

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
W.P.No.21292 of 2005

A.Murugan ... Petitioner/ Petitioner
Vs

- 1.The Government of Tamil Nadu
Rep by Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Government of Tamil Nadu
Rep by the Secretary to Government,
Finance Department, Fort St.George,
Chennai - 600 009.
- 3.The Director of Elementary Education
College Road,
Chennai - 600 006.
- 4.The District Elementary Educational Officer
Dindigul District
Dindigul.
- 5.The Assistant Elementary Educational Officer
Sanarpatti Panchayat Union
Sanarpatti
Dindigul District, Dindigul.

... Respondents/ Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in relation to G.O.Ms.No.278 Finance (CMPC) Department dated 16.06.2000 and the records of the 5th respondent issued in Na.Ka.No.138/A5/2005 dated 20.02.2005 and issued in Na.Ka.No.138/A1/2005 dated 20.04.2005 and quash the same and issue a consequential direction to the respondents to fix the petitioner's pay as Rs.1880/- with effect from 01.01.1996 as per the G.O.Ms.No.191 Finance (Pay Cell Department) dated 29.04.1998 and to grant arrears of salary.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mrs.V.Annalakshmi
Government Advocate

ORDER

The petitioner herein was appointed as a part-time Pre-Vocational Instructor, drawing a consolidated pay of Rs.180/- per month. By G.O.Ms.No.191 dated 29.04.1998, the Government had increased the consolidated pay of the Government employees by 40% with effect from 01.01.1996. Such an order came to be passed on the basis of the recommendations of the Official Committee on Pay Revision constituted by a Government Order.

2. Pursuant to the passing of G.O.Ms.No.191, the petitioner's pay came to be re-fixed by increasing it to Rs.425/- from Rs.180/- per month. While that being so, on 16.06.2000, G.O.Ms.No.278, came to be passed, whereby, the pay for full-time Pre-Vocational Instructors alone came to be fixed. In consequence to the passing of G.O.Ms.278, the part-time Pre-Vocational Instructors pay came to be re-fixed and thereby an order dated 20.04.2005, was passed, wherein the petitioner's pay was fixed at Rs.180/-.

3. Aggrieved against the Government Order in G.O.Ms.No.278 dated 16.06.2000 and the consequential order dated 20.04.2005, the present writ petition had been filed.

4. The learned counsel for the petitioner submitted that when the earlier G.O.Ms.No.191 dated 29.04.1998, came to be passed, it was on the basis of the recommendations of Official Committee on Pay Revision, extending the increase of pay to all employees drawing consolidated pays. While that being so, the G.O.Ms.No.278 dated 16.06.2000, is discriminatory and violative of Article 14 and 16 of the Constitution of India, since it restricts the benefits of G.O.Ms.No.191 only for full-time Pre-Vocational Instructors alone. On this aspect, the learned counsel for the petitioner relied upon the decisions of the Hon'ble Apex Court reported in AIR 1973 SCC 1088, Purshottam Lal and others Vs. Union of India and another and (2003) 10 SCC 405, Jawaharlal Nehru Technological University Vs. T.Sumalatha (SMT) and others.

5. The learned Additional Government Pleader, by relying upon the averments in the counter affidavit submitted that the petitioner was appointed only as a part-time Pre-Vocational Instructor and therefore, he was not

entitled for the benefit under G.O.Ms.No.191. According to the Additional Government Pleader, the increase referred to in G.O.Ms.No.191 is applicable only to full-time Pre-Vocational Instructors and therefore, there was no infirmity to G.O.Ms.No.278, as well as consequential orders passed seeking recovery of the excess amount paid.

6. I have given careful consideration to the submissions made by the respective counsels.

7. As rightly pointed out by the learned counsel for the petitioner, G.O.Ms.No.191 came to be passed on the recommendations of the Official Committee on Pay Revision. A perusal of this Government Order shows that the increase of the pay recommended was to all employees who were drawing either consolidated pay or honorarium pay or fixed pay. When a reference has been made in the said Government Order to cover all Government employees drawing a consolidated pay, like the petitioner herein, there is no basis as to how G.O.Ms.No.278 had differentiated the part-time Pre-Vocational Instructors and full-time Pre-Vocational Instructors.

8. The counter affidavit filed before this Court states that G.O.Ms.No.191 is applicable only to full-time Pre-Vocational Instructors, whereas, there is no such mention in the said Government Order. This Court is unable to comprehend as to how the respondents have come to a conclusion that G.O.Ms.No.191 is applicable only to full-time Pre-Vocational Instructors.

9. As a matter of fact, the Hon'ble Supreme Court in its decision reported in AIR 1973 SCC 1088, Purshottam Lal and others Vs. Union of India and another, had also made an observation that when the Government makes reference in respect of all Government employees by accepting the recommendations of the Pay Commission, in that case, non-implementation would be violative of Article 14 and 16 of the Constitution of India. The relevant portion of the said decision reads as follows:

"15.Mr.Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect

of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned."

10. Likewise, the Hon'ble Apex Court in its decision reported in (2003) 10 SCC 405 in the case of Jawaharlal Nehru Technological University vs T.Sumalatha (SMT) and others had made an observation with regard to the unreasonable payments made. The observation made by the Hon'ble Apex Court in the said Judgement is as follows:

"9. Though the plea of regularization in respect of any of the fifth respondents cannot be countenanced, the respondent employees should have a fair deal consistent with the guarantee enshrined in Articles 21 and 14 of the Constitution. They should not be made to work on a meagre salary for years together. It would be unfair and unreasonable to extract work from the employees who have been associated with the nodal centre almost from its inception by paying them remuneration which, by any objective standards, is grossly low. The Central Government itself has rightly realized the need to revise the consolidated salary and accordingly enhanced the grant on that account on two occasions. That revision was made more than six years back. It is high time that another revision is made. It is therefore imperative that the Ministry concerned of the Union of India should take expeditious steps to increase the salary of the investigators viz. Respondents 1 to 4 working in the nodal centre in Hyderabad. In the absence of details regarding the nature of work done by the said respondents and the equivalence of the job done by them to the other posts prevailing in the University or the Central Government institutions, we are not in a position to give any direction based on the principle

of "equal pay for equal work". However, we consider it just and expedient to direct Respondent 7 or 8, as the case may be, to take an expeditious decision to increase the consolidated salary that is being paid to Respondents 1 to 4 to a reasonable level commensurate with the work done by them and keeping in view the minimum salary that is being paid to the personnel doing a more or less similar job. As far the fifth respondent is concerned, though we refrain from giving similar directions in view of the fact that the post is not specifically sanctioned under the Scheme. We would like to observe that the Central Government may consider increasing the quantum of office expenditure suitably so that the University will be able to disburse higher salary to the fifth respondent."

11. For all the foregoing reasons, I am of the view that the impugned G.O.Ms.No.278 restricting the benefit of G.O.Ms.No.191 is discriminatory and violative of Articles 14 and 16 of the Constitution of India and thereby the petitioner is entitled to succeed. Consequently, the order of the 2nd respondent in relation to G.O.Ms.No.278 Finance (CMPC) Department dated 16.06.2000 and the records of the 5th respondent issued in Na.Ka.No.138/A5/2005 dated 20.02.2005 and issued in Na.Ka.No.138/A1/2005 dated 20.04.2005, are quashed. The respondents are also directed to fix the petitioner's pay at Rs.1880 with effect from 01.01.1996 as per the G.O.Ms.No.191 Finance (Pay Cell Department) dated 29.04.1998 and to grant arrears of salary.

12. Accordingly, the writ petition stands ordered. No costs.

smv

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Government of Tamil Nadu
Rep by Secretary to Government,
School Education Department,
Fort St.George,Chennai - 600 009.

2.The Government of Tamil Nadu
Rep by the Secretary to Government,
Finance Department, Fort St.George,
Chennai - 600 009.

3.The Director of Elementary Education
College Road,
Chennai - 600 006.

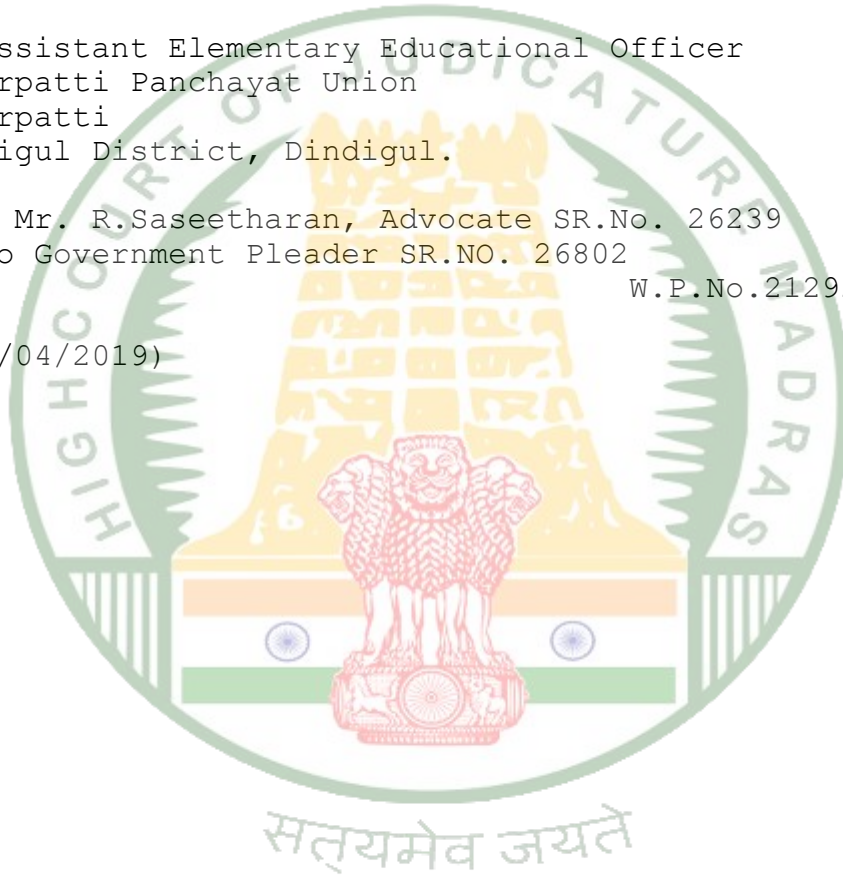
4.The District Elementary Educational Officer
Dindigul District
Dindigul.

5.The Assistant Elementary Educational Officer
Sanarpatti Panchayat Union
Sanarpatti
Dindigul District, Dindigul.

+1cc to Mr. R.Saseetharan, Advocate SR.No. 26239
+1 cc to Government Pleader SR.NO. 26802

W.P.No.21292 of 2005

A.SK(27/04/2019)



WEB COPY