

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM

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

W.P.No.8935 of 2013

M.Francis

.. Petitioner

Vs.

1.The Director of School Education,
Chennai-6.

2.The Chief Educational Officer,
Nagercoil, Kanniyakumari District.

3.The District Educational Officer,
Nagercoil, Kanniyakumari District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records connected in Na.Ka.No.75271/C1/E2/2010, dated 1.7.2011 of the 1st respondent and quash the same and direct the respondents to award Selection Grade / Special Grade as per the Government Order in G.O.Ms.No.1581 Education Department dated 6.11.1989 to the petitioner with all consequential benefits as given to others.

For Petitioner : Mr.G.Elanchezhian

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records connected in Na.Ka.No.75271/C1/E2/2010, dated 1.7.2011 of the 1st respondent and quash the same and direct the respondents to award Selection Grade/Special Grade as per the Government Order in G.O.Ms.No.1581 Education Department dated 6.11.1989 to the petitioner with all consequential benefits as given to others.

2. The petitioner was appointed as School Assistant (B.T.Assistant) through Tamil Nadu Public Service Commission on 3.11.1964 and his services were regularized from the date of his appointment. According to the petitioner, the said appointment was to a combined cadre of School Assistant/Deputy Inspector of Schools and Headmaster Grade II. The date of his selection grade was 3.11.1975 and Special Grade was given to the petitioner on 3.11.1995. The petitioner was promoted as High School Headmaster on 31.12.1985 and he retired on attaining the age of superannuation on 30.11.1997. The petitioner was sanctioned pension with effect from 1.12.1997.

3. It is the case of the petitioner that inasmuch his appointment was prior to 2.10.1970, his service is treated as 'A' Wing in the Educational Service. It is further averred that 'B' Wing High School Headmasters were having separate scale of pay, whereas 'A' Wing Headmasters, who were in the combined cadre of School Assistant had no separate pay scales. It is alleged that School Assistants who have put in five years or lesser service are promoted as Headmaster of 'B' Wing Schools, whereas, School Assistants in 'A' Wing, could be promoted as Headmaster only after they had put in more than 18 to 20 years of service.

4. It is further stated that the government had issued G.O.Ms.No.1581, Education Department, dated 6.11.1989, prescribing that prior to 2.10.1970 there was no category of Headmasters in the Tamil Nadu Educational Subordinate Service. In the Government order issued, it has been ordered that the pay has to be fixed notionally from 1.10.1978 in respect of award of selection grade and from 1.10.1984 in respect of Special Grade with monetary benefits from the date of the order, i.e., 6.11.1989.

5. The petitioner states that based on the said government order, the respondent authorities granted selection grade/special grade to various persons holding the post of Headmaster of High School and relying on the said factor, the petitioner also made representation to respondents to award selection grade/special grade. Since the said representation did not evoke any response, the petitioner filed O.A.No.6008 of 1998 before the Tamil Nadu Administrative Tribunal, which was subsequently transferred to this Court and numbered as W.P.No.33082 of 2006. The said writ petition was disposed of by an order dated 19.3.2010 with a direction to the respondent authorities to consider the representation of the petitioner and pass appropriate orders expeditiously. Thereafter, the respondent authorities rejected the petitioner's claim by proceedings dated 1.7.2011, which is impugned in this writ petition.

6. Hence, the present writ petition for the relief stated supra.

7. The learned counsel appearing on behalf of the petitioner submitted that even though the government order dated 6.11.1989 ordered counting of service rendered in the combined cadre, the respondent authorities denied the benefits to the petitioner without any valid reasons.

8. He further submitted that the similarly placed persons were granted benefits of the said government order, whereas the petitioner is denied of the very same relief and, therefore, the act of the respondent authorities tantamounts to discrimination and violation of Articles 14 and 16 of the Constitution of India.

9. He vehemently contended that when the first respondent issued a clarification letter dated 14.6.1990 to the effect that service rendered in the combined service be counted for awarding selection grade and special grade, it does not lie in his mouth to say that there is no provision to confer such benefits to the petitioner.

10. The learned Special Government Pleader reiterated the reasons that weighed with the respondent authorities in passing the impugned order and prayed for dismissal of the writ petition.

11. I heard Mr.G.Elanchezhian, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents and perused the documents available on record.

12. In the case on hand, the facts are not in dispute and, therefore, this Court does not intend to traverse into the same at this stage.

13. In the counter affidavit filed by the third respondent, it is averred as under:

"5. I submit that the Government vide G.O.Ms.No.1581, Education Department dated 06.11.1989 had ordered that 'the services of a school assistant, Deputy Inspector of Schools and Head Masters, Grade I and II rendered up to and inclusive of 01.10.1970 as per the Special Rules for the Tamil Nadu Educational Subordinate Service 'A' Wing, services rendered by them in the said combined cadre be counted as qualifying service for the purpose of award of selection grade and special grade in the Headmasters of Government High Schools in the Tamil Nadu School Educational Service'.

Accordingly the petitioner is eligible was selection grade and in the cadre of headmaster from the next day of completion of 10 years of service from 03.11.1965 to 01.10.1970 and special grade on completion of 20 years."

14. In the case on hand, the petitioner was admittedly appointed in the combined cadre of School Assistants/Deputy Inspector of Schools and Headmaster Grade II on 03.11.1965 and his services were also regularized. As per the Government Order, the services rendered prior to 02.10.1970 should be counted.

15. Under identical circumstances, the second respondent passed proceedings dated 07.02.2017 granting benefits of selection grade/special grade in the light of the very same government order to one J.Gnanarathinam.

16. The petitioner also specifically contended that similarly placed persons were conferred with the benefits of the government order, but the petitioner was denied. The respondents have not averred anything against the said contention either in the counter affidavit or across the bar.

17. This Court finds no justification in denying the benefits of the above said government order to the petitioner herein in the light of the proceedings dated 07.02.2017 and more particularly, in the light of the stipulations made in the government order itself.

18. For the foregoing reasons, the following order is passed:
- i. the writ petition is allowed and the impugned order dated 01.07.2011 passed by the first respondent is set aside;
 - ii. the respondents are directed to award Selection Grade/Special Grade as per the Government order in G.O.Ms.No.1581, Education Department, dated 6.11.1989 to the petitioner with all consequential benefits as given to others;
 - iii. the above 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 VI)

//True Copy//

Sub Assistant Registrar

To

1.The Director of School Education,
Chennai-6.

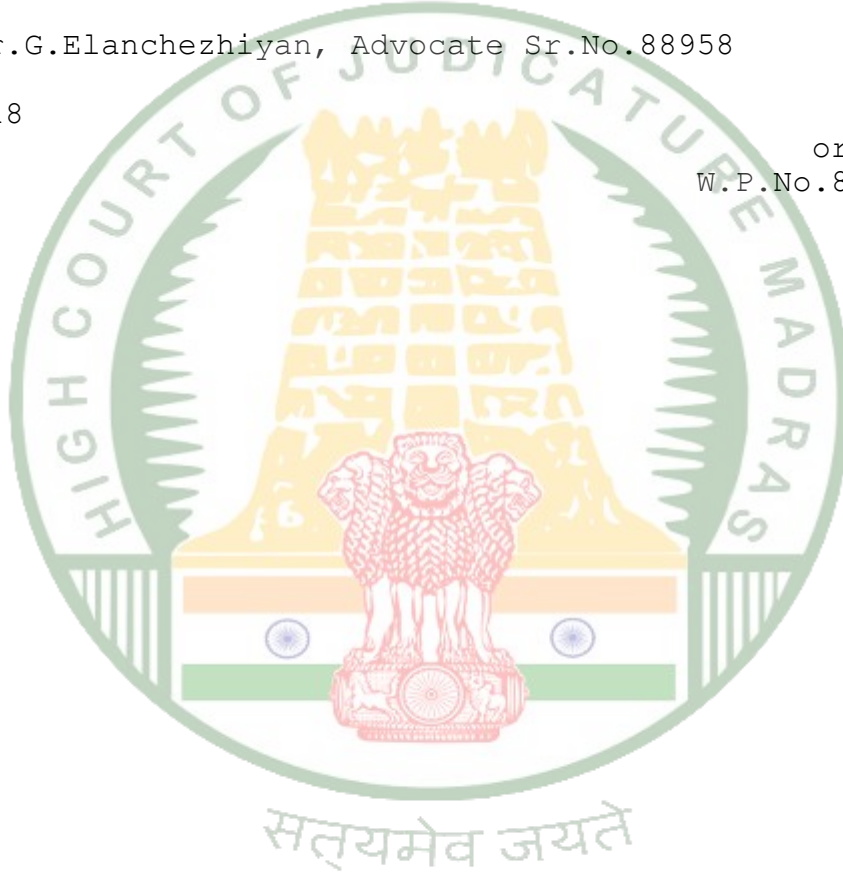
2.The Chief Educational Officer,
Nagercoil, Kanniyakumari District.

3.The District Educational Officer,
Nagercoil, Kanniyakumari District.

+1cc to Mr.G.Elanchezhiyan, Advocate Sr.No.88958

sm:5.7.2018

order made in
W.P.No.8935 of 2013



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