



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.18192 of 2013

- 1.A.Maria Thangarajan
2.Anie Subitha
3.Anin Bright

... Petitioners

vs.

- 1.The State of Tamil Nadu,
represented by the Secretary to Government,
Education Department,
Fort St.George, Chennai - 9.
- 2.The Director of Elementary Education,
Chennai - 6.
- 3.The District Educational Officer,
Thuckkalai.
- 4.The Assistant Elementary Educational Officer,
Colachal, Kanyakumari.
- 5.The Correspondent,
St.Xaviers Primary School,
Pattarivila, Thallakulam Post,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 4th respondent in Na.Ka.No.62/Aa/2012, dated 18.01.2012 and to quash the same and consequently, to direct the respondents to fix the scale of the first petitioner's wife and the mother of the petitioners 2 and 3, V.Rajam Flomin Mary granting her pay scale protection from April'1980 till the date of her retirement in the scale of pay applicable to Headmaster Middle School as that of similarly placed candidates one C.Sargunam and A.Devasahayam.

For Petitioners : Mr.T.Arul
For R-1 to R-4 : Mr.K.S.Selva Ganesan
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the fourth respondent, dated 18.01.2012 and to direct the respondents to fix the scale of the first petitioner's wife, Late V.Rajam Flomin Mary, granting her pay scale protection from April'1980 till the



date of her retirement in the scale of pay applicable to Headmaster Middle School as that of similarly placed candidates, one C.Sargunam and A.Devasahayam.

2.Heard Mr.T.Arul, learned Counsel for the petitioners and Mr.K.S.Selva Ganesan, learned Government Advocate for the Respondents 1 to 4.

3.Brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.1.The petitioners in this Writ Petition are the husband and children of one Late V.Rajam Flomin Mary. She was a qualified Secondary Grade Teacher and was appointed as Headmistress of St.Xavier's Primary School, namely, the 5th respondent institution, on 27.11.1975. When the first petitioner's wife was appointed in 1975, the 5th respondent School was only a Primary School. When the School was upgraded as a Middle School during 1978-79, the wife of the first petitioner became the Headmistress of the Middle School with effect from 28.11.1980. The salary of the first petitioner's wife was also fixed in the pay scale of Headmaster of Middle School. It is not in dispute that she was paid salary as applicable to Headmaster of Middle School with effect from 28.11.1980.

3.2.It is stated that the 5th respondent institution was upgraded as High School during 1981-82. In view of the upgradation of Middle School as High School, the School itself was bifurcated as St.Xavier's Primary School having standards 1 to 5 and St.Xavier's High School having standards 6 to 10. Upon upgradation of the School, the first petitioner's wife was appointed as Headmistress of the Middle School and her salary was reduced to the scale applicable to the post of Headmaster Primary School from March 1994.

3.3.It is the case of the petitioners that in all cases of upgradation of Middle School as High School, the Headmasters of Middle School are given pay protection as a matter of course. It is also the case of the petitioners that it is only in the case of the first petitioner's wife, the second respondent has passed the impugned order, dated 31.01.1994 stating that the Primary School Headmasters are not entitled to pay protection. Therefore, the first petitioner's wife placing reliance on the Government Order vide G.O.Ms.No.35, Education, dated 17.04.1997, filed a Writ Petition in W.P.No.18370 of 2000 for issuance of Writ of Mandamus directing the respondents therein to fix her salary from 28.11.1980 in the pay scale applicable to Headmaster Middle School and continue to pay the salary applicable to Headmaster Middle School till her retirement. By order, dated 23.08.2010, the said Writ Petition was disposed of by this Court in the following lines:

"5.In my considered opinion, Mrs.Rajam Flomn Mary was

entitled for pay protection as directed in the G.O.No.35



cited supra, as a special case. There is no controversy now with regard to the fact that such a pay protection has been given by the department. The only grievance of Mrs.Rajam Flomin Mary was that pay scale protection was not given as it was given to the other teachers referred to above. If really, the pay scale protection itself had been given to those two teachers, Mrs.Rajam Flomin Mary is also entitled for the same treatment. However, the said statement of the learned Counsel for the petitioner is disputed in paragraph 10 of the counter-affidavit filed by the respondents. Therefore, it needs to be again considered by the second respondent. The second respondent has to verify whether the other two teachers were given only pay protection or pay scale protection itself. If pay scale protection had been given to those two teachers, the same benefits should be extended to Mrs.Rajam Flomin Mary also. If it needs any permission from the Government, the second respondent may address to the Government in this regard. If those two teachers also have been given only pay protection, the petitioner is not entitled for any other relief because Mrs.Rajam Flomin Mary had been given pay protection as directed in the Government Order.

6.In view of all the above, the Writ Petition stands disposed of with the a direction to the second respondent to verify the facts as stated, in the previous paragraph and then to pass appropriate order within a period of three months from the date of receipt of a copy of this order."

4.On perusal of the impugned order, it is seen that the fourth respondent has not considered the order passed by this Court in W.P.No.18370 of 2000 and this Court's order was not even referred to in the impugned order. There is no reason why and how pay protection was given to others, who are similarly placed, when this Court specifically directed the respondents to consider the request of the first petitioner's wife for pay protection in the light of the decision taken in the case of two other teachers, whose names are also found in the order. Therefore, a specific direction was given by this Court to find out on what basis pay protection was given to one C.Sargunam and Poisolla Meiyappan and based on the submissions of the learned Counsel for the petitioner that those two were not only given pay protection, but also given pay scale protection. However, the impugned order does not refers to the individual cases.

5.The learned Counsel for the petitioners relied upon a judgment of the Honourable Division Bench of this Court in **W.A.Nos.487 and 1234 of 2009**, in the case of **"The Accountant General of Tamil Nadu vs G.Arumugam and others"**. The relevant portion of



the judgment of the Honourable Division Bench is as follows:

"8.Before going into the merits of the case, it would be appropriate to refer to G.O.Ms.No.784, Rural Development and Local Administration Department, dated 14.5.1978, which says with regard to the reversion and the subsequent benefits. The relevant passage found in paragraph 4(d) of the said G.O. reads as follows:

"A secondary grade teacher who acted as Headmaster Middle School on 1.10.1970 but not senior enough to be promoted as Headmaster Middle School as on 1.10.1970 may be reverted as Headmaster Primary School or as Secondary Grade Assistant on 1.6.1979 according to the seniority but he should be allowed to draw pay in the scale of admissible to the Headmaster Middle School."

From perusal of the above extracted portion, it is clear that though the incumbents were reverted, their pay was protected.

9.The main contention of the learned counsel representing the appellant is that once the incumbents have been reverted to the lower post, they are not entitled for pay scale attached to the higher post whereas it is contended by the learned counsel appearing for the first respondent in these appeals that though they were reverted to the lower post, they were sanctioned and paid pension in the scale of pay of Middle School Headmaster by virtue of the order dated 1.3.1989 passed by the Hon'ble Supreme Court in Civil Appeal No.994 of 1980. G.O.Ms.No.784 (Education), dated 14.5.1979 provides that Middle School Headmasters who were reverted to the lower post will be given protection of pay even after reversion and the said G.O. was challenged before this Court and later before the Supreme Court wherein the provisions of the G.O. was upheld observing that protection of pay should be given to Middle School Headmaster after their reversion. It is also not in dispute that the first respondent in these appeals were continuing to get pension in the same scale of pay. Since the first respondent in the appeals were holding the post of Middle School Headmaster as on 1.10.1978 as mentioned in G.O.Ms.No.784, they are entitled for the pay which they were drawing in the post of Middle School Headmaster throughout their service though they were actually working in the lower post by reversion. Further, once the Supreme Court has the issue again. Therefore, we hold that G.O.No.200 dated 18.5.1999 is not applicable to the persons, who retired



from service as per the pay protection given to them. We find no infirmity or illegality in the order passed by the learned single Judge warranting interference of this Court."

6. In the above judgment, it is specifically observed by the Honourable Division Bench of this Court that G.O.Ms.No.784, Education, dated 14.05.1979, provides pay protection to the Middle School Headmasters, like the first petitioner's wife, who are reverted to the lower post. It is further observed that the Teachers will get pension in the same scale of pay.

7. In view of the decision of the Honourable Division Bench of this Court, it is contended by the learned Counsel for the petitioner that the first petitioner's wife was entitled to pay protection and pay scale protection as decided by the Honourable Division Bench of this Court.

8. The learned Government Advocate appearing for the official respondents submitted that the first petitioner's wife was given pay protection and that nothing need to be done further. However, in the very same counter affidavit, the fourth respondent has also contended that the first petitioner's wife is entitled to receive salary attached to the post of Primary School Headmistress, as she is not entitled to receive the salary applicable to the post of Middle School Headmaster.

9. Despite a direction was issued in the Writ Petition filed by the first petitioner's wife in W.P.No.18370 of 2000, the fourth respondent has passed the impugned order. It is unfortunate to notice that the fourth respondent has failed to comply with the direction in its letter and spirit. Therefore, the conduct of the fourth respondent is contumacious. However, the learned Counsel for the petitioners is fair enough to suggest that this Court can pass suitable orders directing the official respondents to pass orders in the light of the order passed by the Honourable Division Bench of this Court in W.A.Nos.487 and 1234 of 2009, above referred to.

10. Considering the facts and circumstances of the case and the issue discussed above, this Court is of the view that the impugned order cannot be sustained, as it is not only contrary to the judgment of this Court, but also issued in utter disregard to the specific direction of this Court in the earlier Writ Petitions. Hence, the impugned order passed by the fourth respondent, dated 18.01.2012, is quashed. The respondents 1 to 4 are directed to fix the scale of pay of the first petitioner's wife, Late V.Rajam Flomin Mary, by granting her pay scale protection from April'1980 till the date of her retirement in the scale of pay applicable to Headmaster Middle School as that of similarly placed candidates and to give revised pension by passing appropriate orders. The entire



exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11.The Writ Petition is allowed accordingly. No costs.

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Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
The State of Tamil Nadu,
Education Department,
Fort St.George, Chennai - 9.

2.The Director of Elementary Education,
Chennai - 6.

3.The District Educational Officer,
Thuckkalai.

4.The Assistant Elementary Educational Officer,
Colachal, Kanyakumari.

+1 CC to M/s.T.ARUL, Advocate (SR-26606[F] dated 18/08/2021)

+1 CC to M/s.SPL GP (SR-26628[F] dated 18/08/2021)

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