



W.P.No.14201 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.14201 of 2018

1.K.K.Dhanavendan
2.M.Kathiravan
3.D.Stalin Arul Regan
4.Sobhiyavani

.... Petitioners

-Vs-

1.The Joint Secretary
Department of Empowerment of Persons
with Disabilities [Divyangjan]
Ministry of Social Justice & Empowerment
5th Floor, Room No.517, B2 Wing, Pt DDU Bhavan
CGO Complex, Lodhi Road, New Delhi – 110 003.

2.The Director
National Institute for Empowerment of Persons
With Multiple Disabilities (NIEPMD)
East Coast Road, Muttukadu
Kovalam Post, Chennai – 603 112.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to pay scale PB 2 Rs.9300-34800 along with Grade Pay of Rs.4600/- granted under the 6th Pay Commission 2008 from 01.01.2006 or D.O.A., whichever is later and pay the difference amount as arrears mentioned in Table No.3 to the respective petitioners together with interest.



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For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.K.B.Arul,
Central Government Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Mandamus to pay scale PB 2 Rs.9300-34800 along with Grade Pay of Rs.4600/- granted under the 6th Pay Commission 2008 from 01.01.2006 or D.O.A., whichever is later and pay the difference amount as arrears mentioned in Table No.3 to the respective petitioners together with interest.

2. The petitioners are working as Teachers at the second respondent institution which is a special institute to cater the needs of special children with multiple disabilities.

3. Insofar as the pay structure of these petitioners are concerned, as per the 6th Pay Commission recommendation, the pay scale must be with Pay Band PB2 Rs.9300-34800 along with Grade Pay of Rs.4600/- with effect from 01.01.2006. These petitioners have joined in service either in the year 2007 or 2008 and hence from the date of joining the service they are entitled to get the said pay as per the 6th Pay Commission recommendation.



4. As per the 6th Pay Commission recommendation since the Grade Pay for this Pay Band is Rs.4600/-, that should have been fixed to these teachers. However, the grade pay which was fixed and paid to these petitioners was only Rs.4200/- . Therefore, to set right this anomaly the petitioners had made a request to the second respondent institute. After considering the same, the second respondent institute had sent a detailed reply on 08.05.2018 inter alia stating the following.

“ In addition, the revision for the post of Special Teacher was placed before the Committee for examining uniformity in pay scales among National Institutes of DEPwD, MSJE and the Committee has recommended Rs.4600/- grade pay for all the teachers working at National Institutes.

Based on the merits of the representation, NIEPMD forwarded the proposals with recommendations to implement Part B of 6th Pay Commission to Department of Empowerment of Persons with Disabilities (Divyangjan). However, the institute is not in a position to take this further as the approval of the same is awaited from DEPwD, MSJE.”

5. Despite this decision has been taken and communication has been sent to the first respondent Department under the Ministry of Social Justice and Empowerment, the ultimate nod is still awaited, as no order seems to have been passed by the first respondent / Ministry concerned. With the result, the petitioners though are entitled to get the grade pay of Rs.4600/- are getting lesser grade pay of



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Rs.4200/-. Therefore, for suitable direction to the respondents to implement the 6th Pay Commission recommendation and to fix the grade pay of Rs.4600/- to these petitioners from the date of their appointment, this writ petition is filed.

6. Heard Mr.V.Lakshminarayanan, learned counsel for the petitioners who reiterated the aforesaid facts and would seek the indulgence of this Court to issue suitable directions to the respondents and in this regard if the file is pending or the issue is pending with the first respondent, a direction can be given to the first respondent, who in turn, after taking a decision by passing an order, the same can be implemented by the second respondent within a time frame that may be stipulated by this Court.

7. Heard Mr.K.B.Arul, learned Central Government Standing Counsel, who after relying upon the averments made in the counter affidavit would submit that, if at all the proposal has been sent by the second respondent institute, formal approval only has to be given by the first respondent and unless the approval is given and communicated to the first respondent he cannot act upon. Insofar as the first respondent is concerned, if the proposal is still pending with the first respondent as per the communication of the second respondent dated 08.05.2018, certainly that would be considered and an order would be passed at the earliest preferably within a time frame that may be stipulated by this Court, he contended.



8. I have heard the learned counsel for either side and have perused the materials placed on record.

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9. Insofar as the entitlement of the petitioner to get Grade Pay of Rs.4600/- with effect from 01.01.2006 or from the date of appointment, there could be no dispute. This has in fact been considered and recommended by the second respondent, which is reflected in the communication of the second respondent dated 08.05.2018. Therefore, now the issue is pending before the first respondent, who has to take a formal decision to give approval so that the second respondent can act upon and execute that order. Hence, this Court feels that a direction can be given to the first respondent to decide the issue and pass necessary orders on the recommendation of the second respondent at an early date.

10. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the first respondent to consider and decide the recommendation made by the second respondent vide their letter dated 08.05.2018 and pass orders thereon giving such approval or permission to fix the grade pay of Rs.4600/- payable to the faculties like the petitioners, who are working in the second respondent institute from their eligible date ie., from the date of



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appointment. Accordingly, the said decision can be communicated to the second respondent by the first respondent within a period of three months from the date of receipt of a copy of this order.

- It is needless to mention that once such an order or decision is made and communicated by the first respondent, the second respondent shall execute the order and after calculating the arrears if any payable based on the difference in grade pay from the date of eligibility till the date of payment, that shall also be paid to the petitioners within a period of eight weeks thereafter.

11. With the above directions, this writ petition is disposed of. No costs.

04.08.2022

Index : Yes/No
Internet : Yes/No
KST

To

1.The Joint Secretary
Department of Empowerment of Persons
with Disabilities [Divyangjan]
Ministry of Social Justice & Empowerment
5th Floor, Room No.517, B2 Wing, Pt DDU Bhavan



W.P.No.14201 of 2019

CGO Complex, Lodhi Road, New Delhi – 110 003.

2.The Director

National Institute for Empowerment of Persons
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R. SURESH KUMAR, J.

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