



WEB COPY



W.P.No.42232 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.42232 of 2016

V.Chendilvel

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Secretariat,
Chennai – 600 009.

2.The Director of School Education,
DPI Campus,
College Road,
Chennai – 600 006.

3.The Principal Accountant General (A & E),
O/o. Principal Accountant General,
Anna Salai, Teynampet,
Chennai – 600 018.

4.The District Elementary Educational Officer,
Kancheepuram, Kancheepuram District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the 1st respondent to consider the petitioner representation dated 10.03.2016 submitted with request



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to revise the scale of pay in the post of Assistant Elementary Educational Officer and to pay the monetary benefits subsequently pensionary benefits to the petitioner in the light of GO (Ms) No.242 Finance (CMPC) Department dated 23.09.2015.

For Petitioner : Mr.P.Murali

For Respondents : Mrs.S.Mythraye Chandru
Special Government Pleader
for R1, R2 and R4

ORDER

The relief sought for in the present writ petition is to direct the 1st respondent to consider the representation submitted by the writ petitioner on 10.03.2016 to revise the scale of pay in the post of Assistant Elementary Educational Officer and pay the consequential monetary benefits in the light of G.O.(Ms)No.242, Finance (CMPC) Department, dated 23.09.2015.

2.The petitioner was initially appointed as Higher Grade Teacher on 01.01.1971 and thereafter, he was promoted to the post of Secondary Grade Teacher. The petitioner was promoted up to the level of Assistant Elementary Educational Officer and retired from service on 31.01.2006.

3.The grievances of the writ petitioner is that the grade pay as



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admissible pursuant to the 6th Pay Commission recommendation was not granted to him. The petitioner states that the Grade Pay of Rs.4800/- ought to have been granted to the writ petitioner who was holding the post of Assistant Elementary Educational Officer as on 31.01.2006. However, the petitioner was granted lesser grade pay of Rs.4700/- which is applicable to the cadre of Assistant Elementary Educational Officer.

4. Even as per the affidavit filed in support of the writ petition the scale of pay applicable to the post of Assistant Elementary Educational Officer as per the 6th Pay Commission recommendation w.e.f. 01.01.2006 was Rs.9300 – 34800 – 4700. The learned counsel for the petitioner states that one Mr. James retired Assistant Elementary Educational Officer who filed W.P.(MD)No.11332 of 2011 was granted the benefit of the grade pay of Rs.4900/- in G.O.Ms.No.242, Finance Department, dated 23.09.2015 and the benefit already granted to the said James is to be extended to the writ petitioner. Pursuant to the said Government Order reveals that the Government issued order based on the Contempt Petition No.1717 of 2014 filed by Thiru.K.James to implement the order dated 11.08.2015 in W.P.(MD)No.11332 of 2014.

5. Thus, it is clear that based on the order passed in the writ petition



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and based on the contempt petition filed, the Government issued orders.

Question arises, whether such an order passed in favour of an individual be extended to all the employees who retired as Assistant Elementary Educational Officer.

6.First of all, the petitioner was allowed to retire from service on 31.01.2006. His pension was fixed based on the last pay drawn and accordingly, he was receiving the pension. The petitioner approached this Court after a lapse of about ten years from the date of retirement and citing an order passed in favour of an individual. Therefore, the petitioner was a fence-sitter and approached this Court after a lapse of ten years from the date of retirement. Such an act cannot be entertained. That apart, the correctness of the scale of pay cannot be now tested as the scale of pay applicable to the post of Assistant Elementary Educational Officer was fixed in favour of the writ petitioner with reference to the 6th Pay Commission recommendations w.e.f. 01.01.2006.

7.Regarding the citing of similar orders filed by the petitioner, the Division Bench of this Court in the case of ***Director of Sericulture Department vs. K.Kumar***, reported in ***2015 (4) CTC 241*** held as follows:

34. It is true that constituency helps the parties to a



litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained Orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interests.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R.Antulay Vs. R.S.Nayak, AIR 1988 SC 1531. It was observed in the said decision that “in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court”. The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by Writ Petitions getting allowed at the stage of admission, and (2) by getting those Orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the Scale of Pay to be granted



for Selection and Special Grades. Hence, the Second Contention of the Writ Petitioners is also liable to be rejected.

*41. In **Union of India v. Kartick Chandra Mondal**, 2010 (1) LLN 687 (SC) : 2010 (2) SCC 422, the Supreme Court, relying upon its previous decisions in various cases including the one in **State of Bihar v Upendra Narayan Singh**, 2009 (2) LLN 754 (SC) : 2009 (5) SCC 69, held that Article 14 is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a Wrong Order has been passed by a Judicial Forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in **Kartick Chandra Mondal** was subsequent to the decision in **Maharaj Krishan Bhatt** and the decision in **Maharaj Krishan Bhatt** is also referred to in **Kartick Chandra Mondal**.*

8.The Supreme Court of India in the case of **Basawaraj and another vs. Special Land Acquisition Officer** reported in **2013 14 SCC 81** held as follows:



8. *It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh, Anand Buttons Ltd. v. State of Haryana, K.K.Bhalla v. State of M.P. and Flujit Kaur vs. State of Punjab.)*

9. Therefore, similarity cannot be a ground to grant the relief after a



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lapse of many years. The correctness of the fixation is not in dispute as the pay applicable to the writ petitioner in the cadre of Assistant Elementary Educational Officer was fixed and based on the fixation and the last pay drawn, the pension also fixed in favour of the writ petitioner. Thus, the claim of the writ petitioner at this length of time cannot be entertained. That apart, the writ petition itself was filed after a lapse of ten years from the date of retirement and more so, citing a similar case is unsustainable as the similarity with reference to the issues and the pay rules has not been established by the writ petitioner.

10. Accordingly, the writ petition is devoid of merits and stands dismissed. No Costs.

10.10.2022

Index: Yes
Internet: Yes
Speaking order
SSR

To

1. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Secretariat,
Chennai – 600 009.

2. The Director of School Education,



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DPI Campus,
College Road,
Chennai – 600 006.

- 3.The Principal Accountant General (A & E),
O/o. Principal Accountant General,
Anna Salai, Teynampet,
Chennai – 600 018.
- 4.The District Elementary Educational Officer,
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S.M.SUBRAMANIAM, J.

SSR

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