



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

W.A. (MD)No.512 of 2017

and

C.M.P (MD) .No.4395 of 2017

1. The Principal Secretary to Government,
School Education (G2) Department,
Chennai.
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Educational Officer,
Collectorate, Karur District, Karur.
4. The Additional/Assistant Elementary Educational Officer,
Kulithalai, Karur District. ... Appellants/ Respondents

Vs.

R.Velusamy ... Respondent/Writ petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD).No.4578 of 2014 dated 26.03.2014.

Prayer in WP(MD). 4578 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to extend the benefits of G.O. Ms. No.234 Education (G2) Department dated 10.09.2009 and to count the service rendered by the petitioner prior to 01.06.1988 as Secondary Grade Teacher for the purpose of Fixation and grant of selection and special Grade Scale of pay in the post of Primary School Headmaster with all consequential benefits including payment of arrears of pay and allowances and re-fixation of pension and payment of arrears applicable to the petitioner.



For Appellants : Mrs.S.Srimathy,
Special Government Pleader.
For Respondent : Mr.B.Saravanan

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J U D G M E N T

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

The official respondents in W.P.(MD)No.4578 of 2014, filed by the respondent/writ petitioner, are the appellants.

2. The respondent/writ petitioner has filed the said Writ petition praying for issuance of a Writ of Mandamus, directing the official respondents to extend the benefits of G.O.Ms.No.234, Education (G2) Department, dated 10.09.2009 and to count the service rendered by the petitioner prior to 01.06.1988, as Secondary Grade Teacher for the purpose of fixation and grant of Selection and Special Grade scale of pay in the post of Primary School Headmaster with all consequential including payment of arrears of pay.

3. The respondent/writ petitioner in the affidavit filed in support of the Writ petition would aver among other things that he was originally appointed as Secondary Grade Teacher on 01.06.1971, at Panchayat Union Elementary School, Nachaloor, Kulithalai Taluk, Karur District and on 25.08.1995, he got his promotion as Elementary School Headmaster at Savarimedu Panchayat Union Elementary School and retired from service on 31.01.2008, at Panchayat Union Elementary School, Kagampatti, Karur District. The respondent/writ petitioner had submitted a representation dated 11.02.2014, with a request to extend the benefits of G.O.Ms.No.234 dated 10.09.2009, to the appellants/respondents and despite receipt and acknowledgement, nothing is moving forward and therefore, the respondent/writ petitioner is constrained to approach this Court by way of filing the Writ petition.

4. The Writ petition was entertained and the learned Single Judge after taking note of the factual aspects as well as the judgment dated 07.07.2011, passed in W.A.Nos.815 of 2010, etc., [**N.Jawahar v. The Government of Tamil Nadu, School Education Department, Chennai-9**], had passed orders with the positive directions.

5. The official respondents aggrieved by the positive direction passed in the writ petition had filed this Writ Appeal.

6. It is a claim of the respondent/writ petitioner that prior to 01.06.1988, the post of Headmaster of Elementary School



Education was only an allowance post and the substantial post was the post of Secondary Grade Teacher and a separate time scale of pay was granted for the post of Elementary School Headmaster by the 5th Pay Commission/recommendation with effect from 01.06.1988. It is further submitted by the respondent/writ petitioner that the promotion to the post of Elementary School Headmaster prior to 01.06.1988, was not on the basis of seniority or merit and there was no separate time scale of pay for the said post prior to 01.06.1988 and whereas, after the 5th Pay Commission/recommendation, those teachers who were holding the post of Elementary School Headmaster were given selection grade and special grade.

7. It is also averred by the respondent/writ petitioner in this regard that a batch of Original Applications were filed before the Tamil Nadu Administrative Tribunal and a positive order came to be passed in the light of the same, the first appellant thought fit to pass an order through G.O.Ms.No.234, Department of School Education (G2) dated 10.09.2009, in and by which, the entire service rendered by the Elementary School Headmasters for according Special Grade, in respect of 63 person who got orders from the Court, shall be counted to the pay scales of Elementary School Headmasters in effect, the G.O. would apply to the persons who approached the Tamil Nadu Administrative Tribunal.

8. Subsequently, based upon the said orders passed in the Tribunal, various litigations were filed and similar orders came to be passed and in compliance of the same, various Government Orders came to be issued, may be under the pain of contempt.

9. Government have taken into consideration the repeated claims made in this regard, thought fit to pass the order G.O.Ms.No.216, School Education (G2) Department, dated 30.12.2011, covering the persons who approached the Court and got the order as well as the persons who did not approached the Court and subsequently, issued a clarification G.O.Ms.No.179, School Education (G2) Department, dated 06.09.2013, wherein, it has been clarified that as per the annexure, it would apply only to the persons who got the order numbering 1528.

10. The learned Special Government Pleader would submit that the similar claim made by the various persons similarly placed came up for consideration in the form of Review Application No. 227 of 2015, etc., [**Government of Tamil Nadu, rep. by the Secretary, School Education Department v. G.Eswaran & Ors.,**] before the Full Bench of this Court and the Full Bench of this Court has taken into consideration the interest and conscience executed by the retired persons/teachers, who are similarly placed



relevant Government Orders, for resolving the interest of the Government in the form of financial liability and disposed of the Review Applications with the following directions and it is relevant to extract paragraph No.38, hereunder:-

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;

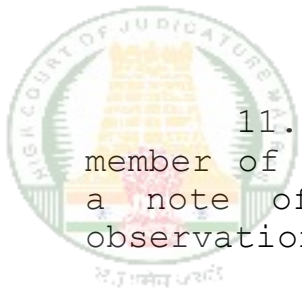
ii) Consequently, the Government shall calculate and revise the pension of those who retired from service and revise the family pension in respect of those who expired, based on the revised scales of pay in terms of G.O.Ms.No.216, dated 22.3.1993 payable on and from 1.3.2017;

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;"



11. The Hon'ble Mr. Justice V.Parthiban, who was also a member of the said Full Bench in his concurrent verdict had taken a note of the rival claim and interest, made the following observations:-

"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. Courts being overburdened at all times, develop tendencies to dispose of cases as early as possible with good intention, having public interest in mind, but in its anxiety so, the Courts like in the present batches, fall in error in disposing of matters without complete adjudication. A small error of judgment followed routinely by others has snow balled into a behemoth today threatening the very efficacy of the justice delivery system.

7. The extraordinary situation as we have seen now in the batch of cases, should be an eye opener for the institution in future, as our perennial urge for quick disposal, howsoever, well meaning, has its flip side too."

12. The learned Special Government Pleader would submit in the light of the above cited Full Bench decision, the appellants/official respondents would taken into consideration the case of the respondent/writ petitioner and pass appropriate orders within a stipulated time frame.

13. Per contra, Mr.B.Saravanan, learned Counsel appearing for the respondent/writ petitioner would submit that the Division Bench judgment, relied upon by the learned Single Judge, in W.A.Nos.815 of 2010, etc., dated 07.07.2011, would be squarely applicable to the facts and circumstances of the case and therefore prays for appropriate orders in terms of the said



judgment.

14. This Court has carefully considered the rival submissions and also perused the materials placed before it.

15. It is the well settled position of law that the Government order need not be interpreted like the statute and on a perusal of G.O.Ms.No.216, would also disclose that a reference has been made to G.O.Ms.No.234 of the first appellant department dated 10.09.2009 and taken into consideration the number of litigations emanated arising the very same issue, thought fit to pass an order and the said G.O also came up for consideration in the above cited Full Bench judgment and balancing the interest of the writ petitioners as well as the Government. The directions were issued in paragraph No.38 (cited supra).

16. The Hon'ble Mr. Justice V.Parthiban, who was also a member of the Full Bench had also taken note of the tendency being executed as to disposal of the case by placing reliance upon the earlier orders and also made an observation as to the said practice.

17. This Court in very many cases came across series of positive orders by relying upon the earlier unreported orders/judgments and granting positive orders in favour of writ petitioners/teachers without actually looking into the factual aspects and taking the cognizance of the same, Hon'ble Mr. Justice V.Parthiban made such an observation in paragraph No.6 of the said Full Bench judgment.

18. It is also very pertinent to observe at this juncture that in the absence of exhaustive codification of the laws relating to the service conditions of the teachers employed in Schools, the School Education Department started issuing very many Government Orders/administrative instructions, in sometimes, in respect of individual cases and on account of their act of own violation, they brought forth upon themselves such monstrous consequences for which they should alone be blamed.

19. In the considered opinion of this Court, the directions issued in paragraph No.38, would aptly be applicable to the facts of this case. In the result, this **Writ Appeal is partly allowed** and the impugned order dated 26.03.2014, passed in W.P.(MD). No.4578 of 2014, is set aside and the appellants/official respondents are directed to comply with the request of the respondent/writ petitioner in terms of the directions given in paragraph No.38 of the Full Bench judgment reported in [(2017) 2 MLJ 257 (FB)] [Government of Tamil Nadu, rep. by the Secretary, School Education Department v. G.Eswaran & Ors.,], as



expeditiously as possible not later than ten weeks from the date of receipt of a copy of this judgment and communicate the decision taken, to the respondent/writ petitioner.

20. It is also made clear that if any benefit has already conferred in terms of G.O.Ms.No.234 of the first appellant department dated 10.09.2009, prior to the Full Bench decision dated 09.12.2016, passed in Review Application No.227 of 2015, no recovery shall be made, as it may lead to opening the flood gate in the form of fresh litigations and thereby overburdening the authorities as well as this Court. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Secretary to Government,
School Education (G2) Department,
Chennai.
2. The Director of Elementary Education,
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3. The District Elementary Educational Officer,
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4. The Additional/Assistant Elementary Educational Officer,
Kulithalai, Karur District.

+1 CC to M/s.GP (SR-15791[F] dated 03/09/2020)

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and C.M.P (MD) .No.4395 of 2017
01.09.2020

SCR(CO)

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