



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.905 of 2013

and

M.P (MD) No.1 of 2013

P.S.Vijayalakshmi

... Petitioner

Vs.

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

2.The Chief Educational Officer,
Theni, Theni District.

3.The District Elementary Educational Officer,
Uthamapalayam,
Theni District.

4.The Principal Accountant General (A & E)
361, Anna Salai,
Chennai-18.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the orders passed by the fourth respondent in No.Pen 22/11/12205883/Rev/12-13/ADK/213, dated 05.09.2012 and the impugned order passed by the fourth respondent in P22/I/Pt 4930/451/169423 dated 28.12.2012 quash the same and consequently direct the respondent to pay revised scale of pay to the petitioner in the light of Tamil Nadu Revised Scales of Pay Rules and the Government Order issued in G.O.Ms.No.57 Finance (Pay Cell) Department dated 28.1.1991 with arrears of increment from 15.10.2003 and also pay the revised retirement benefits to the petitioner.

For Petitioner

: Mr.C.Jeganathan

for M/s.Veera Associates

For R1 to R3

: Mrs.S.Srimathy,

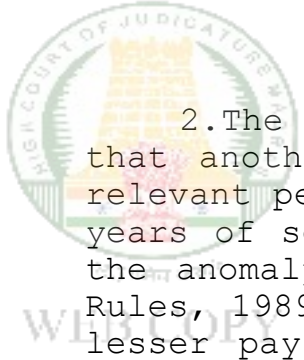
Special Government Pleader

For R4

: Mr.P.Gunasekaran

O R D E R

The petitioner has joined service as B.T.Assistant on 15.10.1973 and she was retired from service as P.G.Assistant on 30.04.2008 after completing 35 years of service. According to the petitioner, while she was working as B.T.Assistant, after introduction of higher secondary course, the post was re-designated as P.G.Assistant Teacher on 29.10.1985 and was given selection grade pay in the year 1995.



2.The learned counsel appearing for the petitioner submitted that another teacher, who has joined as B.T.Assistant during the relevant period of time, has got bonus increment after completing 30 years of service on 15.10.2003. The Government has got to rectify the anomaly equally in terms of Tamil Nadu Revised Scales of Pay Rules, 1989 along with other batchmates. If the incumbent is drawing lesser pay than other batchmates or similarly placed persons, she will also be awarded with stepping up of pay. Based on the said Rules, the petitioner is entitled to one Bonus increment after completing 30 years of service from initial appointment. Since the petitioner was deprived of pay on par with the juniors, the petitioner has made a representation to the first respondent on 25.10.2010. But, unfortunately, the same was rejected by order dated 05.09.2012. When the petitioner has served under the first respondent as B.T.Assistant and retired as P.G.Assistant and the post was upgraded as P.G.Assistant on 29.10.1985 and that other teachers who joined along with the petitioner, has got benefit after completion of 30 years of service, the petitioner is also entitled to get some parity on par with other teachers. The impugned order of fourth respondent is violative of Rule 4(3) of the said Rules.

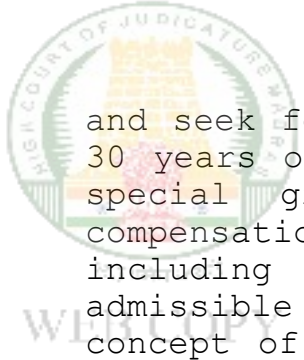
3.He further stated that several P.G. Assistants were awarded with one bonus increment after 30 years and that request of the petitioner was rejected in an arbitrary manner.

4. The third respondent has filed a counter affidavit and contended that the petitioner has sought to quash the impugned order, dated 29.12.2012 issued by the fourth respondent and sought for revised pay scale to the petitioner in terms of Tamil Nadu revised scales of pay and the G.O.Ms.No.57, Finance (Pay Cell) Department, dated 28.01.1991 with arrears of increment from 15.10.2003. It is true that the petitioner was appointed as B.T.Assistant on 15.10.1973 and elevated to the post of P.G.Assistant on 29.10.1985 and granted selection grade in the post of P.G.Assistant with effect from 29.10.1995 after completion of 10 years in the post of P.G.Assistant by G.O.Ms.No.562, Finance (Pay Cell) Department, dated 28.10.1998. The said G.O., is reads as follows:-

"2.The Government after careful examination of the recommendation of the One Man Commission has decided to accept it. Accordingly, Government directs that employees stagnating in a post beyond 30 years be granted with one bonus increment as an incentive.

3.These orders shall take effect from 1st September 1998."

5.According to the respondents, the petitioner was promoted to the post of P.G.Assistant and was awarded selection grade with effect from 29.10.1995 and retired on 30.04.2008. According to the respondent, the benefit that has been given to the other person is also a wrong one and the sanction of one bonus increment is erroneous. The petitioner cannot cite the wrong one as a precedent



and seek for the same treatment. The petitioner has not completed 30 years of service in the same post of 10 years of service after special grade. The concept of bonus increment being the compensation for real stagnation in the same post for 30 years including 10 years in special grade, bonus increment is not admissible to the petitioner. The petitioner has misunderstood the concept of bonus increment and that the concept of stepping up of pay as quoted by the petitioner may not be applicable. That apart, there is no comparative statement by the petitioner in the affidavit, the petitioner did not complete 30 years of service in the same post. Hence, the writ petition has to be dismissed.

6. The facts mentioned supra are not in dispute. Only whether the petitioner is entitled to get increment, even though the petitioner has contended that he is eligible for increment as she has been in service for 30 years and that other persons joined along with her has been granted bonus increment.

7. The learned counsel appearing for the respondent submitted that other persons has been wrongly given increment and certainly there should be recovery from the persons, who has been benefited and wrong extension of benefit cannot be treated as a precedent. Article 14 may not be applicable to get a wrong benefit to the petitioner.

8. The next contention with regard to G.O.Ms.No.57, Finance (Pay Cell-II) Department, dated 28.01.1991 and the relevant portion of the Government Order is extracted below:-

"2. Government after careful consideration direct that if at any point of time on or after 1.6.88 a Government servant would have drawn more pay in the revised pay scale in the substantive post had he continued in it than in the officiating post in which he is actually working his pay in the officiating post shall be refixed in the scale of pay of the officiating post at a stage next above the pay in the substantive post."

9. There is no ambiguity in the G.O., It is very clear that the pay in the officiating post shall be refixed in the scale of pay of the officiating post at a stage next above the pay in the substantive post, which does not mean that the petitioner would be entitled to revise the pay at two stages. What is contemplated under G.O.No.57 is that if the pay given to the petitioner is less than the pay that has been given in the substantive post, the benefit of bonus should be extended to the petitioner by giving increment.

10. In the case, as the petitioner has not completed 30 years of service, which is mandatory requirement and that the petitioner has been extended the benefit of pay correctly.



11. In such view of the matter, this Court is of the view that the petitioner will not be entitled to any relief. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

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

2. The Chief Educational Officer,
Theni,
Theni District.

3. The District Elementary Educational Officer,
Uthamapalayam,
Theni District.

+1cc to Veera Associates, Advocate, SR.No.79170
+1cc to P.Gunasekaran, Advocate, SR.No.79129

W.P. (MD) No.905 of 2013

16.08.2018

AM

MKH-KK/SKN/SAR2/16.10.2018/4P-6C