



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.8450 of 2012

V.L.Sam Prince Kumar

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance (C.M.P.C) Department,
Fort St. George,
Chennai-600 009.

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

3. The Director of School Education,
D.P.I.Campus,
College Road,
Chennai-600 006.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order passed by the first respondent herein in para 2(2) in Letter No.8764/C.M.P.C/2012-1, dated 18.04.2012 so far as it relates to denying Special Allowance to the petitioner in the promotional post of B.T.Assistant from the post of Selection Grade Secondary Grade Teacher, quash the same as illegal and consequently directing the respondents 1 to 3 herein to continue to pay the Special Allowance of Rs.500/- along with monthly salary to the petitioner in the promotional post of B.T.Assistant and all other consequential promotional posts.

For Petitioner : Mr.S.Bharathy Kannan

For Respondents : Mrs.S.Srimathy,
Special Government Pleader

**ORDER**

The order impugned, dated 18.04.2012 rejecting the claim of the writ petitioner for grant of Special Allowance on par with the Secondary Grade Teacher, is under challenge in the present writ petition.

2.The writ petitioner was appointed as Secondary Grade Teacher and subsequently, promoted to the post of B.T.Assistant (History). The grievance of the writ petitioner is that at the time of serving as Secondary Grade Teacher, his special allowance of Rs.500/- was granted along with salary. However, on promotion to the post of B.T.Assistant the special allowance granted was stopped by the authorities.

3.The learned counsel appearing on behalf of the writ petitioner states that the pay fixed for the post of B.T.Assistant is lesser than the pay fixed for Secondary Grade Teacher, therefore, the writ petitioner is eligible to draw special allowance, which was granted to him when he was working as Secondary Grade Teacher. The Government issued G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010 granting special allowance at the rate of Rs.500/- per month to the Secondary Grade Teachers and other teaching posts. The said special allowance is to be extended to the writ petitioner in the promotional post of B.T.Assistant also.

4.The learned Special Government Pleader appearing on behalf of the respondents solicited the attention of this Court with reference to the terms and conditions stipulated in the Government Order issued in G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010. As per the Government Order, the special allowance is applicable to the Secondary Grade Teacher post and it was not granted to the B.T.Assistant. In respect of the allegations of the writ petitioner that on promotion he is receiving lesser scale of pay. The learned Special Government Pleader relied on the counter affidavit filed by the respondents stating that the writ petitioner was receiving the pay of Rs.18,200 + DA 10556 + HRA 320 + MA100+ Special Allowance 500. After promotion to the post of B.T.Assistant the petitioner was receiving Rs.30519(Pay 19050 + DA 11049 + HRA 320 + MA 100). After his promotion to the post of B.T.Assistant, the petitioner gained Rs.843/- more than what he had already received in the cadre of secondary grade teacher. Thus, pay anomaly now stated by the writ petitioner, is incorrect. The writ petitioner was fixed in the higher scale of pay and he is receiving the higher scale of pay than that of the pay which he was receiving, when he was working as secondary grade teacher.



5.This Court is of the considered opinion that when the special allowance is not contemplated in the Government Order by way of policy, more specifically, to the post of B.T.Assistant, the same cannot be granted by the Courts. Grant of special allowance is a policy decision to be taken in the matter of fixation of pay and the Court cannot enhanced the salary in the absence of any specific orders by the Government. The grievance of the writ petitioner is that he is receiving lessor pay than that of the pay attached to the post of secondary grade teacher, is incorrect in view of the fact that the pay received by the petitioner has been stated in the counter affidavit and on perusal of the same, the writ petitioner is receiving more pay than that of the pay granted to him, when he was working in the post of secondary grade teacher.

6.The learned counsel for the petitioner states that even there is a pay anomaly in respect of the post of secondary grade teacher and B.T.Assistant, in case, if there is any pay anomaly as per the writ petitioner, it is left open to him to approach the Grievance Committee or the competent authority for the purpose of rectification of pay anomaly by following the procedures. The pay anomaly, if any, noticed by the authorities competent, then suitable actions are to be taken for the redressal. However, the pay cannot be enhanced by the Courts by exercising the power of judicial review under Article 226 of the Constitution of India and in respect of the pay anomaly, if any exist, the writ petitioner is at liberty to approach the competent authority.

7. The learned Special Government pleader appearing on behalf of the respondents states that even after the promotion to the post of B.T.Assistant, the writ petitioner was erroneously granted the special allowance of Rs.500/- for more than one year.

8.The learned counsel for the petitioner in reply submitted that many such persons were granted special allowance even after their promotion.

9. If any such irregularities are committed by the officials concerned, all suitable actions are to be initiated against those officials for recovery of excess payment granted to the teachers over and above their eligibility and they must be held accountable and the excess amount to be recovered from those officials for committing the act of negligence and dereliction of duty. Whenever such an action is taken it must be uniform in respect of all the persons and against all the officials who all are responsible for such negligence and dereliction of duty.



10. With these observations, the writ petition stands disposed of. No costs.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Secretary to Government,
Finance (C.M.P.C) Department,
Fort St. George, Chennai-600 009.
2. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.
3. The Director of School Education,
D.P.I.Campus,
College Road,
Chennai-600 006.

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-79685[F] dated
05/08/2019)

+1 CC to M/s.S.BHARATHY KANNAN, Advocate (SR-79825[F] dated
05/08/2019)

W.P. (MD) No. 8450 of 2012
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Am

AE/ (13.08.2019) 4P 6C