

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.A.Nos.3280, 3281, 3282, 3283, 3284, 3286 & 3287 of 2019
and CMP.Nos.20880, 20881, 20889, 20890, 20893, 20895, 20898,
20899, 20900, 20901, 20918, 20919, 20952, 20955, of 2019

S.Murugesan ... Appellant in W.A.No.3280 of 2019
V.Tamilarasan ... Appellant in W.A.No.3281 of 2019
M.Kaliteerthan ... Appellant in W.A.No.3282 of 2019
K.Sathuru sankaravelan ... Appellant in W.A.No.3283 of 2019
R.Subramanian ... Appellant in W.A.No.3284 of 2019
G.Jagadeesa Chandrabose ... Appellant in W.A.No.3285 of 2019
C.Nagarasan ... Appellant in W.A.No.3287 of 2019

Vs.

- 1.The State of Tamil Nadu
Rep.by the Principal Secretary to Government
School Education Department,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
(Higher Secondary)
College Road,
Nungambakkam, Chennai-600 006.
- 3.The Joint Director of School Education
Personnel Division
Directorate of School Education
Chennai 600 006.
- 4.The Chief Educational Officer,
Nagapattinam,
Nagapattinam District
Pin Code:611 001. ... Respondents in all WAs

Prayer in Writ Appeal No.3280 of 2019: Writ Appeal filed under
Clause 15 of the Letters Patent to set aside the order made in
W.P.No.1822 of 2019 dated 20.03.2019.

Common Prayer in WA Nos.3281,3282, 3283, 3284, 3286 and 3287 of 2019:

These Writ Appeals filed under Clause 15 of Letters Patent Act to set aside the order made in W.P.Nos.1818/2019, 1671, 1709, 1761, 1666 and 1523 of 2019 respectively dated 20/03/2019.

Common Prayer in WP.Nos.1822/19, 1818, 1671, 1709, 1761, 1666 & 1523/2019 :

These Writ Petitions filed under Article 226 of the Constitution to issue a Writ of certiorarified mandamus calling for all the relevant records pertaining to the order passed by the 1st Respondent in G.O.Ms.No.90 School Education (Pa.Ka) 3 (1) Department dated 9.5.2018 and quash that portion of the Paragraph 10(ii) in the said G.O dated 9.5.2018 in so far it denies the benefit of the G.O.Ms.No.216 Finance (PC) Department dated 22.3.1993 and the consequential order of the 3rd respondent bearing O.Mo. No. 52176/C5/E4/2018 dated 03/08/2018 (09/08/2018) to the Petitioner as arbitrary unreasonable being violative of principles of natural justice and violative of Articles 14 21 and 300A of the Constitution and consequently direct the Respondents to grant the benefits of G.O.Ms.No.216 Finance (PC) Department dated 22.3.1993 issued by the 1st respondent to the Petitioner as done by the Respondents granting Selection/Special grade scale of pay with effect from 01.03.2017 and revise pensionary benefits and pay the arrears of the petitioners.

For Appellant : Mr.S.Ayyathurai

For Respondent : Mr.K.Karthikeyan,
Government Advocate

COMMON JUDGEMENT

(Judgement of the Court was delivered by M.SATHYANARAYANAN, J.)

The writ petitioners are the appellants and all of them were working as a Secondary Grade Teachers working in the Higher Secondary Schools and they have retired about a decade back. The appellant / writ petitioners had submitted individual representations for expanding the benefit rather the benevolence granted by the Government under G.O.Ms.No.216, Finance (P.C) Department dated 22.03.1993. Since the issue involved in all the writ appeals were common, the learned Judge, vide impugned order dated 20.03.2019, has dismissed all the writ petitions, after taking note of the Full Bench decision of this Court reported in Government of Tamil Nadu rep. By the Secretary, School Education Department, Fort St.George, Chennai-600 009 and others (2017 (2)

MLJ 257)and challenging the legality of the same, the present Writ Appeals have been filed.

2.Mr.S.Ayyathurai, learned counsel appearing for the appellants/petitioners has drawn the attention of this Court to the decision rendered by a Division Bench of this Court, vide common order dated 04.02.2015 made in W.A.No.352 of 2014 batch etc., and would submit that similar issue arose for consideration before the Division Bench and the Division Bench has also taken into consideration the issue relating to delay and latches and also that as far as delay is concerned, the claim of arrears for the period taken by the individuals to approach the Court need no be taken into consideration and however passed an order for revising the pension and since it does not involve financial implication, prays for appropriate orders.

3. Mr.K.Karthikeyan, learned Government Advocate, who accepts notice on behalf of the official respondents, has invited the attention of this Court to paragraph no.38 of the Full Bench Judgment and would submit that in the light of the financial implication, the Full Bench has issued certain directions. Admittedly, the appellants / writ petitioners had retired about 10 years back and they have belatedly approached the Court and in the light of the cut off date fixed by the Full Bench, the petitioners/appellants are not entitled to any relief and the learned Single Judge has taken note of the said decision and rightly dismissed the writ petitions and prays for dismissal of these writ appeals.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it and it is relevant to extract paragraph no.38 of the Full Bench Judgment and the same reads as follows:

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 1.6.1988 and 31.12.1995, on and from 1.3.2017 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 22.3.1993 payable on and from 1.3.2017;

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;

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;

5. It is to be noted at this juncture that the Full Bench consists of Mr.Justice Huluvadi G.Ramesh, Hon'ble Mr.Justice Pushpa Sathyanarayana and Honble Mr.Justice V.Parthiban and Hon'ble Mr.Justice V.Parthiban has delivered a separate concurrent judgement and it is relevant to extract paragraph nos.4 and 5:

4. The Government at last woken up to the fact that the entire issue needs to be addressed by this Court afresh, as thousands of Writ Petitions were allowed without proper examination and adjudication. Orders passed by this Court over the years, in favour of the employees by following the earlier order one after the other may be correct or incorrect and this Court may still hold in favour of the employees after proper judicial scrutiny and critical examination of the issues on hand. But the fact of the matter is that there was no proper adjudication of the claim by the Teachers vis-a-vis the Government Order in question and that precisely

is the issue. However, it has become too late in the day for fresh adjudication and start the litigation process from the scratch all over again which means that thousands of beneficiaries of the orders passed by this Court would be forced to confront an uncertain future, which situation would be unwholesome. particularly the beneficiaries, most of them retired, many of them no more, they and the families have been living in a small comfort of recurring monthly pensionary hope. After all in the old age, hope is the only will for their remaining survival.

5. In these circumstances, the Full Bench in quest for equitable, just and fair solution, has to find the terms with pragmatism acceptable to both parties and at the same time, not upsetting the stated position of the parties. Such an arduous task was meant to be tight rope walking, not falling on either side and tilting the scales of justice, one way or the other. The Full Bench was bestowed with the task of remedying the extraordinary situation brought upon the institution, on its own, equally contributed by the employees and the Government and such extraordinary situation called for extraordinary remedy. The Full Bench with the best of its intention attempted only that and by an order the age old controversy which has been engaging the attention of this Court at the instance of both the employees and the Government is effectively put an end to.

6. It is also to be noted at this juncture that one of the Hon'ble judges to the decision dated 04.02.2015 in W.A.No.352 of 2014 batch etc was also one of the judges to the Full Bench decision.

7. Though the issue is relating to limitation, it would not have strict implications in the proceedings initiated under Article 226 of the Constitution of India. As regards the issue relating to delay in latches, in respect of the employees, it involves financial implication.

8. The Full Bench has taken note of the same and accordingly fixed the cut off date on 09.12.2016 and also made it clear that the parties who had approached the Court prior to the said cut off date are entitled to the said benefits and admittedly, the petitioners unfortunately belatedly approached the Court only in the year 2019. Though the learned counsel made vehement attempt by persuading this Court by taking a different view to the decision rendered by the Full Bench, this Court is unable to go into the said aspect for the reason that the judicial discipline requires this Court to bound and follow the decision rendered by the Full Bench of this Court.

9. This Court on an independent application of mind to the entire materials placed and also the reasons assigned by the learned Single Judge is of the considered view that there is no error apparent or infirmity in the said order.

10. Accordingly, these Writ Appeals are dismissed, confirming the common order dated 20.03.2019 made in W.P.Nos.25118/2018 etc., batch. It is made clear that if the Government wants to extend the benevolence by way of policy decision, they may do so. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
(Higher Secondary)
College Road,
Nungambakkam, Chennai-600 006.
- 3.The Joint Director of School Education
Personnel Division
Directorate of School Education
Chennai 600 006.
- 4.The Chief Educational Officer,
Nagapattinam,
Nagapattinam District
Pin Code:611 001.

+1cc to the Government Pleader Sr.87731
+7cc to Mr.S.Ayyathurai, Advocate Sr.87021

W.A.No.3280, 3281, 3282, 3283, 3284,
3286 & 3287 of 2019 of 2019

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srg 11/12/2019