



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2022

PRONOUNCED ON : 06.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.24742, 27763, 27764 & 28881 of 2010

W.P.No.24742 of 2010

1.M.Elangovan

2.R.Kaliaperumal

... Petitioners

Versus

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Elementary Education,
College Road,
Chennai - 600 006.
3. The Director of School Education,
College Road,
Chennai - 600 006.
4. The Chief Educational Officer,
Nagapattinam.
5. The District Elementary Educational Officer,
Nagapattinam.

... Respondents

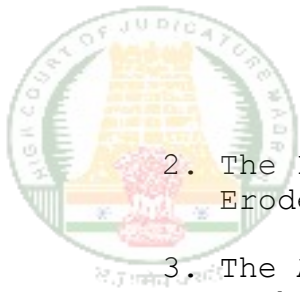
W.P.No.27763 of 2010

K.K.Somasundaram

... Petitioner

Versus

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



2. The District Elementary Educational Officer,
Erode.

3. The Assistant Elementary Educational Officer,
Nambiyur,
Erode District.

... Respondents

W.P.No.27764 of 2010

V.Pauldurai

... Petitioner

Versus

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

2. The District Elementary Educational Officer,
Erode.

3. The Additional Assistant Elementary Educational Officer,
Nambiyur - 638 459,
Erode District.

... Respondents

W.P.No.28881 of 2010

1.S.S.Ramasamy Gounden

2.S.Joseph

3.K.Perumal

4.C.Duraisamy

5.A.Thiruvengkatachetty

... Petitioners

Versus

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

2. The District Elementary Educational Officer,
Erode.

... Respondents

Prayer in W.P.No.24742 of 2010 : Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the second respondent in Na.Ka.No.119806/C5/E4/08, dated 26.08.2009 and quash the same in



WEB COPY

so far as the petitioners are concerned and direct the second respondent to grant pay protection and monetary benefits to the petitioner as that of Elementary Head Master scale of pay by extending the benefits of the G.O.Ms.No.202 (School Education Department) dated 24.09.2008.

Prayer in W.P.No.27763 of 2010: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in Na.Ka.No.4845/L2/2009, dated 27.02.2009 and the order of third respondent in Na.Ka.No.615/A1/2009 dated 11.12.2009 and quash the same and direct the respondents to grant pay protection as that of Elementary Head Master and pay monetary benefits by extending the benefits of G.O.Ms.No.202 of 2009, dated 24.09.2008.

Prayer in W.P.No.27764 of 2010: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in Na.Ka.No.4845/L2/2009, dated 27.02.2009 and the order of third respondent in Na.Ka.No.626/B1/2009 dated 15.12.2009 and quash the same and direct the respondents to grant pay protection as that of Elementary Head Master and pay monetary benefits by extending the benefits of G.O.Ms.No.202 of 2009, dated 24.09.2008.

Prayer in W.P.No.28881 of 2010: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the second respondent in Na.Ka.No.2160/2009/A3, dated 02.05.2009 and quash the same and direct the respondents to grant pay protection as that of Elementary Head Master and pay monetary benefits by extending the benefits of G.O.Ms.No.202 of 2009 School Education Department, dated 24.09.2008.

For Petitioners : Mr.M.Kamalanathan
(in all WPs)

For Respondents : Ms.E.Renganayaki,
(in all WPs) Additional Government Pleader.

COMMON ORDER

In all these cases, the grievances and the prayers are similar in nature and hence, are disposed of by common order.

2. For the purposes of the writ petition, the facts in respect of the petitioner in W.P.No.27764 of 2010 are as follows :



2.1. He joined as Higher Grade Teacher on 09.07.1970 and was posted at Primary School, Neelampalayam. With effect from 01.06.1972, he was promoted as Secondary Assistant Grade Teacher and was posted on Lakshmipudur Elementary School from 01.10.1973 to 30.04.1978, he served as Head Master of the said School. Again, he was transferred and posted as Secondary Grade Assistant in the Primary School on Gandhipuram from 01.05.1978. He was further transferred to Kettcheviyur w.e.f. 13.08.1993 and was again posted as Head Master from 07.01.1994 until his date of retirement on 30.01.2000.

3. The case of the petitioner is that till 01.06.1988, the scale of pay for the post of Secondary Grade Teacher as well as Elementary School Head Master was one and the same and therefore, without following any rules as to the seniority, the persons were posted as Secondary Grade Teacher as well as the Elementary School Head Master depending upon the place of work, in which, they were posted. But, however, w.e.f. 01.06.1988, the scale of pay applicable to the post of Elementary School Head Master was increased and it was made as a promotional post. But, however, the respondent never re-worked the cadre by granting promotion as per the seniority and who ever were working as Primary School Head Master on the date was getting higher pay. This lead to huge number of litigations, wherein, repeated orders were passed by the Tamil Nadu Administrative Tribunal, as well as this Court, granting protection of pay in the form of considering the services as Secondary Degree Teacher also for the purpose of grant of selection grade and Special Grade and in case of persons who had joined the Middle School, were allowed to migrate to Elementary Schools and pay protection to was also ordered to teachers who have lost on account of accidentally not holding the post of Head Master as on 01.06.1988.

4. While so, a batch of teachers, who had similarly suffered loss of emoluments on account of their transfer from one union to another came before this Court, this Court had allowed the cases of teachers who even got transferred to other unions on their own volition. Implementing the judgment, the Government passed G.O.Ms.No.202 of 2009 School Education Department, dated 24.09.2008.

5. The petitioners are also in a similar position as that of the persons who approached this Court and this Court had given direction that the orders were to be implemented even for the persons, who are not petitioners before this Court. When the petitioner sought benefits of the said Government Order, the same was rejected by the impugned order on the ground that the



7. As rightly contended by the Learned Counsel for the petitioners, all these orders were passed on account of the anomaly arisen out of the administrative lapse of the Government in not following principles of seniority or re-posting the teachers as per their seniority in the post of Elementary School Head Master as on 01.06.1988 and therefore, these reliefs have been repeatedly granted by the Tribunals as well as by this Court. Several facts and developments in this regard are in detail traced out by this Court in the Judgment dated 11/11/2014 in S. Chandrasekeran & others -Vs- The Government of Tamilnadu & others (W.P. No. 25001 of 2012). However, the fact remains that the petitioners had not approached the Court at the relevant point of time and sought for extension of the benefit only in the year 2009 and the same was rejected. The petitioners are entitled to the benefit of pay protection as held by the Division Bench in the Judgment referred above in W.A.(MD).No.747 of 2011 and de hors the said Government Order since the pay anomaly had occurred purely on the administrative action of the respondents. As rightly contended by the learned Counsel for the petitioners, if G.O. 202 granted benefits to teachers who were transferred to one Union to another on their own volition, persons like the petitioners who are transferred within the same union by administrative orders stand on a better footing to get the relief of pay protection. Therefore, I hold that the petitioners are entitled to pay protection as prayed for but not on the basis of G.O. 202.

8. But the fact remains that the petitioners though were entitled to the relief, approached this Court only in the year 2010 , after G.O. 202. The Hon'ble Supreme Court in Union of India -Vs- Tarsem Singh (2008) 8 SCC 648 held as follows :

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the



WEB COPY

issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

9. Again, in State of Madhya Pradesh & other -Vs- Yogendra Shrivatsava (2010 12 SCC 538) it was held as follows:

' ' 18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. (See M.R. Gupta v. Union of India [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186] and Union of India v. Tarsem Singh [(2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] . ' '

Thus in matters of pay scale and consequential pension, every month gives rise to a fresh and recurrent cause of action



and the delay by itself is not fatal. But, however, when there is delay on the part of the petitioners approaching the Court, the Court can restrict the arrears.

10. In view of the above, I am inclined to allow these Writ Petitions on the following terms :

(i) The orders impugned in these writ petitions respectively dated 26.08.2009, 27.02.2009 and 02.05.2009 as the case may be are set aside;

(ii) The respondents are directed to extend the pay protection as that of the Primary School Head Master, in a similar manner to those persons, who have been extended the benefits under G.O.Ms.No.202 of 2009, School Education Department, dated 24.09.2008 and accordingly, re-work the last drawn salary and pension of the petitioners;

(iii) The petitioners however will not be entitled to any arrears of salary or other retirement benefits;

(iv) As far as pension is concerned, the petitioners will be notionally fixed higher pension from the date of superannuation, but, however, will be entitled to arrears of pension only from the date of writ petition i.e., from the month of December, 2010 onwards.

(v) There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sp

To

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



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

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

4. The Chief Educational Officer,
Nagapattinam.

5. The District Elementary Educational Officer,
Nagapattinam.

6. The District Elementary Educational Officer,
Erode.

7. The Assistant Elementary Educational Officer,
Nambiyur,
Erode District.

8. The Additional Assistant Elementary Educational Officer,
Nambiyur - 638 459,
Erode District.

+4cc to Mr.R.Kamaraj, Advocate, S.R.No.32602,32603,32604,32605
+1cc to the Special Government Pleader, S.R.No.32560

W.P.No.24742, 27763, 27764 & 28881 of 2010

SKM(CO)
CT 13/06/2022