



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

**W.P(MD) No. 19297 of 2016 and
WMP(MD) .No.13915 of 2016**

A. Sundaram :Petitioner
..VS..

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

2.The Principal Accountant General,
O/o. The Principal Accountant General
(A&E) Tamil Nadu,
No.361, Anna Salai,
Chennai -18.

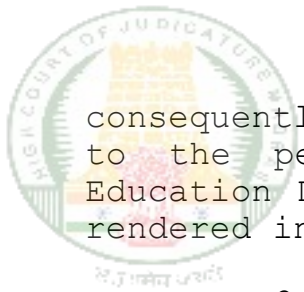
3.The Assistant Elementary Educational Officer,
Thanthonimalai,
Karur, Karur District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ in the nature of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Pen.23/II/12315123/RN/15-16/Final Reply dated 05.08.2015 and quash the same as illegal and consequently to direct the respondents to pay revised benefits to the petitioner in the light of the G.O.Ms.No.202, School Education Department date 24.09.2008 and in the light of Judgment rendered in M. Annamalai Case reported in 2014(5) MLJ 513 within the period that may be stipulated by this Court.

For Petitioner	: Mr. Nawazkhan
For R1 and R3	: Mrs. N. Ramesh Arumugam Government Advocate (Civil Side)
For R2	: Mr. P. Gunasekaran

O R D E R

The present Writ Petition is filed to quash the impugned order passed by the 2nd respondent in his proceedings in Pen. 23/II/12315123 / RN / 15-16 / Final Reply dated 05.08.2015 and



consequently to direct the respondents to pay the revised benefits to the petitioner in the light of the G.O.Ms.No.202, School Education Department, dated 24.09.2008 and in the light of Judgment rendered in M. Annamalai Case reported in 2014(5) MLJ 513.

2. The petitioner was appointed as Secondary Grade Teacher at Panchayat Union Elementary School, Karur Union on 04.08.1960, then promoted and transferred to Panchayat Union Middle School as Headmaster on 28.06.1965, then, transferred to Panchayat Union Elementary School, Perichipalayam Union as Headmaster on 03.06.1966. Thereafter, transferred and posted as Secondary Grade Assistant on 10.06.1967 at Panchayat Union Higher Elementary School and he resigned from the post on 20.07.1971. After the lapse of 14 years, the petitioner was appointed as Secondary Grade Assistant at CSI Aided Elementary School, Pallapalayam, Karur District on 11.02.1985. Then, the petitioner was awarded Selection Grade and Special Grade on 01.04.1974 and 06.03.1994. The petitioner attained superannuation on 30.04.1996. The petitioner is claiming the benefits under G.O. Ms. No. 202, School Education Department, dated 24.09.2008.

3. The contention of the petitioner is that the petitioner was working as Headmaster in the Panchayat Union Elementary School and transferred to a different Panchayat Union and posted as a Secondary Grade Teacher for want of vacancies in the post of Headmaster and his service would be considered in the post of Headmaster and pay scale will be fixed on par with the Headmaster of Elementary School. Since the petitioner was working as Headmaster in the Panchayat Union Elementary School and transferred to another school as Secondary Grade Teacher, the petitioner's scale of pay should be fixed on par with the Headmaster of an Elementary School. The claim of the petitioner is the third respondent i.e., Assistant Elementary Educational Officer has forwarded the revised pension proposal along with revised scale of pay to the second respondent to refix the scale of pay in the light of G.O.Ms.No.202, but the second respondent rejected the claim vide impugned proceedings dated 05.08.2015 stating the said G.O 202 is applicable to the Primary School Headmaster who was transferred from one Panchayat Union to another Panchayat Union prior to 01.06.1998 and the said G.O is not applicable to the teacher serving in aided school. Aggrieved over the said proceedings the present Writ Petition is filed.

4. The respondents 2 and 3 have filed counters. The 3rd respondent in his counter stated that the petitioner has attained superannuation and retired on 30.04.1986, he has approached this Court after the lapse of 20 years which will be hit by the principles of laches. The petitioner was appointed on 04.08.1960 in the Panchayat Union Elementary school, Karur Union. Earlier the posts of Secondary Grade Assistant and the Elementary School Headmaster was carrying similar scale of pay. After 01.06.1988, the Elementary School Headmaster post became Promotional Post and



prior to 1988, he is not entitled to this relief. The respondents submitted G.O.Ms.No.202, School Education Department, dated 24.09.2008 is applicable to the persons who had worked as Primary School Headmaster prior to 01.06.1988, subsequently, transferred as Primary School Headmaster and joined as Secondary Grade Teacher who had worked as a Primary School Headmaster from the date of original appointment. The said G.O is applicable to the Teachers who had been transferred to one Panchayat union to another Panchayat union from the post of Primary School Headmaster to Secondary Grade Teachers. In the present case, the petitioner was newly appointed on 11.02.1985 in the post of Secondary Grade Teacher in the aided school. Therefore, the petitioner is not entitled to the said relief. The Government Order relied on by the petitioner is applicable to the teachers who have been posted as Primary School Headmaster as on 01.06.1988 and had transferred and posted as Secondary Grade Teachers have to be treated as Primary School Headmaster. In the present case, the petitioner has resigned the service in the year 1971. He has been joined afresh in the aided school in the year 1985 and he has not worked anywhere from the year 1971 to 1985. Moreover, the resignation would amount to forfeiture the service.

5. The second respondent has also filed counter stating G.O.Ms.No.202 is not applicable to the petitioner since he has served in the aided school. Moreover, the petitioner has resigned from the Panchayat Union Elementary school and joined in the aided institution. Therefore, the said G.O is not applicable to the petitioner.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. On perusing the entire file it is seen that the petitioner has preferred this Writ Petition in the year 2016 and he was aged about 78 years. The petitioner has attained superannuation on 30.04.1996 and this petition has been preferred after the lapse of 20 years. Therefore, this Court is of the considered opinion that this petition is hopelessly belated and it is hit by the principles of laches.

8. On facts, the petitioner was appointed as Assistant Secondary Grade Teacher on 04.08.1960, thereafter, the petitioner resigned on 20.07.1971. On resignation the past service would be forfeiture and that service could not be taken into account for granting any relief. This Court is of the considered opinion that the petitioner is not entitled to on this ground also.

9. The petitioner has submitted that he has joined as Secondary Grade Assistant at C.S.I Aided Elementary School, Pallapalayam, Karur District on 11.02.1985 and has received <https://hse.sco.raj.gov.in/jsp/ser> on 01.04.1974 and has received Special Grade on



06.03.1994. This Court is of the considered opinion that the granting of selection grade on 01.04.1974 itself is illegal and erroneous for the reasons the petitioner was not in service from 1971 - 1985 at all. Therefore, calculating from 1964 - 1974 period and granting selection grade is absolutely erroneous. Especially, when the petitioner was not in service from 1971 to 1974. Now, the petitioner has come up with the claim to grant the benefits under G.O.Ms.No.202. On perusal of the G.O.Ms.No.202 it is stated that தொடக்கக் கல்வி - 01.06.1988க்கு முன்பு தொடக்கப் பள்ளி தலைமையாசிரியராக பணியாற்றியவர்கள் ஒன்றியம் விட்டு ஒன்றியம் பணி மாறுதல் பெற்றபோது இடைநிலை ஆசிரியராக பணி நியமனம் செய்யப்பட்டது. The said G.O was passed to those teachers who were holding Headmaster post prior to 01.06.1988 and they were transferred from one Panchayat Union to another Panchayat Union. The condition precedent for granting the benefits under G.O.Ms.No.202 are two conditions the teacher ought to have hold the post of Primary School Headmaster prior to 01.06.1988 and the teacher transferred from one panchayat Union to another panchayat union. Admittedly, the petitioner has joined in the aided school and not working in any Panchayat school. Transfer from one panchayat to another panchayat is applicable to the Government Aided / Panchayat Union School. For aided schools separate Rules and Regulations are applicable and they are maintaining separate seniority. Therefore, the petitioner cannot compare himself with the Panchayat Union School employees.

10. This Court in the Division Bench has rendered a judgment dated 28.06.2018 in W.A. No. 74 of 2014 wherein it has been held that the G.O.Ms.No.202 is not applicable to the aided schools. The relevant portion is stated hereunder:

"6. However, the case of the appellant is different. Admittedly, he was appointed as Secondary Grade Teacher at R.C. Aided School. There is no doubt that the scale of pay to all the teachers, those who were working in the Panchayat Union Schools and Government Aided Schools were one and the same. Every union has got its own seniority. However, in the Government Aided Private R.C. School, especially in the minority institutions, separate seniority is not maintained. Therefore, the above said G.O. is not made applicable to Government Aided Minority Private School. This aspect was not taken note of while allowing the Writ Petition.

7. In view of the above discussion, the order passed by the learned Single Judge in W.P.No.23979 of 2012 dated 04.09.2012 is set aside. The Writ Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed."



11. Therefore, for the reasons stated above, the Writ Petitioner is not entitled to the benefits granted in G.O.Ms.No.202. Hence, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

To

1.The Secretary to Government,
School Education Department,
St. George, Fort, Chennai -9.

2.The Principal Accountant General,
O/o. The Principal Accountant General
(A&E) Tamil Nadu,
No.361, Anna Salai,
Chennai -18.

3.The Assistant Elementary Educational Officer,
Thanthonimalai,
Karur,
Karur District.

+1 CC to M/s.SPL GP (SR-40449[F] dated 27/12/2021)

W.P(MD) No. 19297 of 2016 and
WMP(MD) .No.13915 of 2016
23.12.2021

NSN(CO)

GC(31.01.2022) 5P 5C