



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2021

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.12028 of 2021

and

W.M.P (MD)No.9480 of 2021

WEB COPY

A.Wilson James

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

4.The District Educational Officer,
Tirunelveli, Tirunelveli District.

5.The Correspondent,
Christhuraaja Higher Secondary School,
Palayamkottai,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent DEO in Na.Ka.No.450/A5/2021, dated07.2021, quash the same and further direct the respondents herein to sanction personal pay of Rs.750/- notionally w.e.f., 01.01.2006 and monetary benefits w.e.f., 01.01.2011 as per G.O.Ms.No.23, Finance (Pay Cell) Department, dated 12.01.2011.

For Petitioner : Ms.A.Amala

For R1 to R4 : Mr.P.Subbaraj
Government Advocate

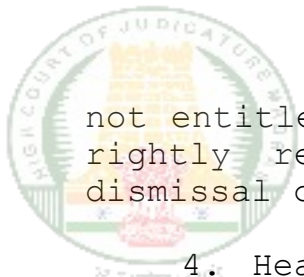


ORDER

This writ petition has been filed to quash the impugned proceedings of the fourth respondent, dated ...07.2021 in Na.Ka.No.450/A5/2021 and for a direction to the respondents herein to sanction personal pay of Rs.750/- notionally w.e.f., 01.01.2006 and monetary benefits w.e.f., 01.01.2011 as per G.O.Ms.No.23, Finance (Pay Cell) Department, dated 12.01.2011.

2.The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Secondary Grade Teacher on 01.04.1997 in the fifth respondent school. Thereafter, he was promoted as BT Assistant in Tamil on 17.02.2009. The learned counsel for the petitioner further submitted that the Government announced pay commission revision by issuing G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, fixing the scale of pay for all the government employees as per the recommendations of the VIth Pay Commission. Since there was anomaly in the above pay fixation for Secondary Grade Teachers, One Man Commission was constituted and the Commission submitted its report to the Government. As per the recommendation of the One Man Commission, special allowances were granted to certain categories in Elementary Education/School Education Department by issuing Government Order in G.O.Ms.No.270, Finance (Pay Cell) Department dated 26.08.2010. One Man Commission has recommended to grant special allowance at the rate of Rs.500/- to the Secondary Grade Teachers and other teaching posts in the grade of Secondary Grade Teacher. Not being satisfied with the same, the Teachers' Association raised their objection and demanded for pay equal to the teachers working in the Central Government Schools. Considering the same, the Government issued G.O.Ms.No.23, Finance (Pay Cell) Department, dated 12.01.2011, granting personal pay of Rs.750/- by enhancing from the special allowance of Rs.500/- and the same was implemented by granting personal pay of Rs.750/- to the Secondary Grade Teachers, by re-fixing the scale of pay and the same was given with effect from 01.01.2006 notionally, but monetary benefits only with effect from 01.01.2011. The petitioner made representation to sanction the personal pay of Rs.750/- by implementing the above Government Order in G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011. In the meanwhile, the fourth respondent vide impugned proceedings in Na.Ka.No.450/A5/2021, rejected the claim of the petitioner on the ground that the petitioner was not Secondary Grade Teacher as on 01.08.2010, hence, he has not received Rs.500/- as special allowance as per G.O.Ms.No.270, Finance (Pay Cell) Department, dated 26.08.2010. Challenging the said order, the petitioner has filed the present writ petition.

3.Learned Government Advocate appearing for the respondents 1 to 4 submitted that since the petitioner was not in service in the post of Secondary Grade Teacher on the date of issuance of G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011, he is



not entitled for the personal pay of Rs.750/- and fourth respondent rightly rejected the claim of the petitioner and prayed for dismissal of writ petition.

4. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials on record.

5. Perusal of records shows that G.O.Ms.No.23, Finance (Pay Cell) Department, was issued only on 12.01.2011, granting personal pay of Rs.750/-, by enhancing the special allowance of Rs.500/- and re-fixing the scale of pay to the Secondary Grade Teachers with retrospective effect from 01.01.2006 and therefore, the reason for rejection that as on the date of issuance of the said G.O., the petitioner was not working as a Secondary Grade Teacher, cannot be acceptable, as notional payment has been given with effect from 01.01.2006 itself. If a teacher continued in the same post, he/she is entitled to get the benefit, but if a teacher was given promotion, he/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/- on notional basis w.e.f., 01.01.2006 till 02.06.2010, when he was promoted as B.T.Assistant. 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 till the date of promotion that is 16.02.2009 as per G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011 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/-.

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 said decision 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 fourth respondent in his proceedings Na.Ka.No.450/A5/2021 dated .07.2021, 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 till the date of promotion that is upto 16.02.2009 as per G.O.Ms.No.23, Finance (Pay Cell) Department, dated 12.01.2011 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.

7.With the above direction, the writ petition is allowed. No costs.Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

am

To

1.The Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer,
Tirunelveli, Tirunelveli District.

+1 CC to M/s.GP (SR-23695[F] dated 23/07/2021)

+1 CC to M/s.A.AMALA, Advocate (SR-23769[F] dated 23/07/2021)

W.P (MD) No.12028 of 2021
22.07.2021

RK (05.08.2021) 5P 7C