

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 02.12.2019  
CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.22200 of 2019

1. Sulochana Lily Gnanamalar
2. R.Selwyn Amirtharaj
3. D.Azariah
4. A.Beulah Manohara Pushpavathy
5. T.Stephen Gnana Thiraviam
6. C.Chellakani
7. J.Thomas Jevaveerapandian
8. M.Samuel
9. T.Jebaraj
- 10.S.Samuel Gunaseelan
- 11.R.Mabel Jasmine Elizabeth ... Petitioners

Vs.

1. The State of Tamil Nadu,  
Rep by its Principal Secretary to Government,  
Education Department,  
Secretariat, Chennai.
2. The Director of School Education,  
(Higher Secondary),  
College Road,  
Chennai - 6.
3. The District Education Officer,  
Tirunelveli District Education Office,  
Tirunelveli - 627 009 ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to extend the benefits provided in G.O.(Ms)No.216, Finance (Pay Commission) Department, dated 22.03.1993 to the petitioners and consequently award selection grade / special grade pay scale with effect from 01.06.1988 and also revise the pensionary benefits.

For Petitioners : Mr.Manoj Sreevalsan  
For Respondents : Mr.A. Rajaperumal  
1 to 3 Additional Government Pleader

O R D E R

The present Writ Petition has been filed for a direction to the respondents to extend the benefits provided in G.O.(Ms) No.216, Finance (Pay Commission) Department, dated 22.03.1993 to the petitioners and award them with selection grade / special grade pay scale with effect from 01.06.1988 and consequently to revise the pensionary benefits.

2. The petitioners had joined as Secondary Grade Teachers and thereafter, they were promoted as Selection Grade Teachers and all of them are entitled for the benefits under G.O.(Ms) No.216, Finance (Pay Commission) Department, dated 22.03.1993. The petitioners have come before this Court after giving a representation to the respondents during February 2019, requesting them to extend the benefits of G.O.(Ms) No.216, Finance (Pay Commission) Department, dated 22.03.1993, to the petitioners also.

3. Mr.Manoj Sreevalsan, learned counsel for the petitioners submitted that the petitioners are entitled for the benefits under G.O.(Ms)No.216, Finance (Pay Commission) Department, dated 22.03.1993. The learned counsel further submitted that the Full Bench of this Court had considered the entire issue and has extended the benefits to all similarly placed teachers. The learned counsel further submitted that based on a review application filed by the Government, this Court had restricted the implementation of the G.O on and from 01.03.2017 onwards in respect of all the Secondary Grade Teachers of High / Higher Secondary Grade Schools including teachers who have attained Selection Grade / Special Grade. The learned counsel submitted that the Full Bench had restricted the relief only to the parties who were before the Court and it was made clear that no fresh writ petitions will be entertained on and from 09.12.2016. The learned counsel submitted that this portion of the order creates problem for the petitioners to claim the relief of G.O.(Ms)No.216, Finance (Pay Commission) Department, dated 22.03.1993, even though the petitioners are also placed similarly to that of the petitioners who were before the Full Bench of this Court.

4. The learned counsel for the petitioners submitted that the normal rule is that when a particular set of employees is given relief by the Court, all the other identically placed

persons need to be treated alike by extending the benefit. In order to substantiate his submissions, the learned counsel brought to the notice of this Court the judgment of the Hon'ble Supreme Court in STATE OF UTTAR PRADESH AND OTHERS -VS- ARVIND KUMAR SRIVASTAVA AND OTHERS [2015 (1) SCC 347].

5. The relevant portion of the judgement is extracted hereunder:

"22) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 The Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like

scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

6. The learned counsel for the petitioners further submitted that the Full Bench Judgement came to be passed on 09.12.2016 and the Full Bench had held that the G.O. will be implemented only on and from 01.03.2017. Taking into consideration the specific directions, the petitioners cannot be said to have approached this Court with delay and if at all, the petitioners are considered, they will also be entitled for the relief only on and from 01.03.2017.

7. Per contra, the learned counsel for the respondents submitted that entertaining such writ petitions at this juncture, will open flood gates and the Full Bench has specifically restricted the relief only for those persons who were before the Court and no fresh writ petitions can be entertained on and from 09.12.2016. The learned counsel submitted that the petitioners are more in the nature of fence sitters and they were waiting for the others to get the relief and thereafter, they have approached this Court with a considerable delay. Therefore, the learned counsel submitted that the present Writ Petition is not maintainable and the petitioners are not entitled for the benefits of G.O.(Ms) No.216, Finance (Pay Commission) Department, dated 22.03.1993 and prays for dismissal of the Writ Petition.

8. This Court has carefully considered the submissions made on either side and materials available on record.

9. The petitioners are seeking for extension of the benefits of G.O.(Ms)No.216, Finance (Pay Commission) Department, dated 22.03.1993. Similarly placed persons had approached this Court and ultimately a final judgement was passed by the Full Bench of this Court. While the Full Bench considered the review application that was filed by the Government, it had made the following observations and the same are extracted hereunder:

"38. Today, when the matters are taken up for consideration, keeping in mid 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 22.03.1993 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 revised 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."

10. It is clear from the above that the Full Bench has categorically held that no fresh Writ Petitions would be entertained on and from 09.12.2016 and that the benefits are extended only to those parties who were before the Court. The above observations made by this Court clearly make this judgement as a "judgment in personam" and this Court's judgment cannot be treated as "judgment in rem", since the intention on the part of the Court has been specifically spelt out in the judgment. The request made by the learned counsel for the petitioners to the effect that similarly placed persons should not be deprived of the benefits, cannot be acceded to. Judicial discipline requires that the Single Bench has to necessarily fall in line with the

judgment of the Full Bench. By entertaining the present Writ Petition, this Court will only be going against the directions given by the Full Bench. That apart, by entertaining such Writ Petitions, it will only result in opening the flood gates.

11. In view of the above discussion, this Court is not inclined to entertain this Writ Petition and accordingly, the same is dismissed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srn  
To

1. The Principal Secretary to Government,  
State of Tamil Nadu,  
Education Department,  
Secretariat, Chennai.
2. The Director of School Education,  
(Higher Secondary),  
College Road,  
Chennai - 6.
3. The District Education Officer,  
Tirunelveli District Education Office,  
Tirunelveli - 627 009

+1cc to Mr.Manoj Sreevalsan , Advocate SR.No. 100635

A.SK(20/01/2020)

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