



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

**W.P. (MD) Nos.1422 of 2015 and 4364 of 2019
and
WMP (MD) Nos.1 to 3 of 2015 and 3469 of 2019**

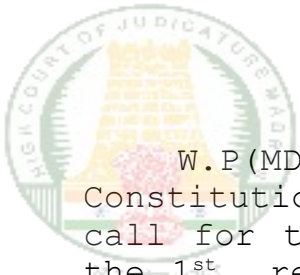
R.Pandiyarajan

... Petitioner in both W.Ps.

Vs.

- 1.The State of Tamil Nadu,
rep.by its Principal Secretary to Government,
Finance Department,
Fort St. George,
Chennai - 600 009.
- 2.The State of Tamil Nadu,
rep. by Principal Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 3.The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 4.The Joint Director of School Education (Vocational),
O/o.the Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 5.The Chief Educational Officer,
O/o.Chief Educational Officer,
Theni District, Theni.
- 6.The District Educational Officer,
Peiriyakulam,
Theni District.
- 7.The Head Master,
V.M.Government Higher Secondary School,
Periyakulam Post - 625 601,
Theni District.

... Respondents in both W.Ps.



W.P(MD)No.1422 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned letter issued by the 1st respondent in letter No.66858/CMPC/2013-2 dated 22.08.2014 and the consequential recovery order issued by the 7th respondent in Na.Ka.No.06/A1/2015 dated 19.1.2015 and quash the same and consequently forbearing the respondents from reducing the existing scale of pay with allowances granted to the petitioner.

W.P(MD)No.4364 of 2019 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to disburse the retirement benefits including the DCRG of the petitioner having regard to the fact that the petitioner was duly allowed to retire vide proceedings in Na.ka.No.231/A1/2018 dated 31.12.2018 of the 7th respondent along with accrued interest thereon within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Saravanakumar in WP(MD)1422/15
For Petitioner : Mr.C.Venkatesh Kumar for
M/s.Ajmal Associates in WP(MD)4364/19
For Respondents : Mrs.S.Srimathy
Special Government Pleader
in both writ petitions.

COMMON ORDER

While WP(MD)No.1422 of 2015 has been filed to quash the impugned orders of the first and seventh respondents dated 22.08.2014 and 19.01.2015 respectively and to forbear the respondents from reducing the scale of pay with allowances granted to the petitioner, WP(MD)No.4364 of 2019 has been filed seeking a direction to disburse the retirement benefits to the petitioner.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondents.

3.The learned counsel appearing for the petitioner submitted that in an identical issue, in W.P(MD)Nos.2654, 2924 and 2663 of 2018 on 19.03.2018, this Court passed the following order:

"3.The scale of pay of Vocational Instructor was revised to 9300-34800+GP4600. This is the scale of pay payable to ordinary Vocational Instructor. Those who have put in 10 years of service would move to Selection Grade. Their revised scale of pay was 15600-39100+GP5400. This is the evident from the proceedings of the Principal Accountant General, Chennai, dated 14.07.2014.



4. In the said proceedings, it has been mentioned that such a revision of scale of pay was admissible with monetary benefit only from 01.04.2013. But, by subsequent letter dated 22.08.2014, the Government took a stand that the revised selection grade scale of pay for the Vocational Teachers would also be 9300-34800+GP 4800. This runs counter to the earlier G.O.Ms.263 dated 22.07.2013. The said subsequent Government letter is impugned in these writ petitions.

5. The subsequent Government letter suffers from two errors. Firstly, it equates Vocational Instructor with BT Assistant. Such an equation is not sustainable for more than one reason. BT Assistant has more than one promotional avenue. Vocational Instructor remains Vocational Instructor during their entire career. That apart in G.O.263 dated 22.07.2013, what was laid down was the revised scale of pay for ordinary Vocational Instructor. Ordinary Vocational Instructor would get a Grade Pay of Rs.4,600 but then a selection grade Vocational Instructor will get a Grade Pay of Rs.5,400/-.

6. A Government letter cannot prevail over a Government order issued under Article 162 of the Constitution of India. But then, as per the proceedings of the Principal Accountant General, Chennai, the monetary benefits can be given only from 01.04.2013. If they have been mistakenly given from the earlier date, the excess pay has to be recovered.

7. The learned counsel appearing on behalf of the writ petitioner placing reliance of the Hon'ble Supreme Court of India in **2015 (4) SCC 334 [State of Punjab v. Rafiq Masih]** held that an order of recovery may not be made. Though the Hon'ble Supreme Court made it clear that only if it would cause hardship, recovery ought not be effected. In this case, some of the writ petitioners who have retired are very much getting pension. Therefore, the order of recovery will not cause hardship to them.

8. The Standing Counsel appearing on behalf of the Principal Accountant General, Chennai, submits that the objection was made in the year 2011. That apart, the proceedings dated 14.07.2014 of the Principal Accountant General, Chennai, are not under challenge.

9. Therefore, these writ petitions are partly allowed by holding that selection grade Vocational Instructor are



entitled to be paid selection grade scale of pay Rs.15600-39100+GP 5400 admissible with monetary benefits from 01.04.2013. No costs. Consequently, connected miscellaneous petitions are closed.

4. At this juncture, the learned Special Government Pleader appearing for the respondents submitted that subsequent to the aforesaid order passed by this Court in W.P(MD)Nos.2654, 2924 and 2663 of 2018 dated 19.03.2018, the Government implemented the said order and passed G.O.Ms.No.306 Finance (CMPC) Department, dated 12.09.2018. The relevant portion of the Government Order is extracted as under:

"7. ... Accordingly, the Government direct that the Selection Grade Scale of Pay of Vocational Instructors who were awarded Selection Grade prior to 01.01.2006 and in the case of employees who have exercised their option to come over to the revised scales of pay on the date of their award of Selection Grade between 01.01.2006 and 31.05.2009 shall be refixed in the scale of pay at Rs.15,600 - 39,100 + G.P.5,400 notionally with effect from 01.01.2006 or the date of award of Selection Grade in the post of Vocational Instructor with monetary benefits from 01.04.2013.

8. The above orders shall be applicable to all the Vocational Instructors who were awarded Selection Grade prior to 01.01.2006 and those awarded Selection Grade between 01.01.2006 and 31.05.2009 and opted for the revised scales of pay on that date irrespective of the fact as to whether they filed separate writ petitions or not.

9. The arrears of pay and allowances shall be drawn and paid to the individuals with effect from 01.04.2013 as per the orders in force."

5. In view of the order passed by this Court in W.P(MD) Nos.2654, 2924 and 2663 of 2018 dated 19.03.2018 and also in the light of the subsequent Government Order in G.O.Ms.No.306 Finance (CMPC) Department, dated 12.09.2018, the impugned orders are set aside. Accordingly, WP(MD)No.1422 of 2015 is disposed of, directing the respondents to pass appropriate orders in respect of the claim made by the petitioner, in line with G.O.Ms.No.306 Finance (CMPC) Department, dated 12.09.2018. No costs. Consequently, WMP(MD)Nos.1 and 2 of 2015 are closed.

6. In view of the order passed in WP(MD)No.1422 of 2015, WP (MD)No.4364 of 2019 is disposed of, directing the seventh respondent to send a proposal regarding retirement benefits payable to the third respondent through the sixth respondent. On receipt of such proposal, the third respondent is directed to consider the same, in the light of G.O.Ms.No.306 Finance (CMPC)



Department, dated 12.09.2018 and pass orders, within a period of six weeks from the date of receipt of such proposal. No costs. Consequently, WMP(MD)No.3469 of 2019 is closed.

Sd/-

Assistant Registrar(CS-II)

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// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Finance Department,
Fort St. George,
Chennai - 600 009.
- 2.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 600 009.
- 3.The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 4.The Joint Director of School Education (Vocational),
O/o.the Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 5.The Chief Educational Officer,
O/o.Chief Educational Officer,
Theni District, Theni.
- 6.The District Educational Officer,
Peiriyakulam, Theni District.
- 7.The Head Master,
V.M.Government Higher Secondary School,
Periyakulam Post - 625 601,
Theni District.

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.54289
+1 CC to M/s.Ajmal Associates, Advocate in SR-54422
+1 CC to M/s.M.SARAVANA KUMAR, Advocate in SR-54398

W.P. (MD) Nos.1422 of 2015 and 4364 of 2019
14.03.2019