



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.9001 of 2016

- 1.D.Rajan
- 2.K.Ayyapillai
- 3.C.Ganapathi Asari
- 4.T.Natarajan Nadar
- 5.P.V.Sountharam
- 6.C.Thanka Bai
- 7.G.Maragatham
- 8.Y.Selvaraj
- 9.K.Sornammal
- 10.D.Stanislas
- 11.G.Maria Arputham
- 12.R.Rani Rejent Bai
- 13.R.Kamala Bai
- 14.P.Thankaiyan
- 15.V.Joseph

...Petitioners

Vs

1. The Government of Tamil Nadu,
Rep. by the Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600009.
2. The Director of Elementary Education,
College Road, Chennai - 600006.
3. The District Elementary Educational Officer,
Kanyakumari District, Nagercoil.
4. The Assistant Elementary Educational Officer,
Thiruvattar, Kanyakumari District.
5. The Assistant Elementary Educational Officer,
Karungal, Kanyakumari District.
6. The Assistant Elementary Educational Officer,
Thuckalay, Kanyakumari District.
7. The Assistant Elementary Educational Officer,
Kuzhithurai, Kanyakumari District.



8. The Assistant Elementary Educational Officer,
Nagercoil, Kanyakumari District.

9. The Accountant General,
(Accounts & Entitlements) Tamil Nadu,
361, Anna Salai, Chennai - 600018.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay the arrears of pay to the petitioner for the period they worked consequent on the re-fixation of their pay and pension as per G.O.Ms.No.207, School Education (G-2) Department, dated 30.09.2008 and grant the petitioner with all consequential benefits.

For Petitioners : Mr.P.Manoj Kumar

For R1 to R8 : Mr.K.V.Sajeev Kumar
Government Counsel

For R9 : Mr.S.Balaji

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. All the petitioners herein are Primary School Headmasters, who had retired from their services. As per G.O.Ms.No.207, School Education (G-2) Department, dated 30.09.2008, re-fixation of pay has been provided apart from re-fixation of pension and therefore, the petitioners herein claim that they are entitled for fixation of pay.

3. The learned counsel for the petitioners relies upon the decision of this Court passed in W.P.No.25001 of 2012 in the case of S.Chandrasekaran and 2 others Vs. The Government of Tamil Nadu, School Education Department and others, which has been subsequently followed by a learned Single Judge of this Court in the case of A.Dhandapani and others Vs. The Government of Tamil Nadu and others passed in W.P.No.19150 of 2011.

4. Per contra, the learned Government Counsel appearing for the respondents 1 to 8 would submit that for the Primary School Headmasters, who retired after the revised pay scale fixed by the Vth Pay Commission on 31.12.1995, the anomaly that existed during the Vth Pay Commission would be automatically revised under the VIth Pay Commission, which came into force from 01.01.1996. Hence, the learned Government Counsel would submit



that the Primary School Headmasters, who had retired and promoted, subsequent to 01.01.1996, are not entitled to get any arrears of pay.

5. As rightly pointed by the learned counsel for the petitioners, the very same issue came up for consideration before this Court in the case of S.Chandrasekaran and 2 others (supra), wherein the learned Judge had relied upon the earlier orders in a batch of writ petitions and allowed a similar claim as that of the petitioners' claim. Likewise, in the case of A.Dhandapani and others (supra), another learned Single Judge had placed reliance on the decision in S.Chandrasekaran and 2 others (supra) and had allowed the writ petition, thereby granting arrears of pay to the retired Primary School Headmasters therein. When such decisions have been taken by more than one Single Judge of this Court, it would not be appropriate to deviate from such findings.

6. The decision of this Court in the case of A.Dhandapani and others (supra) justifies the decision for grant of arrears of pay to the Primary School Headmasters in the following manner:-

"5. The above said anomaly between two sets of similarly placed persons gave rise to filing number of cases and several orders were passed by the then Administrative Tribunal and later by this Court and in pursuance of the said orders, several Government Orders were also issued over a period of time. However, for the purpose of adjudication of the issue on hand, all those G.Os. are not required to be referred to.

6. As far as the case on hand is concerned, the grievance of the petitioners is that though their main relief regarding parity in treatment in regard to grant of selection and special grades to the post of Primary School Headmasters who were appointed as on 1.6.1988 and after 1.6.1988, had been redressed vide G.O.Ms.No.207 School Education Department (G2) dated 30.09.2008, however, the benefit of arrears of pay consequent to such refixation of their pay, had been denied and only the benefit of such re-fixation had been granted in the pensionary benefits.

7. In the above circumstances, the petitioners had given a representation on 18.2.2011, seeking for payment of arrears of pay consequent to implementation of G.O.Ms.No.207 dated 30.09.2008 and since there was no reply to



their representation and no action was taken towards grant of arrears of pay, the petitioners are before this Court, seeking to issue Writ of Mandamus.

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8. At the outset, the learned counsel for the petitioners would submit that the issue raised in the Writ Petition is no more res integra in view of the decision of the learned Judge rendered in W.P.No.25001 of 2012, dated 11.11.2014. In the said decision, the learned Judge before this Court, while relying upon the earlier orders passed in the batch of Writ Petition on the same issue, allowed similar claim made therein as that of the present petitioners.

9. The learned counsel appearing for the petitioners would draw the attention of this Court to paragraphs 25 to 27, wherein, the learned Judge has referred to earlier order passed by this Court in a batch of writ petitions, viz., W.P.Nos.20706 of 2010 etc., which are extracted hereunder:

"25.While so, the Director of Elementary Education, issued the proceeding in Na.Ka.No.2200/C-2/2010 dated 23.07.2010 that no monetary benefits would be given pursuant to the grant of selection grade / special grade in the post of Primary School Headmaster and consequent pay fixation as per G.O.Ms.No.207, but only monetary benefits in respect of retiral benefits would alone be granted.

"26. Since the monetary benefits pursuant to the fixation of Selection Grade / Special Grade pay of Primary School Headmaster as per G.O.Ms.No.207 was not granted, this led to filing of a batch of writ petitions in W.P.Nos.20706 of 2010 etc. batch seeking to quash the proceeding dated 23.07.2010 of the Director of Elementary Education on the ground that the same is contrary to G.O.Ms.No.207.

"27. This Court allowed the aforesaid writ petitions in W.P.Nos.20706 of 2010 etc., batch on 05.08.2011 and quashed the proceeding of the Director of Elementary Education dated 23.07.2010 and held that the



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persons, who were promoted as Primary School Headmasters after 01.06.1988, are entitled to receive monetary benefits pursuant to their Selection Grade / Special Grade pay fixation of Primary School Headmaster, besides the monetary benefit in respect of retiral benefits. Para 6 and a passage in para 7 of the said judgment are extracted hereunder :

"6. In all these matters, the petitioners had served as Primary School Headmasters and retired from service. It is seen from the perusal of the G.O.Ms.No.207, School Education Department, dated 30.09.2008 that for the persons, who have been appointed as Primary School Headmasters after 01.06.1988, their pay scales have to be fixed pursuant to the fixation of pay in the selection and special grade. The said Headmasters are entitled to claim retiral monetary benefits and benefits of fixation of pay.

7. Therefore, this Court is of the considered view that the impugned orders of the Director of Elementary Education, Chennai, rejecting the claim of the petitioners that they are entitled only to receive the monetary benefits in respect of arrears of pension alone are unsustainable."

10. After relying upon the earlier orders passed by this Court in a batch of the writ petitions cited above, the learned single Judge went on to hold that the order passed by the authority dated 23.7.2010 in and by which, the denial of arrears of pay and allowances for the period in question, was liable to be quashed. Therefore, according to the learned counsel, there is no factual or legal impediment for allowing the present writ petition as allowed by the learned single Judge in the afore said Writ Petition.

11. Upon notice, Mr.S.V.Duraisolaimalai, learned Addl. Govt. Pleader entered appearance for the respondents 1 to 3 and attempted to draw distinction between the claim of the petitioners



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herein and the employees who were covered in the above said writ petition, which was allowed by the learned single Judge. However, he was unable to point out as to what is the distinguishing factor to convince this Court to take a different stand in the matter. According to the learned Addl. Government Pleader, the petitioners have accepted the pensionary benefits on their re-fixation of pay, cannot now be heard to complain as against non-payment of actual arrears of pay and allowances. The above said contention put forth by the learned Addl. Government Pleader cannot be countenanced both in law and on facts for the simple reason, that there cannot be any estoppel against the constitutional right of the petitioners to be treated equally in terms of Articles 14 and 16 of the Constitution of India. Moreover, this Court has allowed similar claim in batch of Writ Petitions and the same was also followed by the learned single Judge in W.P.No.25001 of 2012 dated 11.11.2014, now this Court cannot take a different view, to reject the case of the petitioners.

12. In the above said circumstances, this Court has no hesitation in allowing the writ petition. Accordingly, the Writ Petition is allowed. There shall be a direction to the respondents to grant arrears of to pay to the petitioners consequent to re-fixation of their pay as per G.O.Ms.No.207 School Education (G2) Department, dated 30.09.2008 as directed by this Court in W.P.No.25001 of 2012, within a period of three months from the date of receipt of copy of this order. No costs."

7. The aforesaid extract is self-explanatory. The facts as well as the ratio laid down squarely covers the case of all the petitioners herein and as such, the petitioners herein would also be entitled to succeed in the present writ petition.

8. In the light of the above observations, there shall be a direction to the respondents to grant arrears of pay to the petitioners herein consequent to re-fixation of their pay in accordance with G.O.Ms.No.207, School Education (G-2) Department, dated 30.09.2008, as expeditiously as possible, in any event, within a period of 3 months from the date of receipt of a copy of this order.



9. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar

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//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600009.
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College Road, Chennai - 600006.
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(Accounts & Entitlements) Tamil Nadu,
361, Anna Salai, Chennai - 600018.

+1cc to Mr.P. Rajendran, Advocate, S.R.No.32564

W.P.No.9001 of 2016

AKII(CO)
BE(29/07/2021)