.. Mr.A.Zakkir Hussain
Addl. Govt. Pleader

ORDER

The petitioner has come forward before this Court seeking the following relief:

'To issue a writ of certiorarified mandamus to call for the records relating to the proceedings of the second respondent in Na.Ka.No.4845/L2/2009 dated 27.02.2009 and quash the same and direct the 3rd and 4th respondents to pay the arrears of annual increments and all the monetary benefits for the period from 01.06.1988 to 31.12.2000 which was sanctioned pursuant to G.O.Ms.No.202 of 2008 dated 24.09.2008'.

2. The case of the petitioner is as follows:

The petitioner was appointed as Secondary Grade Headmistress on 01.06.1970 and served as Elementary School Headmistress from 01.06.1970 to 04.09.1978 at Tiruchendur Panchayat Union, Senthamarai Hindu Primary School. On 09.06.1980, the petitioner was reverted as Secondary Grade Teacher due to administrative reason and placed below the temporary person in the said lower category of Secondary Grade Assistant Teacher. Subsequently, she was promoted as Elementary School Headmistress on 01.08.1995.

3. According to the petitioner, at the time when she was reverted, she ought to have been posted as Elementary school Headmaster and not to the lower post with loss of seniority, in which event, the petitioner would have been entitled to Selection Grade, Special Grade Elementary School Head Master in terms of Government Order issued on the subject matter. When the petitioner was posted to Secondary Grade Teacher, the post of Elementary School Headmaster, Secondary Grade Teacher carries the same pay scale and therefore, there was no loss of emoluments. However, after the commencement of Fifth Pay Commission, the pay scale of Elementary School Headmaster was revised higher than Secondary Grade Teachers.

4. In the above said circumstances, similarly placed teachers have approached Tamilnadu Administrative Tribunal in O.A.No.6090 of 1995 seeking pay protection as that of Elementary School Headmasters. The Tamilnadu Administrative Tribunal by its order dated 13.02.2002, allowed the original application alongwith the batch of applications granting pay protection to the teachers, who are similarly placed persons like the petitioner herein.

5. As against the order of the learned Tribunal, a petition in W.P.No.43010 of 2006 was filed and the Division Bench of this Court has dismissed the writ petition by confirming the order passed by the Tamilnadu Administrative Tribunal. In these circumstances, the petitioner had submitted a representation seeking grant of pay protection as given to similarly placed persons covered under the orders passed in O.A.No.6090 of 1995. Since, the representation was not considered for some time, the petitioner has approached this Court in W.P.No.33011 of 2007. This Court has disposed of the writ petition, directing the second respondent herein, to consider the representation of the petitioner on merits and in accordance with law. However, the direction passed by this Court was not complied forthwith. In the said circumstances, the petitioner was constrained to file contempt petition No.325 of 2008. The respondent therefore has issued G.O.No.202, School Education (G2) Department dated 24.09.2008 granting pay protection, as directed by the Tamilnadu Administrative Tribunal in the batch of original applications as aforesaid. The petitioner was also granted pay protection on similar lines in December 2009.

6. While matter stood thus, by the impugned order dated 27.02.2009, the second respondent had conveyed his decision that the benefit under G.O.202, School Education (G2) Department dated 24.09.2008, will be granted only to the Elementary School Headmasters, who had worked from 01.06.1981 to 31.05.1988 and not to those who are transferred and reverted as Secondary Grade Teacher at their request or due to administrative reasons. The petitioner herein, who had been admittedly appointed as Elementary School Headmaster and reverted earlier on 09.06.1980, was covered under G.O.No.202, School Education (G2) Department dated 24.09.2008 vide proceedings dated 27.02.2009. Therefore, she is before this Court assailing the impugned proceedings by restricting the grant of promotion only for the Elementary School Headmasters, who have functioned as such between 01.06.1981 to 31.05.1988.

7. The learned counsel for the petitioner, at the out set would submit that there was no sanctity attached to the date namely i.e., 01.06.1981 to 31.05.1988, as no explanation or reasons were spelt out by the Government as to why the promotion is to be restricted only for such of those Headmasters, who are functioning as such and reverted only between the period from 01.06.1981 to 31.05.1988. In the instant case, admittedly, the petitioner was appointed earlier to 1981 as Headmistress and reverted as Secondary Grade teacher due to administrative reasons. Her case is also squarely falls within the benefit as envisaged in G.O.No.202, School Education (G2) Department dated 24.09.2008. Moreover, the learned counsel would submit that there is no such distinction is

contemplated in the said Government Order, which meant that the benefit as granted in the said Government Order cannot be taken away by subsequent executive proceedings.

8. Upon notice, Mr.A.Zakkir Hussain, the learned Additional Government Pleader entered appearance for the respondents and reiterated the contents of the impugned proceedings, stating that the petitioner was not entitled to the benefit of G.O.202, School Education (G2) Department dated 24.09.2008, as she was appointed earlier to 1981.

9. This Court, upon considering the submissions is entirely in agreement with the submissions made on behalf of the learned counsel for the petitioner. As set out above, the learned counsel would demonstrate as to how the case of the petitioner is distinguishable from the other Elementary School Headmasters, who are appointed and reverted only during the period between 1981 and 1988. No special reasons have been spelt out as to how the case of the petitioner can be dealt with differently in the matter of petitioner's promotion. In the absence of distinguishable criteria between the petitioner and the other similarly placed Elementary School Head Masters, this Court finds that the present impugned proceedings is violative of Article 14 of the Constitution of India. In the above said circumstances, this Court has no hesitation in accepting the case of the petitioner. The writ petition is therefore allowed and the impugned proceedings issued by the second respondent in Na.Ka.No.4845/L2/2009 dated 27.02.2009 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

10. It is brought to the notice of this Court that during the pendency of the writ petition, an amendment was sought in the prayer and the same has been allowed and the prayer has been amended as follows:

सत्यमेव जयते

''To direct the 3rd and 4th respondents to pay the arrears of annual increments and all the monetary benefits for the period from 01.06.1988 to 31.12.2000 which was sanctioned pursuant to G.O.Ms.No.202 of 2008 dated 24.09.2008''.

11. In view of the same, the authorities are directed to pass consequential orders granting him all the attendant benefits to the petitioner as prayed for within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary
The Government of Tamilnadu,
School Education Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Elementary Education,
College Road,
Nungambakkam,
Chennai- 600 006.
- 3.The District Elementary
Educational Officer,
Tuticorin.
- 4.The Assistant Elementary
Educational Officer,
Thiruchendur,
Tuticorin District.

+1 cc to Government Pleader sr 69814
+1 cc to Mr.J.Antony Jesus Advocate sr 69928

W.P.No.8648 of 2009

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