

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2017

CORAM

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

W.P.No.35592 of 2004 and
WP.MP.No.42874 of 2004

K.Palanisamy

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu,
by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai-9.
- 2.The Assistant Elementary Educational Officer,
Kodumudi, Erode District.
3. The Accountant General (Accounts & Entitlements),
Tamil Nadu, Chennai - 600 018. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.185, School Education Department, dated 16.12.2002 and the consequential order of the third respondent in P25/5/P116-1687/RTD/2003-2004/8803, dated 26.2.2004 and quash the same.

For Petitioner : Mr.P.Rajendran

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

ORDER

This writ petition is filed seeking issuance of writ of certiorari to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.185, School Education Department, dated 16.12.2002 and the consequential order of the third respondent in P25/5/P116-1687/RTD/200-3004/8803, dated 26.02.2004 and quash the same.

2. The facts in a nutshell, which are not much in dispute, are as under: The petitioner, who initially was appointed as Higher Grade Teachers on 21.06.1971, was promoted as Secondary Grade Teacher on 01.09.1981 and as Primary School Head Master on 23.07.1986 and as on the crucial date, i.e., on 01.06.1988, the petitioner was holding the post of Primary School Head Master. The petitioner retired from service on 31.12.2003 as Head Master of Kasthuribai Kalvi Nilayam, Kodumudi, Kodumidi Block, Erode District.

3. Prior to 01.06.1988, the posts of Secondary Grade Teacher and Primary School Headmaster carried the same scale of pay. Therefore, in fact, no seniority was followed for appointment to the post of Primary School Headmaster. When the scale of pay of Government employees and the Teachers was revised, pursuant to the recommendations of the V Pay Commission, in G.O.Ms.No.666, Finance Department, dated 27.06.1989, higher pay was fixed to the Primary School Headmaster and the Primary School Headmaster became the promotional post to Secondary Grade Teacher, with effect from 01.06.1988, the date on which the revised scale of pay came into effect.

4. While the scale of pay of Secondary Grade Teacher was revised to Rs.1200-2040 with effect from 01.06.1988 pursuant to V Pay Commission's recommendations, the scale of pay of the Primary School Headmaster with effect from 01.06.1988 was revised to Rs.1400-2600. Prior to the said revision, both the Secondary Grade Teacher and Primary School Headmaster were in the scale of pay of Rs.610-1075.

5. While so, the Government issued orders in G.O.Ms.No.1381, Education Department, dated 05.10.1990 that the Secondary Grade Teachers, who were holding the post of Primary School Headmaster as on 01.06.1988, are entitled for selection grade and special grade pay of Primary School Headmaster by counting the service rendered as Secondary Grade Teacher also.

6. The aforesaid G.O.Ms.No.1381 was challenged before the Tamil Nadu Administrative Tribunal by filing a batch of Original Applications in O.A.Nos.2897, 2309 and 2310 of 1999 etc. The learned Tribunal passed an order dated 24.09.1993 in O.A.Nos.2897, 3099 and 3010 of 1999 setting aside G.O.Ms.No.1381 and also issued direction to Government to pass fresh orders.

7. Pursuant to the aforesaid order dated 24.09.1993 of the Tamil Nadu Administrative Tribunal in O.A.Nos.2897 of 1991 etc. batch., quashing G.O.Ms.No.1381, Education Department, dated 05.10.1990, the Government issued orders in G.O.Ms.No.300, Education, Science and Technology Department, dated 07.04.1994,

directing that for all the Primary School Headmasters, the service rendered in the post of Primary School Headmaster alone would be taken for the purpose of granting Selection/Special Grade pay of Primary School Headmaster.

8. The Government Order in G.O.Ms.No.300 was put to challenge in a batch of writ petitions in W.P.Nos.8896 of 1994 etc., batch. This Court disposed of the said writ petitions on 18.04.2001, by remitting the matter back to the Government to reconsider the entire issue at length and directed the Government to pass fresh order. This Court also expressed its views that the reduction of pay scale is a rare phenomenon and the Government would take care to protect the pay scales of the petitioners.

9. In the said circumstances, pursuant to the order dated 18.04.2001 in W.P.Nos.8896 of 1994 etc. batch, the Government issued G.O.Ms.No.185, School Education Department, dated 16.12.2002, laying down the mode of grant of selection grade and special grade for Primary School Headmasters, who were holding the post as on 01.06.1988 and after 01.06.1988. The following three modes are given at para 5 of the said G.O.

"(i) For Primary School Headmasters holding the post as on 01.06.1988, the service rendered as Primary School Headmaster prior to 01.06.1988 also be taken into account for grant of selection and special grade pay of Primary School Headmaster though the Primary School Headmaster post prior to 01.06.1988 did not carry higher scale and the said post was given only a special allowance.

(ii) In respect of Primary School Headmasters promoted after 01.06.1988, the procedure laid down in G.O.Ms.No.212, School Education Department, dated 07.08.2000 has to be followed for grant of selection grade and special grade for the post of Primary School Headmaster.

(iii) In respect of Primary School Headmaster holding the post as on 01.06.1988, their selection grade and special grade pay is already fixed as per G.O.Ms.No.1381 by taking into account the service rendered as Primary School Headmaster and Secondary Grade Teacher before 01.06.1988 and their pay has to be refixed without causing any monetary loss as per the annexure given in the said Government Order."

10. Based on the aforesaid government order, it is alleged that the third respondent vide the order dated 26.02.2004 had directed recovery of the pay and allowances made in excess to

the petitioner from his DCRG.

11. Assailing the said government order dated 16.12.2002 issued by the first respondent and the consequential proceedings of the third respondent dated 26.02.2004, the present writ petition is filed.

12. The main plank of the argument of the learned counsel for the petitioner is that the order of the third respondent directing recovery of excess payment had been passed in gross violation of the principles of natural justice and in any event, neither the liability nor the extent of liability of the petitioner had been determined in the manner known to law.

13. He further contended that in view of the government order under challenge, severe monetary loss has been caused to several Primary School Head Masters, including the petitioner, since their pay has been fixed in the lower scale of pay contrary to the orders of this Court.

14. The learned Additional Government Pleader appearing on behalf of the respondent reiterated the reasons that weighed with the respondent authorities in passing the impugned order and prayed for dismissal of the writ petition.

15. I heard Mr.P.Rajendran, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents and perused the documents available on record.

16. At the outset it is to be noted that even though at the time of admission of the writ petition, i.e., on 06.12.2004, an order of interim stay of recovery was granted, till date the respondent authorities have not taken any steps to either vacate the same or file a counter affidavit. This only shows that no recovery had been made as such till date.

17. Under identical circumstances, though in respect of counting of service rendered as Secondary Grade Teacher and Primary School Head Master, a learned Single Judge of this Court in S.Chandrasekaran and others v. The Government of Tamil Nadu and others, reported in 2015 5 LW 140, held as under:

"60. Applying the same analogy, the persons who joined as Secondary Grade Teachers before 01.06.1988 is entitled to claim the benefit of counting the service of Secondary Grade Teachers for Selection Grade and Special Grade in the post of Primary School Headmaster, if they were promoted as Primary School Headmaster after 01.06.1988, without fixing the cut off date as 31.12.1995.

61. As far as the persons, who were holding the post of Primary School Headmasters as on 01.06.1988, the Government themselves granted the benefit, though they were juniors, as stated above.

62. It is well settled in a catena of decisions that the State shall not discriminate its employees in granting monetary benefits, if they are similarly situated only on the ground that some did not come to the Court, as such discrimination amounts to violation of Articles 14 and 16 of the Constitution.

63. A learned Single Judge of this Court in N.S.Balasubramanian V. Food Corporation of India, 2006 WLR 327, by relying on the judgments of the Apex Court in K.C.Sharma V. Union of India, AIR 1997 SC 3588 and State of Karnataka and Others V. N.Parameshwarappa and Others, (2003) 12 SCC 192, held in paragraph 16 as hereunder :

'16.From the analysis of the judgments cited above, it is beyond doubt and clear that once the point is decided in favour of a group of persons, there is no further point in waiting for each and every person to file petition and pray for the same relief. As held by the Honourable Court, the benefit of the judgment is equally applicable to similarly placed persons to do complete and substantial justice.'

64. In paragraph 14 of the judgment in 2006 WLR 327, the learned Single Judge also held as follows :

'14. Article 14 of the Constitution of India clearly prohibits discrimination and if any discrimination without any intelligible differentia, certainly violation will be hit by Article 14 of the Constitution of India, which is a guaranteed fundamental right available to any person.'

65. For all the aforesaid reasons, the writ petition is allowed and the proceeding dated 23.07.2010 in Na.Ka.No.2200/C2/2010 of the second respondent is quashed and a direction is issued to the respondents to extend the benefit of counting the service of Secondary Grade Teacher for grant of Selection Grade and Special Grade in the post of

Primary School Headmaster with monetary benefits to the persons who were promoted after 01.06.1988, if those teachers joined prior to 01.06.1988 without reference to the date of promotion as Primary School Headmaster and without driving them to this Court to obtain an order in their favour and also a direction is issued to the respondents to pay the monetary benefits, i.e., arrears of pay to the petitioners, pursuant to the grant of Special Grade in the post of Primary School Headmaster with effect from 01.07.1994, 14.01.1999 and 07.11.1992 by the fourth respondent in the proceeding dated 07.01.2012, 27.01.2012 and 10.02.2012 respectively, within a period of eight weeks from the date of receipt of a copy of this order."

18. That apart, in the case on hand, nothing has been placed on record to show that an opportunity of hearing was afforded to the petitioner before ordering recovery of excess pay alleged to have been paid to the petitioner. Therefore, violation of principles of natural justice is writ large.

19. Moreover, the respondents had neither determined the liability nor the extent of liability of the petitioner in the manner known to law. What is the amount to be deducted? What is the basis for such deduction ordered? The records do not disclose any information with regard to the recovery. The order of the third respondent is as vague as it could be.

20. For the foregoing reasons, the writ petition is allowed by setting aside the order passed by the third respondent and the matter is remitted to the third respondent to pass appropriate orders after giving an opportunity of hearing to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that the third respondent, while passing such order, shall take note of the observation made by this Court in S.Chandrasekaran and others v. The Government of Tamil Nadu and others, reported in 2015 5 LW 140. No costs. Consequently, W.M.P.No.42874 of 2004 is closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

vs

To

1.The Secretary to Government
Government of Tamil Nadu,
School Education Department
Fort St. George,
Chennai-9.

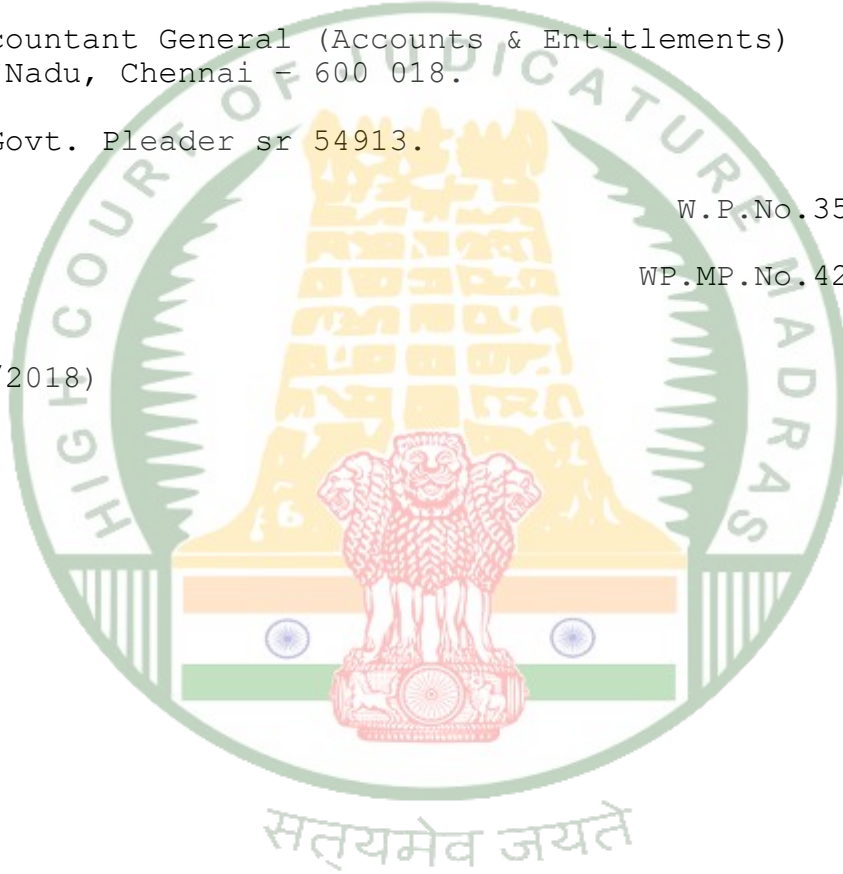
2.The Assistant Elementary Educational Officer
Kodumudi, Erode District.

3. The Accountant General (Accounts & Entitlements)
Tamil Nadu, Chennai 600 018.

+1 CC to Govt. Pleader sr 54913.

W.P.No.35592 of 2004
and
WP.MP.No.42874 of 2004

GSP (06/07/2018)



WEB COPY