

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 29227 of 2004

G.Gladis Sarojini Thanaseeli

... Petitioner

-vs-

1. The Principal Accountant - General,
(Accounts and Entitlement), Tamil Nadu,
261, Anna Salai, Chennai - 600 018.
 2. The Assistant Elementary Educational Officer,
Thoothukudi (Urban),
Thoothukudi District.
 3. The Correspondent,
Caldwell Primary School,
Thoothukudi, Thoothukudi District.
- ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to restore the pay of the petitioner in the Selection Grade Scale of Primary School Headmaster with effect from 01.10.1989 and in the Special Grade Scale of Primary School Headmaster with effect from 01.10.1999 and grant all consequential benefits to the petitioner including refund of the sum of Rs.70,036/- recovered from the petitioner on account of the cancellation of Selection Grade Scale of Pay with effect from 01.10.1989.

For Petitioner : Mr.P.Mohanraj

For Respondents : Mr.T.Ravikumar
Standing counsel for R1
Mr.S.Sureshkumar
Government Advocate for R2

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents to restore the pay of the petitioner in the Selection Grade Scale of Primary School Headmaster with effect from 01.10.1989 and in the Special Grade Scale of Primary School Headmaster with effect from 01.10.1999 and grant all consequential benefits to the petitioner including refund of the sum of Rs.70,036/- recovered from the petitioner

on account of the cancellation of Selection Grade Scale of Pay with effect from 01.10.1989.

2. The petitioner though was appointed as Substitute Higher Grade Teacher in the year 1965, after breaking in service, was permanently appointed as Permanent Higher Grade Teacher and designated as Secondary Grade Teacher with effect from 01.10.1969 and in that capacity, she worked for ten years up to 30.09.1979, where she becomes eligible to get Selection Grade, that was conferred on her and subsequently, she worked nearly about ten years up to 05.06.1989 and on that day, since there was promotional due for the petitioner as per the seniority, she was given promotion as Elementary School Headmaster with effect from 06.06.1989 and in that capacity, she worked up to 30.09.2003 and retired from service on superannuation on 30.09.2003.

3. In this context, the further case of the petitioner is that, after completion of ten years of service as Secondary Grade Teacher, she was conferred Selection Grade in 1979. Even though, she completed 9 years 8 months service up to 05.06.1989, as she was given promotion as Elementary School Headmaster from 06.06.1989, therefore, the Special Grade for which, the petitioner would be eligible to get it, on completion of ten years, exactly was not conferred on her, for short of four months service in the said category of Selection Grade.

4. Therefore, subsequently, when the petitioner promoted as Elementary School Headmaster with effect from 06.06.1989, considering the completion of ten years period by 01.10.1989 the respondents have conferred the status and fixed the pay equivalent to that of the Special Grade of the Secondary Grade Teacher that was Rs.1640-2900.

5. Based on such fixation, the petitioner was paid the salary and when the petitioner was about to reach superannuation, it seems that, objection has been raised that, the petitioner should not have been fixed the pay scale of Rs.1640-2900, which is in fact the pay scale of Special Grade - Secondary Grade Teacher and that pay should not have been conferred on the petitioner with effect from 01.10.1989. In fact, such a pay should be fixed on the petitioner only on completion of ten years of service in the Special Grade of Elementary School Headmaster. Therefore, only by the year 1998 or 1999 alone, the petitioner would be entitled to get the fixation of the said salary of Rs.1640-2900. Therefore, what has been fixed earlier with effect from 01.10.1989 is an excessive fixation and based on which, what has been paid, excessively is liable to be recovered and accordingly, a sum of Rs.70,036/- was recovered from the petitioner on account of cancellation of Selection Grade Scale of pay with effect from 01.10.1989 fixed and paid to the petitioner.

6. In this context, the petitioner has filed this Writ Petition with the aforesaid prayer seeking indulgence of this Court.

7. Mr.P.Mohanraj, learned counsel appearing for the petitioner by heavily relied upon G.O.Ms.No.210, Personnel and Administrative Reforms (Per.S) Department, dated 11.03.1987 would contend that, in such kind of cases, where at the fag end of completion of required ten years in Selection Grade for the purpose of conferment of Special Grade in lower post, the person who got promoted to the next Higher Grade would lose the beneficiary position by fixing the same on par with Special Grade in lower post, which would be higher than the Ordinary Grade of the higher post. In order to streamline this pay anomaly, pay fixation in various grades which has already been detrimental to the promoted category of the people, the Government appointed One Man Commission and based on the recommendation of the One Man Commission, Government issued G.O.Ms.No.210 dated 11.03.1987. He would also rely upon paragraph No. 2 of the G.O., which reads thus:

"2. The Government after careful examination accept the recommendation of the One Man Committee and direct that the service in the Selection Grade of the lower post shall be counted for the Selection Grade in the promoted post provided that the Selection Grade Scale of the lower post is identical to the Ordinary Grade of the higher post and that the concession be allowed only at the first promotion level. Government also direct that in the case of posts with different grades one who has put in ten years or more of service in the lower post (e.g. Grade-II) shall be advanced to the next higher post (i.e., Grade-I) under the Scheme of Flexible Complementing and one with a service of twenty years or more be advanced to Selection Grade of the higher psot (i.e., Grade-I) wherever it has already been provided."

8. By relying upon the G.O., the learned counsel appearing for the petitioner would contend that, if the import of the G.O., is applied to the facts of the case, where the petitioner would be entitled to get the benefit of Selection Grade pay of the lower post at the Ordinary Grade of the promoted post, thereby, the fixation of Rs.1640-2900 made in favour of the petitioner with effect from 01.10.1989 is in conformity with the said G.O. Therefore, the said fixation ought not have been cancelled, pursuant to which, the recovery made to the extent of Rs.70,036/- ought not to have been recovered. Therefore, the learned counsel seeks indulgence of this Court to give a direction as prayed for.

9. I have heard Mr.T.Ravikumar, learned Standing counsel appearing for the first respondent and Mr.S.Sureshkumar, learned Government Advocate appearing for the second respondent.

10. The learned counsel would contend that, especially by relying upon the counter affidavit filed by the first respondent that, the petitioner though had been moved to Selection Grade on completion of ten years from 01.10.1979, subsequently, before she completing full ten years for getting the Special Grade in the lower category i.e., Secondary Grade Teacher, since she was promoted with effect from 06.06.1989 to Elementary School Headmaster, she would not be eligible to get the pay that too equivalent to that of Special Grade Pay of Secondary Grade Teacher i.e., Rs.1640-2900.

11. However, that was wrongly fixed to the petitioner with effect from 01.10.1989 and the petitioner would be normally entitled to get the said pay after the completion of ten years in the post of Elementary School Headmaster, which she completed only in 1999, hence she would be entitled to get the pay of Rs.1640-2900 only from that date. Hence, the pay, that was wrongly fixed and paid with effect from 01.10.1989 to the petitioner for nearly about ten years is an excess payment. Therefore, it is liable to be recovered and was rightly recovered from the petitioner, hence for such recovery against the petitioner, no indulgence is required from this Court, they contended.

12. In fact, a similar issue came up before this Court in W.P. No. 36512 of 2007 and it came up before me in last week, i.e., on 19.02.2021. Having considered all these aspects, I have passed a detailed order in that case, where the Writ Petitioner was similarly placed and the relief was granted, of course based on the aforesaid G.O.Ms.No.210, dated 11.03.1987. In order to appreciate the said facts of the case, the relevant portion of the said order dated 19.02.2021 is extracted hereunder:

"11. With regard to the aforesaid dates, where the petitioner has moved from the date of appointment till his superannuation, there has been not much dispute between 1972 and 1982. The petitioner was worked in Ordinary Grade of Assistant and from 1982 onwards, he was conferred with the Selection Grade. In the year 1993, on regular basis, he was promoted as Superintendent with effect from 26.03.1993. However, he retired from service on superannuation on 31.10.2001. Therefore, ten years of service has not been completed by the petitioner in the category of Superintendent.

Therefore, he would not be eligible to consider for the conferment of financial upgradation of Selection Grade Superintendent and this is the exact stand of the learned Special Government Pleader for the respondents.

12. However, the petitioner expected to extend the benefits of G.O.Ms.No.68, whereby as has been quoted above, the Government had given a concession to those who worked in the lower cadre in the Selection Grade and that pay if was equivalent to the Ordinary Grade of the promoted post, that kind of period where the incumbent was working in the Selection Grade in lower post, can also be treated as eligible service for the purpose of calculating the required service for conferment of Selection Grade in the promoted post.

13. In the present case, between 1982 and 1992, when the petitioner was working as Assistant (Selection Grade) during the particular period between 01.10.1984 to 31.05.1988, what was the pay scale fixed in that cadre is equal to that of the pay scale on Superintendent Ordinary Scale.

14. The said pay scale was revised or modified only with effect from 01.06.1998, of course, after Pay Commission recommendation. Therefore, it is a fact that, at least for the period of more than three years, the petitioner was working in the lower post of Selection Grade cadre with the same pay scale of Ordinary Grade of the promoted post of Superintendent.

15. Exactly, this kind of situation has been confronted in the aforesaid G.O., where the language used is that, "the service in the Selection Grade of the lower post (which means in the present case, is Selection Grade Assistant post), shall be counted for the Selection Grade in the promoted post, (which means the said period of the lower post in Special Grade shall be counted for the purpose of conferring Selection Grade in the promoted post, i.e., Superintendent post), provided that the Selection Grade scale of the lower post is identical to the Ordinary Grade of the higher post (that is equal in this case atleast for three years or more i.e., between 01.10.1984 to 31.05.1988). The other sentence used in the said G.O., is that, the concession be allowed only at the first promotion level, here from Assistant post it is a first promotion level to the post of Superintendent. Therefore, the very G.O., itself had given this concession to these

kind of employees only in order to get the financial upgradation in the first level promotion post, i.e., what the petitioner exactly seeks for and the same has been rejected through the impugned order, by stating that, the said period of three years and more between 01.10.1984 to 31.05.1988 had already been calculated for the purpose of conferring Special Grade to the petitioner.

16. There is no exemption given in the said G.O., to state that, if consequent Special Grade is conferred in the same lower post, this kind of concession cannot be given to such candidate who had been conferred with the consequent Special Grade in the lower post.

17. In the absence of any such language used in G.O.Ms.No.68, such kind of interpretation cannot be imported and supplied by the Government and therefore, whatever the clarification that has been obtained from the Government as has been reflected in the impugned order would go against the spirit of G.O.Ms.No.68. Therefore, this Court feels that, the said reasons cited in the impugned order cannot be sustained."

13. This case is also similar to the case cited supra, as here also, the petitioner has completed ten years in Ordinary Grade Teacher, therefore, she conferred the Selection Grade in 1979. Thereafter, she completed 9 years and 8 months in the Selection Grade and before, she completes ten years, since promotion due has come she was promoted as Elementary School Headmaster on 06.06.1989. Merely because, she was promoted as Elementary School Headmaster on 06.06.1989, detrimental to the interest of the petitioner to pay benefits which would have been otherwise accrued or conferred on the petitioner by completing other four months in the Selection Grade in the lower post it should not have been denied to her. Therefore, such pay scale of Rs.1640-2900 had been rightly fixed on the petitioner and that too the same has been fixed only with effect from 01.10.1989, i.e., exactly after completion of ten years period, either such as Secondary Grade Teacher (Selection Grade) or Ordinary Grade - Elementary School Headmaster which is possible as per the import of the G.O.Ms.No.210 referred to above. Therefore, the said fixation cannot be found fault with. Accordingly, the cancellation subsequently made and pursuant to which, the recovery also since has been effected against the petitioner, is bad in law as it goes against the spirit of the G.O., referred to above. Therefore, this Court feels that, the petitioner is entitled to succeed in this Writ Petition.

14. In the result, the following orders are passed in this Writ Petition:

"(i) That the pay fixation already made by conferring the Special Grade Pay to the petitioner from the year 1989 is a correct pay. Therefore, the said fixation need not be interfered with. If at all any cancellation of that pay has been made, the same should be set right and accordingly, the petitioner shall be paid the revised pay as indicated above and correspondingly, his pensionable benefits also should be revised and paid.

(ii) In view of the above, the recovery made to the extent of Rs.70,036/- from the petitioner shall be paid back to the petitioner.

(iii) The aforesaid needful shall be undertaken within a period of two months from the date of receipt of a copy of this order."

15. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vji
To

1. The Principal Accountant General,
(Accounts and Entitlement), Tamil Nadu,
261, Anna Salai, Chennai - 600 018.
2. The Assistant Elementary Educational Officer,
Thoothukudi (Urban),
Thoothukudi District.
3. The Correspondent,
Caldwell Primary School,
Thoothukudi, Thoothukudi District.

+1cc to Mr.T.Ravikumar, Advocate SR.No. 11706

W.P. No. 29227 of 2004

SRA(CO)

A.SK(13.07.2021)