

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 11.12.2017****CORAM:****WEB COPY****THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN****W.P(MD)No.5200 of 2011**

N.Nagarajan

... Petitioner

vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Chennai - 600 009.
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Educational Officer,
Thanjavur.
4. The Assistant Elementary Educational Officer,
Thiruvidaimarudur,
Thanjavur District.

... Respondents

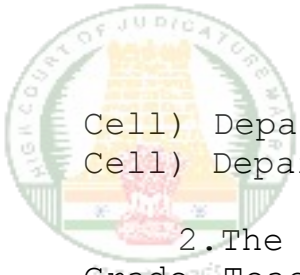
PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Na.Ka.No.2947/08/A2, dated 03.12.2008 issued by the third respondent, quash the same and direct the respondents to extend the benefits of G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.03.1993 and G.O.Ms.No.241, Finance (Pay Cell) Department, dated 01.04.1981.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.VR.Shanmuganathan

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Na.Ka.No.2947/08/A2, dated 03.12.2008 issued by the third respondent, quash the same and direct the respondents to extend the benefits of G.O.Ms.No.216, Finance (Pay



Cell) Department, dated 22.03.1993 and G.O.Ms.No.241, Finance (Pay Cell) Department, dated 01.04.1981.

2.The petitioner submits that he was working as a Secondary Grade Teacher and retired from service in the year 1998. From G.O.Ms.No.216, dated 22.03.1993 in respect of Secondary Grade Teachers, there is no promotional post for them, as on the date of issuance of G.O and hence, the Teachers are eligible for selection/Special Grade. By virtue of the said G.O, he was eligible for the scale of Rs.2,000-3,200/- instead of Rs.1,640-2,900/- as on 01.06.1988 and as per G.O.Ms.No.241, which provides that the Secondary Grade Teachers are entitled to stagnation increments beyond the maximum of the scale. The Director of School Education in his proceedings in Na.Ka.No.25962/C6/C24/06, dated 16.05.2006 issued clarifications that the Secondary Grade Teachers, who had completed 30 years of service prior to 1998, are entitled to one stagnation increment.

3.The petitioner has sent various representations to the authorities and since his representations were not considered, the petitioner has filed a Writ Petition in W.P.No.9670 of 2008, directing the authorities to confer for the purpose of re-fixing the pensionary benefits and this Court by an order, dated 21.04.2008, directed the authorities to consider the representation. Thereafter, the third respondent issued proceedings in Na.Ka.No.294808/B2, dated 03.12.2008 stating that the petitioner is not entitled to the benefits of G.O.Ms.No.216 and rejected the claim stating that it is not stated in the G.O that the Secondary Grade Teachers, who have no chance of promotions, are entitled to the pay scales of Headmaster of Elementary Schools. Hence, the petitioner has filed the present Writ Petition.

4.In the counter-affidavit filed by the respondents, it is stated that the petitioner has entered into service as Secondary Grade Assistant with effect from 03.08.1967 in regular capacity and the petitioner was appointed as Selection Grade and Special Grade in Secondary Grade Assistant as follows:-

"1) Date of Award of Selection in Secondary Grade
as per the orders of District Elementary
Education Officer, Thanjavur proceedings
D.Dis.19445/76-77/dated 17.10.77 : 03.07.77

2) Date of Award of Special Grade in Secondary Grade
as per the orders of District Elementary
Education Officer, Thanjavur proceedings
Rc.1868//E2, dated 10.01.68 : 03.08.77

<https://hcservices.ecourts.gov.in/services> Accordingly the pay of the petitioner was fixed in the appropriate time scales applicable for Selection Grade and Special Grade as follows:



Selection Grade Time Scale with effect from
03.08.177 as per District Elementary
Education Officer, Thanjavur
Proceedings D.Dis.10445/76-77/ 250-10-400

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Special Grade Time Scale with effect from
03.08.1978 as per the District Elementary
Education Officer Proceedings
Rc.1868/E2, dated 10.01.88
780-35-1025-40-1385

Special Grade Time Scale in the revised scales of
pay as per Ms.No.304/Finance dated 20.03.90
with effect from 01.06.88 Special Grade Time
scale as per G.O.Ms.No.427, Finance Department
dated 28.08.98 with effect from 01.01.1996
1640-60-2600-75-2900
5900-200-9900"

5.Since there was scope for the promotion as Headmaster of the Elementary School as well as B.T Assistant, the petitioner was neither qualified for such promotional opportunity nor the petitioner has reached the seniority for such promotion. The petitioner was retired as a Special Grade in Secondary Assistant Teacher on attaining the age of superannuation with effect from 28.02.1998. After a lapse of 10 years of retirement, the petitioner has come up with a request to provide him Time-Scale of Pay for the post of Elementary School Headmaster, for which, the petitioner is not entitled, since there is no provision for notional promotion to a higher category or notional fixation of pay in higher time scale. The petitioner also filed a Writ Petition in W.P.No.9670 of 2008 and this Court by an order dated 21.04.2008 permitted the petitioner to send a copy of representations, dated 12.09.2007, 09.09.2007, 01.08.2007, 18.09.2007 and 12.07.2007 respectively to the respondents within a period of two weeks from the date of receipt of a copy of that order and on receipt of the same, the second respondent is directed to consider and pass orders on merits and in accordance with law within a period of twelve weeks thereafter.

6.As per the directions of this Court, the petitioner's representation, dated 20.06.2008 was considered by the respondents based on the Government Orders in force with regard to awarding of Selection/Special Grade and fixation of pay and the petitioner's request was rejected as devoid of merits as per the order of the third respondent in Rc.2947/2008/B2, dated 03.12.2008. Aggrieved by the same, the petitioner has filed the present Writ Petition.

<https://hcservices.ecourt.gov.in/Govservices/>
7.The Government Order in G.O.Ms.No.216, Finance Department, dated 22.03.1993, in para 3(ii) reads as follows:-



"3(ii). In respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28.03.90, ie., the date of issue of the G.O second read above, although there is promotion post in Primary Schools. As a measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the Teachers be made eligible for Selection/Special Grade as in Annexure to the G.O second read above."

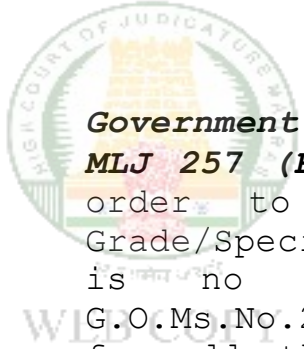
8.It is stated that the above Government Order specifically provides Selection/Special Grade and not notional promotion to the higher post as alleged by the petitioner and there was no mention in the Government Order to the effect that the Scale of Pay of Selection/Special Grade by 2000-3200/- as stated by the petitioner. As per the Time scale of pay of Selection/Special Grade communicated in Annexure to G.O.Ms.No.304, Finance Department, dated 28.03.1990 is as follows:-

Ordinary Grade	Selection Grade	Special Grade Time Scale
1,200-2,040	1,400-2,600	1,640-2,900

9.Hence, there is no question of fixation of pay in the higher Time Scale Rs.2,000-3200/-, which is not applicable to the petitioner. Regarding the stagnation increment, it is submitted that the petitioner was drawing a basic pay of Rs.7,100/- with effect from 01.07.1997 in the revised scale of Pay of Rs.5,900-200-9,900/- as on the date of retirement on 28.02.1998 and since he has not reached the maximum of the above Time scale of pay, the petitioner is not entitled for stagnation increment as alleged by the petitioner and his request was considered by the Government and the same has been rejected on 03.12.2008. The Government in G.O.Ms.No.216, Finance Department, dated 22.03.1993 was issued only with a view to extend some benefits to the Secondary Grade Assistant Teachers working in High Schools and Higher Secondary Schools, since they have no promotional opportunities and it cannot be made applicable to the petitioner, since he had worked in Aided Middle School and there was no such direction in the Government Order to fix the pay of the Secondary Grade Assistants in the Time Scale, applicable to the Elementary School Headmaster, as alleged by the petitioner. Similarly placed person like that of the petitioner, one Govindarajan, who worked in Government Higher Secondary School, Thiruppur, had the benefit of the above Government Order, but the petitioner cannot claim the benefit of the Government Order, since he had worked only in Aided Middle School and prayed for dismissal of the same.

10.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

<https://hcservices.courts.gov.in/hcservices/> In support of his contention, the learned counsel for the petitioner relied on the **Full Bench Judgment of this Court in**



Government of India Vs. G.Eswaran and others reported in (2017) 2 MLJ 257 (FB), wherein it has been categorically stated that "in order to remove certain ambiguity in awarding Selection Grade/Special Grade pay in respect of the posts for which, there is no promotional opportunity, the Government issued G.O.Ms.No.216, dated 22.03.1993 introducing uniform scale-of-pay for all the Secondary Grade Teachers and as per Annexure-I of G.O.Ms.No.304, the ordinary grade, Selection Grade and Special Grade Scales of pay are fixed at Rs.1,200-2,040/-, Rs.1,400-2,600/- and Rs.1,690-2,900/- respectively. Since the Government has rightly issued G.O.Ms.No.216, dated 22.03.1993 removing the disparity in the pay scales of the Selection Grade Teachers of High/Higher Secondary Schools on par with the Primary Schools Headmasters, since there was no promotional avenue for them and in view of the fact that right from the inception all the Division Benches have upheld the G.O.Ms.No.216, dated 22.03.1993, we are unable to take a different view at this distant point of time, to frustrate the respective orders of the various Division Benches of this Court. In such view of the matter, the conflicting order, dated 10.12.2015 passed by the Division Bench of this Court in W.P (MD)No.7061 of 2011 etc., is set aside and confirmed that the benefits of G.O.Ms.No.216 have to be extended to all the Secondary Grade Teachers of High/Higher Secondary Grade Schools on par with the Primary School Headmasters, it is for the Government to implement the order and considering the financial burden that would fall on the State.

12.In the abovesaid Judgment, in paragraph Nos.36 to 38 it is stated as follows:-

"36.In fact, considering financial burden that would fall on the State exchequer, by order dated 24.11.2016, we passed the following:

"2.According to the learned Senior Counsel appearing for the teachers, as per G.O.Ms.No.860, Finance (Pay Commission) Department, dated 11.08.1989, which is issued based on the proceedings of the Director of School Education, dated 22.08.1989, in in para No.III, Sl.No.79, it provides for equal pay scale to that of the Headmaster of Middle School, which is equivalent to the Selection Grade Secondary Grade Teachers and their pay scale was revised from Rs.705-1230 to Rs.1640-2900. It is their further contention that till 31.05.1988, viz., the date of implementation of V Pay Commission, the scale of pay of Secondary Grade Teachers and Primary School Headmasters were identical. It appears for the Primary School Headmasters and the Secondary School Headmasters basic pay is shown to be different than that are mentioned above,



3. Therefore, with regard to the implementation of the Pay Scales prescribed by the V Pay Commission and also in giving effect to G.O.Ms.No.216, Finance (PC) Department, dated 22.03.1993, it is open to the Government to consider the financial position and the burden that would fall on the exchequer, subsequent to the implementation of the recommendations of the V Pay Commission. Further, the Government may also keep in mind that this Court has left it open to the Government that implementation would be only with reference to the pensionary benefits along from the date of the judgment, i.e. 04.02.2015 and the arrears cannot be claimed by the Teachers and it is for the Government to decide about the arrears and also regarding any financial hardship that would be pleaded by the Government."

37. While passing the above order, we also directed the learned Advocate General to take assistance of the Secretaries to the Government, Education and Finance Department to take a decision as to the implementation of the G.O.Ms.No.216, dated 22.03.1993 keeping in mind the various orders passed by this Court.

38. Today, when the matters are taken up for consideration, keeping in mind the financial strain that would fall on the State exchequer in the event of implementation of the G.O., and in order to give a quietus to the issue, we feel it appropriate to fix the date as 01.03.2017 from which date onwards, the Government shall calculate and revise the pension and family pension (without arrears) based on the revised scales of pay by implementing the G.O., for which, the learned Advocate General and the learned counsels appearing for the Teachers have fairly acceded to the same. Accordingly, we pass the following:

(i) The Government is directed to implement the G.O.Ms.No.216, dated 22.3.1993 for the period between 01.06.1988 and 31.12.1995, on and from 01.03.2017 onwards in respect of all the Secondary Grade Teachers of High/Higher Secondary Schools including the Special Teachers who attained Selection Grade/Special Grade during the above said period, on par with the pay scale of Primary School Headmasters;

(ii) Consequently, the Government shall calculate and revise the pension of those who retired from service and revise the family pension in respect of those who expired, based on the revised scales of pay in terms of G.O.Ms.No.216, dated 22.03.1993 payable on and from 01.03.2017;



(iii) It is made clear that the beneficiaries under this order, are not entitled to the arrears of revise pay scales;

(iv) It is further made clear that the benefits as directed above, shall be extended to the parties who are before this Court alone and no fresh Writ Petitions would be entertained on and from 09.12.2016;

(v) The Government is directed to expedite the process of calculating and fixing the revised pension and family pension and we do hope that the Government will complete the same as early as possible without making any further delay;

(vi) All the matters which are at SR stage and listed before this Court are also ordered and disposed of by this common order and consequently, connected MPs thereof, are ordered."

13. From the above order of the Full Bench Judgment of this Court, it is seen that the petitioner has filed the present Writ Petition in the year 2011 and it has been pending before this Court. The same also comes under the purview of the order passed by the Full Bench Judgment of this Court and based on the above said order, the respondents are directed to consider the case of the petitioner and also considering his age, fix his revised pension and family pension without any arrears as expeditiously as possible. It is made clear that the petitioner is not entitled to the arrears of revised pay Scale and as per the Bench Order, it shall be extended only to the parties before this Court alone and no fresh writ petitions would be entertained on and from 09.12.2016. Since the petitioner is before this Court by filing this Writ Petition in the year 2011 itself, he is entitled for revised pension and family pension as per the said order, without any arrears.

14. In the result, the Writ Petition is allowed to the extent indicated above and the order impugned herein, passed by the third respondent, dated 03.12.2008, stands quashed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1. The Secretary,
Government of Tamil Nadu,
Education Department,
Chennai - 600 009.

2. The Director of Elementary Education,
College Road, Chennai.

3. The District Elementary Educational Officer,
Thanjavur.

4. The Assistant Elementary Educational Officer,
Thiruvidaimarudur,
Thanjavur District.

+ 1 cc TO Mr.R.Subramanian , Advocate in SR No. 92267

ps

AE/MR KKR/SAR3/21.12.2017/8P/6C

W.P (MD) No.5200 of 2011
11.12.2017