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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) No.664 of 2017

P.Robert

... Petitioner

vs.

1.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.

2.The Assistant Elementary Educational Officer,
Alangulam,
Tirunelveli District.

... Respondents

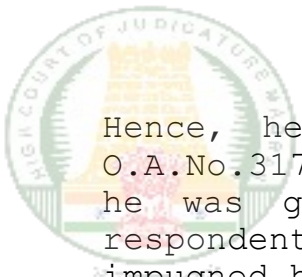
PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.No.1669/A1/2016, dated 19.07.2016 and quash the same and direct the respondents to sanction Special Grade to the petitioner in the cadre of Middle School Headmaster and confer all consequential monetary benefits within a time that may be stipulated by this Court.

For Petitioner	: Mr.V.Panneer Selvam
For Respondents	: Mrs.S.Srimathy Special Government Pleader

ORDER

The prayer in this Writ Petition is to quash the order of the second respondent in his proceedings in Na.Ka.No.1669/A1/2016, dated 19.07.2016 and direct the respondents to sanction Special Grade to the petitioner in the cadre of Middle School Headmaster and confer all consequential monetary benefits within a time that may be stipulated by this Court.

2. The case of the petitioner is that he was appointed as a Secondary Grade Assistant on 20.07.1960 and he was promoted as B.T.Grade Middle School Headmaster on 01.04.1972. While so, the school in which the petitioner worked was upgraded as High School on 01.09.1986 and he was absorbed as B.T.Assistant on 01.09.1986 without his option. Therefore, the petitioner and similarly placed persons sent representations to the Government to give pay protection. The Government issued orders on 15.06.1988 stating that there will not be any change in the post and nomenclature and the emoluments are also protected. But the petitioner was not awarded special grade in the cadre of middle school Headmaster.



Hence, he approached the Tamil Nadu Administrative Tribunal in O.A.No.317 of 1993 and the same has not been disposed of. However, he was granted interim order. Despite the same, the second respondent has rejected the claim of the petitioner, by the order impugned herein. Hence, this Writ Petition.

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3. The learned counsel for the petitioner submitted that the connected Original Applications filed by the similarly persons were disposed of by the Tribunal by stating that either the applicants therein should be posted as BT Grade Headmasters of Middle Schools in the Panchayat Union School or given the scale of pay as applicable to the post of Headmasters of Middle School. Hence, the learned Counsel sought for appropriate direction to the respondents, to consider the claim of the petitioner, in the light of the Government letter dated 15.06.1988.

4. Heard the learned Special Government Pleader appearing for the respondents on the above submissions made by the learned Counsel for the petitioner.

5. Admittedly, the petitioner was working as Middle School Headmaster and on upgradation of the said school, the petitioner was absorbed as BT Assistant and he is entitled to get pay protection in terms of the Government Letter dated 15.06.1988. Even though the Fifth Pay Commission recommended separate scale of pay for the post of Headmaster of Middle School, the petitioner having been worked as Middle School Headmaster and due to the upgradation of the said school, the petitioner is entitled to get pay protection and the difference in pay should be treated as his personal pay.

6. The Order of the Tribunal passed in O.A.Nos.694 and 740 of 2005 etc., also supports the case of the petitioner, wherein the Tribunal has held as follows:-

On this aspect, the Judgment of this Tribunal in O.A.Nos.1212, 1279, 1320, 1328 and 1329 of 1993, dated 12.03.1993 has been brought to my notice. The facts in the said cases are set out as follows:-

"The applicants while working as Middle School Headmasters had been absorbed in the High School when the Middle School was upgraded and posted as B.T.Assistant. Since the teachers working in the Middle Schools were not willing to be absorbed in the High Schools when their option was called for, the Government dispensed with the option and appointed the applicants in the High Schools without their willingness. Protection of their pay and designation was given when they have not absorbed in the High School.

Following the V Pay Commission when a higher scale of pay has been sanctioned to B.T. Headmasters of Middle School, the applicants have been denied the benefit on



the ground that they are not working as Headmasters. Earlier the scale of pay of B.T. Assistant of the High School and the B.T Headmaster of the Middle School were the same.

On consideration of all these, the then Vice-Chairman of this Tribunal has issued a direction which reads as follows:-

(1) B.T Headmaster should be given an option to revert to the Panchayat Union in which he should be given a posting with reference to his seniority reverting the junior most in the category if necessary.

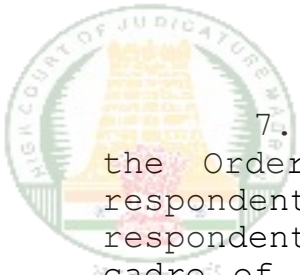
(2) Such junior person, if he opts for High School service can be accommodated in the scale of B.T Assistant because he has ceased to be a Headmaster consequent on reversion. This may be temporary, pending other arrangements for appointment in the High School service or if the individual is willing, he can be absorbed in the High School service as B.T Assistants without any claim for the pay of headmaster of middle schools. Otherwise, he should be reverted to the Panchayat Union unit after making alternative arrangements within the High School service.

(3) Till such reversion to the Panchayat Unit, the B.T Headmaster not facing reversion if retained in the High School without his willingness, should be given the same benefit as if he had continued as Headmaster. He cannot be denied the benefit consequent on the revision of the scale because he would have been getting such benefit if he had continued in the Panchayat Unit from which he was transferred without his consent..."

8. As per the above, option is given to the petitioners to go to Middle School once again. But, now at this distance of time, it will be very difficult for the Government to accommodate them as Middle School Headmasters and the persons are working as Middle School Headmasters will be facing reversion etc., But, it is stated by the Learned Counsel for the petitioners Mr.C.Selvaraju that if pay protection is given and continued till their retirement, there is no necessity for them to go back to Panchayat Union Service and Middle Schools.

9. In the circumstances, in all these cases, I am of the view that direction No.3 in the Judgment can be adopted. In the result, the petitions are ordered as follows:-

"The petitioners should be given the same benefit as if they had continued as Headmasters and consequential monetary benefits such as Selection Grade, Special Grade including increments etc., should be given to them till their retirement."



7. In the light of the above Government Letter as well as the Order of the Tribunal, the impugned order passed by the respondent is set aside and a direction is issued to the respondents to sanction Special Grade to the petitioner in the cadre of Headmaster of Middle School and confer all consequential benefits. The arrears of salary payable to the petitioner shall be calculated and paid to the petitioner within a period of eight weeks from the date of receipt of copy of this order. No costs.

8. This Writ Petition is allowed as indicated above. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.

2.The Assistant Elementary Educational Officer,
Alangulam,
Tirunelveli District.

+1CC TO MR.V.PANNEER SELVAM, Advocate Sr. No. 55059

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 55124

W.P(MD)No.664 of 2017
18.03.2019

AVG (CO)

TR (02.05.2019) 4P 5C