



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.9079 of 2021

J.Antony Michael Raj

... Petitioner

Vs.

1.The District Educational Officer,
Karur,
Karur District.

2.The Block Educational Officer,
Thanthoni,
Karur District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings in O.Mu.No.4597/A3/2020 dated 23.02.2021 and quash the same and direct the respondents to sanction the personal pay of Rs.750/- to the petitioner notionally with effect from 01.01.2006 and monetary benefits with effect from 01.01.2011 as per G.O.Ms.No.23 Finance (Pay Cell) Department dated 12.01.2011.

For Petitioner
For Respondents

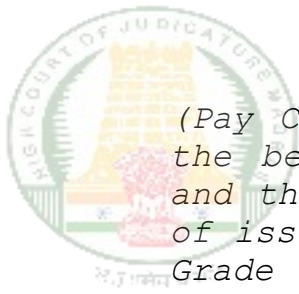
: Mr.V.Panneer Selvam
: Mr.P.Thillak Kumar,
Standing Counsel

ORDER

The petitioner herein seeks extension of the benefit of G.O.Ms.No.23, Finance Department, dated 12.01.2011, for the purpose of disbursement of Rs.750/- personal pay in the post of B.T. Assistant notionally, from the date on which, he was promoted to the post of B.T. Assistant.

2. It is brought to the notice of this Court that the issue involved in the writ petition has already been dealt with by the earlier order of this Court in W.P.(MD)No.19240 of 2014 dated 02.01.2018, which has been relied upon in a subsequent decision in W.P.(MD)No.16801 of 2015 dated 11.02.2020 in the case of **G.Jeyakannan Vs. The State of Tamil Nadu, School Education Department and others**, whereby, the educational authorities were directed to extend the benefit of personal pay to the petitioner therein notionally. The relevant portion of the order reads as follows:-

"5. Perusal of records shows that G.O.Ms.No.23, Finance



(Pay Cell) Department was issued only on 12.01.2011 granting the benefit by giving retrospective effect from 01.01.2006 and therefore, the reason for rejection that as on the date of issuing the said G.O., the petitioner was not a Secondary Grade Teacher, cannot be acceptable as notional payment has been given from 01.01.2006 itself. If a teacher continued in the same post, she is entitled to get the benefit, but if a teacher was given promotion, she is not entitled to get the benefits which is totally contrary to the basic principle. If that is accepted, the teacher continued in the same post will get more pay than the promoted teacher. The juniors working in the same post without any promotion were getting higher pay only because of the reason that at the time of issuance of the Government Order, they were holding the post of Secondary Grade Teacher. Therefore, the issue was raised before this Court and it was decided by this Court in W.P (MD)No.19240 of 2014 dated 02.01.2018 allowing the benefits of personal pay of Rs.750/- till the date of promotion. After promotion, the personal pay will be merged with the basic pay and therefore, the petitioner is not entitled to get personal pay separately after promotion. Hence, the issue is covered by the decision of this Court as stated supra. The petitioner also stands in the same footing and he is entitled for the benefit of personal pay of Rs.750/- notionally with effect from 01.01.2006 as per G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011 till the date of promotion that is 02.06.2009 and thereafter the same will be merged with the basic pay while fixing the pay in the promotional post. The relevant portion of the order in W.P (MD)No.19240 of 2014 dated 02.01.2018 is extracted below:-

"4.I went through the contents of the counter filed by the third respondent. Following the implementation of the sixth pay commission's recommendations, there arose certain pay anomalies. The Government of Tamil Nadu constituted a One Man Commission vide G.O.Ms.No.444, Finance (PC) Department dated 09.09.2009. The Secondary Grade Teachers had been agitating that they had been dealt with unfairly. Therefore, the said One Man Commission made a recommendation for grant of Special Allowance of Rs.500/- per month to them. The said recommendation was accepted by the Government and the Government issued G.O.Ms.No.270, Finance (Pay Cell) Department dated 26.08.2010. Still, the Secondary Grade Teachers were not satisfied. Therefore, this amount was enhanced to Rs.750/-.



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5.It was made clear that both the Government Orders shall take notional effect from 01.01.2006 and monetary effect from 01.08.2010 and 01.01.2011 respectively. It is seen that the writ petitioner herein was promoted from the post of Secondary Grade Teacher to the post of B.T.Assistant on 02.06.2010 itself. In other words, he ceased to be a Secondary Grade Teacher from the said date. He was working as a B.T Assistant when G.O.Ms.No.270, dated 26.08.2010 was issued.

6.In the counter affidavit, it has been conceded that the writ petitioner was given Special Allowance of Rs.500/- on notional basis till the date of his promotion as B.T.Assistant. In other words, the writ petitioner was given the benefit of G.O.Ms.No.270, dated 26.08.2010. In the counter affidavit, a stand is taken to the effect that the writ petitioner is not entitled to claim benefit in terms of G.O.Ms.No.23, dated 12.01.2011, since she was not a Secondary Grade Teacher by then. This is clearly self contradictory. G.O.Ms.Nos.270 dated 26.08.2010 and G.O.Ms.No.23, dated 12.01.2011 cannot be separated from one another.

7.Vide G.O.Ms.No.270, dated 26.08.2010, a sum of Rs.500/- has been granted as Special Allowance. In G.O.Ms.No.23, dated 12.01.2011, the said sum of Rs. 500/- was enhanced to Rs.750/- and the department thought it fit to apply G.O.Ms.No.270 dated 26.08.2010 in favour of the writ petitioner. It cannot therefore be heard to say that it will not apply G.O.Ms.No.23, dated 12.01.2011.

8.In this view of the matter, I have no hesitation to hold that the writ petitioner is entitled to Personal Pay of Rs.750/- on notional basis with effect from 01.01.2006 till 02.06.2010, when he was promoted as B.T.Assistant. The question of granting monetary benefit in terms of the said Government Orders will not arise because, she was no longer a Secondary Grade Teacher by then. The respondents 3 and 4 are directed to include the sum of Rs. 750/- in the pay of the writ petitioner as Secondary Grade Teacher with notional effect from 01.01.2006 till



02.06.2010 when he was promoted as B.T.Assistant."

6.The above case is squarely applicable to the present facts and circumstances of this case. Therefore, I am inclined to interfere with the impugned order. Accordingly, the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.9794/D3/2015 dated .04.2015 is quashed and the respondents are directed to give the benefit of personal pay to the petitioner at Rs.750/- notionally with effect from 01.01.2006 as per G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011 till the date of promotion that is upto 02.06.2009 and thereafter the same is directed to be merged with the basic pay while fixing the pay in the promoted post and such an exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order."

3. It is also brought to the notice of this Court, as against the order passed in W.P(MD)No.19240 of 2014, dated 02.01.2018, the Government had preferred an appeal in W.A(MD)No.962 of 2018 and the Honourable Division Bench of this Court vide judgment dated 29.04.2021, dismissed the said writ appeal confirming order passed in the writ petition. Relevant portion of the said judgment is extracted hereunder:

"4. The ground canvassed before us is that G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010 provides that a Secondary Grade Teacher is entitled to special allowance of Rs.500/- per month only from 01.08.2010 and on the said date, the respondent/writ petitioner was not a Secondary Grade Teacher. It is further contended that G.O.Ms.No.23, Finance (Pay Cell) Department, dated 12.01.2011 provides for enhancement of special allowance to Secondary Grade Teachers from Rs.500/- to Rs.750/- as personal pay, that too, only from 01.01.2011. The date on which, the petitioner was not a Secondary Grade Teacher, as he was already promoted as BT Assistant on 02.06.2010. This submission was considered by the learned Single Bench and found that G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010 was given notional effect from 01.01.2006 and monetary benefits was extended to the Secondary Grade Teacher with effect from 01.08.2010. It is not in dispute that as on the said date, viz., 01.08.2010, the respondent/Writ Petitioner was not working as Secondary Grade Teacher, but was promoted as BT Assistant on 02.06.2010.



5. In such circumstances, merely because, an anterior date was fixed for grant of monetary benefits in G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010 will not be a ground to deny notional benefit to the respondent/writ petitioner as provided in G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010. If such is the conclusion, then equally the enhanced notional benefit in terms of G.O.Ms.No.23, Finance (Pay Cell) Department, dated 12.01.2011 will also notionally accrue to the respondent/writ petitioner."

4.The above cited decisions are applicable to the facts and circumstances of the present case. As such, the petitioner would be entitled to succeed in this writ petition.

5. Therefore, I am inclined to interfere with the impugned order. Accordingly, the impugned order passed by the 2nd respondent in his proceedings O.Mu.No.4597/A3/2020 dated 23.02.2021, is quashed and the respondents are directed to give the benefit of personal pay to the petitioner at Rs.750/- notionally with effect from 01.01.2006 as per G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011 till the date of promotion that is upto 12.10.2009 and thereafter, the same is directed to be merged with the basic pay while fixing the pay in the promoted post and such an exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

6. The writ petition is allowed accordingly. No Costs.

Sd/-

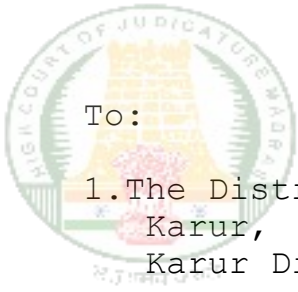
Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

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 District Educational Officer,
Karur,
Karur District.

2.The Block Educational Officer,
Thanthoni,
Karur District.

W.P (MD) No. 9079 of 2021
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