

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.20554 of 2013

1.G.Thomas Senior (died)
2.Sulochana Thomas ... Petitioners
(2nd petitioner substituted as LR of deceased 1st petitioner as per order in WMP.No.19978 of 2017, dt. 24.7.2017)

Vs

1.The Director of Elementary Education,
DPI Campus,
College Road,
Chennai-600 006.
2.The District Elementary Educational Officer,
Thiruvallur,
Thiruvallur District. ... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of mandamus directing the respondents to dispose of the representation of the 1st petitioner dated 9.3.2013 and consequently grant selection grade and special grade in the post of Elementary School Headmaster with effect from 1.6.1988 and consequently, refix the pension of the petitioner with further direction to pay the arrears to the petitioner within the time frame to be fixed by this Court.

For Petitioner : Ms.Dakshayani Reddy

For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader

ORDER

This writ petition has been filed by the original petitioner seeking a writ of mandamus directing the respondents to dispose of the representation dated 9.3.2013 and consequently grant selection grade and special grade in the post of Elementary School Headmaster with effect from 1.6.1988 and to re-fix the pension of the original petitioner with a further direction to pay the arrears within the time frame to be fixed by this Court. Pending writ petition, the original petitioner died and his wife was substituted as second petitioner.

2. The case of the deceased petitioner was that he had worked from 1964 till 1978 as Middle School Headmaster and subsequently, from 1978 till 1985, he had worked as Elementary School Headmaster and also with effect from 1.3.1985, he had worked as Secondary Grade Assistant. Therefore, his service prior to 1.6.1988 ought to have been taken into consideration for fixation of Selection Grade/Special Grade as per G.O.Ms.No.202, dated 24.9.2008. According to the deceased petitioner, despite several representations commencing from 1985, the respondents have not extended any benefit to him. Hence, he had filed the writ petition.

3. Resisting the writ petition, the second respondent filed counter stating that the teachers who served as Headmasters in one Union, while getting transferred to another Union cannot carry their seniority, so they had been compelled to work as Secondary Grade Assistants even though they were ready to take the responsibility of Headmaster even without commensurate financial reward. But those teachers, who have worked in the same Union throughout their entire service, were not ready to take the responsibility of the Headmaster even though they were eligible to be appointed as Headmasters by virtue of their seniority within the Union, because the pay scale was some for the Secondary Grade Assistant and the Elementary/Primary School Headmaster, when G.O.Ms.No.666 fixed a higher scale of pay to the Elementary/Primary School Headmasters on the recommendation of the V Pay Commission. It is stated that the petitioner out of his own volition declined to take the responsibility of the Headmaster even though he was eligible by virtue of his seniority as well by other criteria. After having shirked his responsibility, the petitioner cannot be allowed to cry foul now when a financial reward has been granted retrospectively. According to the second respondent, the petitioner was never given his willingness to be promoted as Headmaster and in fact, he had relinquished the promotion and therefore, the petitioner cannot turn around and claim benefits for the promotion.

4. I heard Ms.Dakshayani Reddy, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents and also perused the materials available on record.

5. The grievance of the petitioner is that he had worked as Elementary School Headmaster from 9.6.1978 to 28.2.1985 and was transferred to the Panchayat Union School, Poonamallee as Secondary Grade Assistant with effect from 1.3.1985. Since the petitioner had worked Elementary School Headmaster prior to 1.6.1988 and had been transferred and appointed to the post of Secondary Grade Assistant, he is entitled to the benefit of G.O.Ms.No.202, dated 24.9.2008 and the said G.O. is squarely applicable to the petitioner. Accordingly, the petitioner is entitled to fixation of pay scale in the pay scale of Elementary School Headmaster with effect from 1.6.1988.

6. It appears that the petitioner originally joined as Middle School Headmaster in the Panchayat Union Middle School at Kambaliampatty village with effect from 20.8.1964 and subsequently, he was appointed as Elementary School Headmaster with effect from 9.6.1978 and continued in the post of Elementary School Headmaster till 28.5.1985. The petitioner was posted as Elementary School Headmaster in the Panchayat Union Elementary School, Eluppaikinaru. Subsequently, he was transferred to Poonamallee with effect from 1.3.2015 in the post of Secondary Grade Assistant, Panchayat Union School, Kotramedy, Ponnmallee. Thereafter, he was transferred to the Panchayat Union School at Swaranchery within the same Poonamallee Panchayat Union and had continued in the post of Secondary Grade Assistant till the date of retirement on 30.9.2000.

7. In respect of persons, who were employed as Elementary School Headmasters prior to 1.6.1988 and who got transferred as Secondary Grade Assistants, the Government has issued an order in G.O.Ms.No.202, School Education Department, dated 24.9.2008. Under the said Government Order, such persons were directed to be treated only as Headmasters of Elementary Schools, for the purpose of fixation of pay under the V Pay Commission recommendations. As stated supra, the deceased petitioner held the post of Elementary School Headmaster prior to 1.6.1988 and has been transferred and appointed to the post of Secondary Grade Assistant. It appears that the deceased petitioner had submitted representations to the respondent authorities seeking to extend the benefit of G.O.Ms.No.202 and despite the receipt of the same, the respondent authorities have not considered the same. The last representation of the petitioner was dated 9.3.2013.

8. It is an admitted fact that prior to 01.06.1988, the scale of pay of Secondary Grade Assistant as well as the Primary School Headmaster was one and the same and a perusal of the Government Order in G.O.Ms.No.202, School Education (G2) Department, dated 24.09.2008, particularly, paragraph No.4 of the said order, would disclose that even though the Headmasters, who worked before 01.06.1988, were transferred and joined in the Union to which they had been transferred as the intermediate teachers, have to be treated as the Headmaster of the Elementary School from the date of joining of the Union to which they were transferred and some of them made a challenge to the said proceedings and obtained orders and the persons, who have not obtained orders, the service period of all of them will be calculated before 01.06.1988 and as per the Government Order in No.666, Finance Department, dated 27.06.1989, as per the recommendation of the V Pay Commission, Selection Grade/Special Grade shall be granted and pay may be fixed for them accordingly.

9. A Division Bench of this Court, in an unreported judgment, dated 28.02.2012, made in W.A.(MD)No.747 of 2011, has considered similar issue and held as under:-

"7.Referring to the reliance placed on G.O.Ms.No.160, School Education (G) Department, dated 23.08.2005, particularly paragraph 2(ii), the appellant submitted that the Government Order was applicable to only those officials who are holding the post as Headmaster of the Primary School as on 01.06.1988 and continued so thereafter too. As far as the first respondent/writ petitioner is concerned, although he was holding the post of Primary School Headmaster as on 01.06.1988, on his joining as Secondary Grade Teacher on 09.07.1989, not being re-promoted as Primary School Headmaster until his retirement on 30.06.2000, the said Government Order had no beneficial application to the writ petitioner.

8.In considering the applicability of the G.O.Ms.No.160, dated 23.08.2005, as well as the subsequent G.O.Ms.No. 202, School Education Department, dated 24.09.2008, learned single Judge pointed out that prior to 1.6.1988, the scales of pay of Secondary Grade Teacher and Primary School Headmaster was identical. After the 5th Pay Commission, the Government fixed separate scales of pay for the Headmasters and Secondary Grade Teachers. Pursuant to the order of the Tamil Nadu Administrative Tribunal in O.A.No.3009 of 1991 as regards the Headmasters of Primary Schools transferred as Secondary Grade

Teachers who sought for counting of entire service period as Secondary Grade Teacher upto 31.05.1988 for award of Selection Grade/Special Grade in the post of Headmaster of Elementary School, the Government passed G.O.No.300, dated 7.4.1994, cancelling the earlier G.O.No.1381 dated 5.10.1990, thereby directed inclusion of the service rendered as Elementary School Headmaster. On a challenge made, this Court directed the Government to pass suitable orders after considering the earlier order. Accordingly, G.O.No.185, School Education, dated 16.12.2002, was passed as under:

i) In the case of Headmasters, Elementary School, who have served as Headmaster on 01.06.1988 and continued to serve as Headmaster, even after 01.08.2005, that period can be taken into account for award of selection/special grade in the post, in view of the additional responsibilities attached to the post for which special allowance was allowed.

ii) In the case of headmasters of elementary schools, appointed after 01.06.1988, their pay has to be fixed in selection/special grade in headmasters elementary school post, as per the provisions of G.O.Ms.No.212, School Education Department, dated 07.08.2000.

iii) In the case of Headmasters elementary schools who were in position as on 01.06.1988 and awarded selection or special grades, by taking into account, the services rendered as headmaster elementary school and service rendered in secondary grade teacher post as per the G.O.Ms.No.1381, Education department, dated 05.10.1990, their pay fixation illustrated in the annexure to the G.O.Ms.No.185, School Education Department, dated 16.12.2002. Consequently, the Government have issued clarificatory order in G.O.Ms.No.160, School Education (G) Department, dated 23.08.2005 in respect of selection/special grade to elementary school headmasters.

While implementing this, the Government issued G.O.No.160, School Education Department, dated 23.08.2005, as a clarification of G.O.No.185, School Education Department, dated 16.12.2002.

.....

21.As rightly pointed out by the learned single Judge in his order, G.O.Ms.No.202, School Education Department, dated 25.09.2008, shows that Elementary School Headmasters who had functioned so even prior to 01.06.1988 and transferred to any other Panchayat Union and functioning as Secondary Grade Teacher would nevertheless be treated as Elementary School Headmasters. Thus, accepting the recommendation made, G.O.Ms.No.202, School Education Department, dated 25.09.2008 was issued. Similarly, under G.O.Ms.No.207, School Education Department, dated 30.09.2008, the Government considered the decision in W.P.No.8079 of 2006 dated 28.04.2006 that even in respect of those who had been functioning as on 01.06.1988 as Headmaster and subsequently, had been transferred to other Panchayat Union to work as Secondary Grade Teacher, they would continue to be considered as Headmaster for the purpose of working out the salary and other benefits, including pensionary benefits."

10. In paragraph No.24 of the said judgment, the Division Bench has observed thus:

"The sum and substance of the said Government Order is that the Government did not make any distinction between the Elementary School Headmaster who had worked so as on 01.06.1988 or prior to that or even thereafter and those holding position as Secondary Grade Assistant Teacher in a different Panchayat Union, that the said post held by them would continue to be treated as Primary School Headmaster for all pay and allowances."

11. As observed by this Court, prior to 01.06.1988, there was no difference in the scale of pay between the posts of Elementary School Headmaster and Secondary Grade Assistant and the said fact was taken into consideration in the unreported judgment, dated 28.02.2012, made in W.A.(MD)No.747 of 2011.

12. Similarly, the Division Bench of this Court in Writ Appeal Nos.1121 and 1673 of 2013 dated 22.4.2014, considered the same issue, wherein the request of the appellants to extend the benefits of G.O.Ms.No.202 School Education Department dated 24.9.2008 was rejected by the learned Single Judge. Considering the factual aspects and taking note of the substance

of the Government Order, the Division Bench of this Court set aside the order of the learned Single Judge and allowed the writ appeals extending the benefit of G.O.Ms.No.202 School Education Department, dated 24.9.2008 to the appellants therein. In the said judgment, the Division Bench of this Court held as under:-

"17.A perusal of the service registers of the respective appellants would also disclose that long prior to the cut off date, viz., 01.06.1988, they were appointed as Secondary Grade Headmaster and Secondary Grade Assistant respectively and they were transferred and posted as Secondary Grade Assistants.

18.In the light of the above factual aspect, coupled with the interpretation of G.O.Ms.No.202, School Education (G2) Department, dated 24.09.2008, and the unreported judgment, dated 28.02.2012, made in W.A. (MD)No.747 of 2011, this Court is of the view that the appellants are entitled to the benefits of the above said Government Order.

19.In the result, both the writ appeals are allowed and the impugned orders, passed in W.P.Nos.16070 and 16170 of 2010, dated 07.11.2012, are set aside and so also the impugned orders, dated 30.12.2009, are set aside and the writ petitions are allowed, as prayed for. No costs. The respondents are directed to extend the benefits of G.O.Ms.No.202, School Education (G2) Department, dated 24.09.2008, to the respective appellants within a period of eight weeks from the date of receipt of copy of this order."

13. Applying the true intent of G.O.Ms.No.202, dated 24.9.2008 and also the orders of this Court in the case of similarly placed persons to the facts of the present case, this Court is of the view that the deceased petitioner is entitled to get the benefits of G.O.Ms.No.202 School Education (G2) Department, dated 24.9.2008.

14. In the result,

- (a) this writ petition is allowed.
- (b) the respondent authorities are hereby directed to consider the deceased petitioner's representation dated 09.3.2013 by granting Selection Grade and Special Grade in the post of Elementary School Headmaster with effect from 01.6.1988;
- (c) the respondents authorities are directed to re-fix the pension of the deceased petitioner and to pay the arrears to the second petitioner.
- (d) the said exercise shall be done within a period

of eight weeks from the date of receipt of a copy
of this order. No costs.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

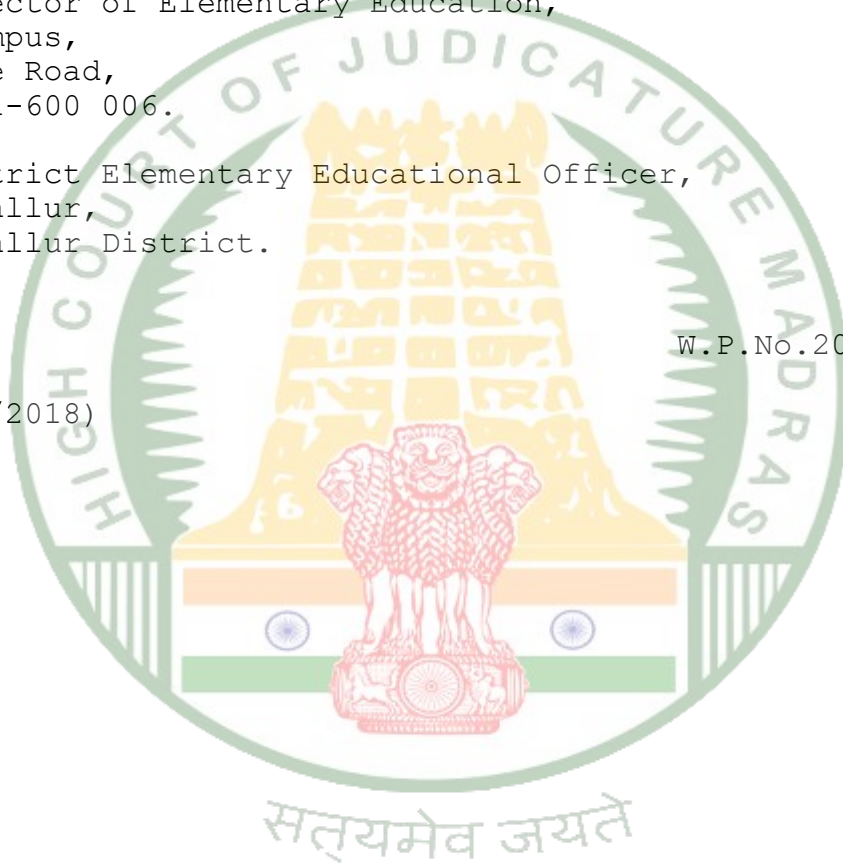
vs

To

- 1.The Director of Elementary Education,
DPI Campus,
College Road,
Chennai-600 006.
- 2.The District Elementary Educational Officer,
Thiruvallur,
Thiruvallur District.

W.P.No.20554 of 2013

GMV (26/09/2018)



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