



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2021

CORAM

WEB COPY

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 12921 of 2021

and

W.M.P. (MD) No. 10001 of 2021

V.Nagarajan

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep.by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 006.

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

3. The District Educational Officer,
Trichy,
Trichy District - 620 001.

4. The Block Educational Officer,
Thiruvarambur Union - 620 013,
Trichy District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the Respondents herein to sanction and award forthwith Selection Grade and Special Grade to the Petitioner in the post of Primary School Headmaster by reckoning and computing the Petitioner's service rendered in the cadres of Primary School Headmaster as well as Secondary Grade teacher from 11.11.1963 in light of the G.O (Ms) No. 234 School Education (G2) Department dated 10.09.2009 and G.O (ms) No. 202 School Education (G2) Department dated 25.09.2008.

For Petitioner : Mr. J.Ragatheesh Kumar
For Respondents : Mr.P.Subbaraj,
Counsel appearing for the
Government of Tamil Nadu



O R D E R
(through video conference)

Mr. J.Ragatheesh Kumar, Learned Counsel for the Petitioner and Mr. P.Subbaraj, Learned Counsel, who takes notice for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had retired from service as Middle School Headmaster, Panchayat Union Middle School, Ariyamangalam, Thiruvarambur Union, Trichy District on 30.04.2002, has filed this Writ Petition seeking for a direction to the Respondents to forthwith sanction and award Selection Grade and Special Grade to him in the post of Primary School Headmaster by reckoning and computing the service rendered by him in the cadres of Primary School Headmaster as well as Secondary Grade Teacher from 11.11.1963 in the light of G.O. (Ms) No. 202, School Education (G2) Department dated 25.09.2008 and G.O. (Ms) No. 234, School Education (G2) Department dated 10.10.2009 issued by the Government of Tamil Nadu.

3. The Division Bench of this Court in **Government of Tamil Nadu -vs- J.Clotina Mary** (Order dated 19.03.2018 in Rev. Aplc. (MD) No. 35 of 2018 etc., batch) considered the entitlement to the claim made by the retired teachers under G.O. (Ms) No. 234, School Education (G2) Department dated 10.10.2009 issued by the Government of Tamil Nadu, and held as follows:-

"5. Though the Division Bench confirmed the order passed by the Writ Court dated 17.09.2010, there were certain writ appeals which were allowed by various Divisions Bench referring some of those judgment were placed before us where there is a reference to earlier orders in W.A.(MD) Nos.815, 1531, 1691 to 1693 and 1165 of 2010. In certain cases, there has been a concession given by the learned standing counsel for the Government which, according to the Government is without proper instructions. However, now the issue has been resolved in another batch of cases, which were referred to the Hon'ble Full Bench in the case of Government of Tamil Nadu represented **Secretary, School Education -vs- G.Eswaran** reported in 2017(2) MLJ 257 (FB) and LNINDORD 2016 MAD 510. The only difference between the present batch of cases and issues which was referred to Hon'ble Full Bench was that the Government Order was passed pursuant to order of the School Education Department whereas in the instant case the order is passed pursuant to the order of the elementary School Education Department. Apart from the said difference, there is no other difference, with regard to benefit which were extended by the Government orders. Very recently, a Division Bench of this Court in the case of **Principal Secretary to Government, School Education (G2) Department**



-vs- M.Aariyan in W.A. (MD) No. 361 to 363 of 2015, etc dated 11.08.2017 had followed the full Bench in the case of (2017) 2 MLJ 257 (FB) - **Secretary, School Education Department -vs- G.Eswaran**, and held that the issue involved is squarely covered by the decision of the Full Bench."

After taking into account the conflict of judicial views on the entitlement to the benefits of G.O. Ms. No. 216 dated 22.03.1993 issued by the Government of Tamil Nadu, the Full Bench of this Court in **Government of Tamil Nadu -vs- G.Eswaran** [(2017) 2 MLJ 257] has held as follows:-

"38. Today, when the matters are taken up for consideration, keeping in mind the financial strain that would fall on the State exchequer in the event of implementation of the G.O., and in order to give a quietus to the issue, we feel it appropriate to fix the date as 01.03.2017 from which date onwards, the Government shall calculate and revise the pension and family pension (without arrears) based on the revised scales of pay by implementing the G.O., for which, the learned Advocate General and the learned counsels appearing for the Teachers have fairly acceded to the same. Accordingly, we pass the following:-

- (i) The Government is directed to implement the G.O. Ms. No. 216, dated 22.3.1993 for the period between 1.6.1988 and 31.12.1995, on and from 1.3.2017 onwards in respect of all the Secondary Grade Teachers of High/Higher Secondary Schools including the Special Teachers who attained Selection grade/Special Grade during the above said period, on par with the pay scale of Primary School Headmasters;
- (ii) Consequently, the Government shall calculate and revise the pension of those who retired from service and revise the family pension in respect of those who expired, based on the revised scales of pay in terms of G.O. Ms. No. 216, dated 22.3.1993 payable on and from 1.3.2017;
- (iii) It is made clear that the beneficiaries under this order, are not entitled to the arrears of revised pay scales;
- (iv) It is further made clear that the benefits as directed above, shall be extended to the parties who are before this Court alone and no fresh Writ Petitions would be entertained on and from 09.12.2016;
- (v) The Government is directed to expedite the process of calculating and fixing the revised pension and family pension and we do hope that the Government will



complete the same as early as possible without making any further delay;

(vi) All the matters which are at SR stage and listed before this Court are also ordered and disposed of by this common order and consequently, connected MPs thereof, are ordered;"

It is evident from the aforesaid decision of the Full Bench of this Court that though benefit under the relevant Governmental Order had been extended to all the persons whose Writ Petitions were pending as on that date, it has been made clear in clause (vi) that no fresh Writ Petitions shall be entertained on and from 09.12.2016. Since the Petitioner has filed this Writ Petition only on 23.07.2021, which is apparently after that date, he would not be entitled to the benefit claimed in this Writ Petition.

4. In this context, reference must also be made to the dictum of the Hon'ble Supreme Court of India in **State of Uttar Pradesh -vs- Arvind Kumar Srivastava** [(2015) 1 SCC 347], where it has been held as follows:-

"22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the



Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India* (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

It is borne out from the materials placed on record that the Petitioner, who had retired from service on 30.04.2002, had not at all made any claim for the benefits conferred under the relevant Governmental Order and his first representation was made only on 24.08.2020 followed by reminders dated 10.11.2020 and 05.06.2021 which are evidently belated. The affidavit filed in support of the Writ Petition offers no explanation for the laches and acquiescence on his part in claiming the relief. Any endeavour by this Court to consider the stale claim made by the Petitioner despite the aforesaid binding rulings would unnecessarily cause financial burden on the public exchequer and militate against larger public interests, which cannot be countenanced.

5. In fine, this Writ Petition, which cannot be entertained, is dismissed. No costs.

Sd/-

Assistant Registrar (T&P)

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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

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3. The District Educational Officer,
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4. The Block Educational Officer,
Thiruvarambur Union - 620 013,
Trichy District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-24269[F] dated 29/07/2021)

+1 CC to M/s.SPL GP (SR-24379[F] dated 29/07/2021)

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KB(15.09.2021) 6P 7C