

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.9610 of 2013

V.Devarajan

.. Petitioner

Vs

1. The Government of Tamilnadu  
rep. by the Secretary to Government  
School Education (G2) Department  
Secretariat, Chennai - 600 009.
  2. The Accountant General (A&E)  
No.361, Annasalai  
Chennai - 600 018.
  3. The District Elementary Officer  
Thiruvannamalai  
Thiruvannamalai District.
  4. The Assistant Elementary Educational Officer  
Kipennathur - 604 601  
Thiruvannamalai District.
  5. The Correspondent  
Ramu Reddiar Middle School  
Karungalikuppam  
Kilpennathur Union  
Thiruvannamalai District.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus to direct respondents 3 and 4 to disburse the arrears of revised pensionary benefits to the petitioner as per Lr.No.AG (A&E) PEN.P23/a/Rev./2010-11/12302720/CVP, dated 25.10.2010 of the second respondent.

For Petitioner : Mr.Ramesh  
for Mr.V.Thirupathi

For Respondents : Mr.R.Govindasamy  
Spl. Government Pleader  
for respondents 1, 3 and 4

Mr.V.Murali (for R2)

No Appearance (for R5)

#### ORDER

The petitioner has filed this writ petition seeking issuance of a writ of mandamus to direct respondents 3 and 4 to disburse the arrears of revised pensionary benefits to the petitioner as per Lr.No.AG (A&E) PEN.P23/a/Rev./2010-11/12302720/CVP, dated 25.10.2010 of the second respondent.

2. Succinctly put, the facts of the case are as under: The petitioner, who joined as Secondary Grade Assistant on 14.9.1965 in the fifth respondent school, was awarded selection grade on 14.9.1975 and special grade on 14.9.1985. It is stated that he passed B.Lit. in the year 1988 and B.Ed. in the year 1989 and being the senior most Secondary Grade Teacher in the fifth respondent school, he was eligible to be promoted as Headmaster of the fifth respondent school, which is a non-minority aided school.

3. It is averred that even though a retirement vacancy arose in the post of Headmaster of the fifth respondent school from 1.6.1991, the petitioner was not promoted, despite requests made by him and, therefore, he preferred W.P.No.9209 of 1992 to direct the fifth respondent to promote him as B.T. Grade Headmaster with effect from 1.6.1991. It is stated that this Court, by order dated 10.11.1998, directed the fifth respondent to promote the petitioner with retrospective effect from 1.6.1991, but without monetary effect and further directed respondents 1 to 3 to approve the said promotion. The appeal preferred by the fifth respondent school, being W.A.No.1715 of 1998, it stated to have been withdrawn on 3.7.2002.

4. It is further stated that pursuant to the said order, the fifth respondent by proceedings dated 4.7.2002 appointed the petitioner as B.T. Headmaster with effect from 1.6.1991 and the third respondent also approved the same vide proceedings dated 21.4.2003 and subsequently, the fourth respondent by proceedings dated 19.5.2003 re-fixed the pay of the petitioner in the promoted post and awarded selection grade in the promotional post of Headmaster by counting the selection grade and special

grade Secondary Grade service together with the middle school Headmaster service as per G.O.Ms.No.238, dated 26.6.1998.

5. It is the say of the petitioner that he retired from service on 31.5.2004 and the fourth respondent vide proceedings dated 28.8.2010 sent revised pensionary benefits proposal based on G.O.Ms.No.238, dated 26.6.1998 to the second respondent for approval and the same was sanctioned by the second respondent by proceedings dated 25.10.2010. Despite such sanction accorded by the second respondent, it is stated that the fourth respondent has not paid the revised pensionary benefits from 4.7.2002 to 31.5.2004. Therefore, the petitioner made a representation to the fourth respondent on 29.11.2010, which was in turn sent to the third respondent for issuing orders on the proposal for payment of arrears of revised pension. However, it is stated that the third respondent raised objection and requested for downward revision of pension. However, the second respondent, by proceedings dated 16.11.2011, reiterated that the sanction accorded earlier was in accordance with law.

6. It is the case of the petitioner that he made a representation on 8.6.2012 to respondents 3 and 4 requesting them to pay the arrears of revised pensionary benefits calculated from 4.7.2002 to 31.5.2004 by the second respondent. However, the said representation is stated to have evoked no response from the authorities concerned, necessitating the petitioner to file this writ petition for the relief stated supra.

7. Per contra, the learned Special Government Pleader appearing on behalf of respondents 1, 3 and 4 submitted that the scale of pay of Special Grade Secondary Grade Teacher and Middle School Headmaster was not identical during the period from 14.9.1985 and 31.5.1998 and inasmuch as the petitioner has served as B.T. Grade Headmaster and discharged his duties from 4.7.2002, he is eligible for one bonus increment and not other benefits as ordered by the second respondent.

8. The learned counsel appearing on behalf of the second respondent submitted that the award of Selection Grade in the post of Middle School Headmaster and consequent revision of pensionary benefits to the petitioner by the proceedings of the second respondent, referred supra, are in consonance with the Orders/Rules of Government and the petitioner is entitled to the benefits.

9. Heard the learned counsel on either side, who reiterated the stand taken by them in the affidavits referred to above, and perused the documents available on record.

10. By virtue of the Government Order in G.O.Ms.No.210, P&AR Department, dated 11.3.1987, the services in the selection grade of the lower post shall be counted for awarding selection grade in the higher post, provided the selection grade scale of pay of the lower post and the ordinary grade scale of pay of the post of the higher post are identical.

11. Subsequently, the Government vide G.O.Ms.No.238, Education (E2) Department, dated 26.6.1998 issued clarifications and ordered that though there is a difference in the increment stage, these two scales of pay may be considered as identical for the purpose of awarding selection grade in the higher post taking into account the services rendered in the selection grade post of the lower post with effect from 1.10.1984 with monetary benefits from 1.4.1986.

12. Pursuant to the same, certain clarifications were sought for by the Directorate of Education Department in regard to the implementation of the Government Orders in G.O.Ms.No.210, P&AR Department, dated 11.3.1987 and G.O.Ms.238, Education (E2) Department, dated 26.6.1998 in regard to the reckoning of 10 years of service for awarding selection grade in the higher post.

13. While so, the Government issued orders in G.O.Ms.No.38, School Education Department, dated 05.03.2001, stating that the service rendered as selection grade Secondary Grade Teacher before 01.06.1988 would not be counted for grant of selection grade in the post of Primary School Headmaster after 01.06.1988, on the ground that the selection grade pay of Secondary Grade Teacher was not the same as that of the ordinary grade pay of Primary School Headmaster before 01.06.1988. That is, the benefit of G.O.Ms.No.210, that was extended by way of G.O.Ms.No.185, was taken away by way of in G.O.Ms.No.38. However, the G.O.Ms.No.38, dated 05.03.2001 was quashed by this Court by the order dated 22.08.2012 in W.P.No.36752 and 36831 of 2006.

14. However, in the case on hand, it is the specific stand of the second respondent, as could be deciphered from the proceedings dated 16.11.2011, that the pay of Special Grade Secondary Grade Assistant and Ordinary Grade B.T. Middle School Headmaster are identical. The relevant portion of the said proceedings reads as under:

"As the scales of pay of Special Grade Secondary Grade Assistant and Ordinary Grade BT Middle School Headmaster are identical, Selection Grade was awarded in the post of BT Middle School Headmaster on 14.09.1995 to Shri. V.Devarajan, Headmaster, Ramu Reddiar Middle School by counting the Special

Grade Secondary Grade Assistant services from 14.9.1985 is in order and is in accordance with the rules."

15. When it is the specific case of the second respondent that the scales of pay are identical, it does not lie in the mouth of respondents 3 and 4 to take a different stand that the scales of pay are different. Nothing has been placed on record by respondents 3 and 4 to refute the stand taken by the second respondent.

16. For the foregoing reasons, the writ petition is allowed and respondents 3 and 4 are directed to disburse the arrears of revised pensionary benefits to the petitioner as per Lr.No.AG (A&E) PEN.P23/a/Rev./2010-11/12302720/CVP, dated 25.10.2010 of the second respondent expeditiously, in any event within four weeks from the date of receipt of a copy of this order. No costs.

-s/d-  
Deputy Registrar

True Copy

Sub-Assistant Registrar

To:

1. The Government of Tamilnadu  
rep. by the Secretary to Government  
School Education (G2) Department  
Secretariat, Chennai - 600 009.
2. The Accountant General (A&E)  
No.361, Annasalai  
Chennai - 600 018.
3. The District Elementary Officer  
Thiruvannamalai  
Thiruvannamalai District.
4. The Assistant Elementary Educational Officer  
Kipennathur - 604 601  
Thiruvannamalai District.

+1 CC to Mr.V.Thirupathi, advocate sr 64457.  
+1 CC to Mr.V.Murali , Advocate sr 64808.  
+1 CC to Govt. Pleader sr 64948.

W.P.No.9610 of 2013

SP(09/01/2019)