

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.10546 OF 2014

Secondary Grade Seniority
Teachers Association (SSTA),
Rep. by its State General Secretary,
J.Robert, Regn.No.209/2011,
284, Phase-II, Perumalpuram,
Palayamkottai, Tirunelveli District.

... Petitioner

Vs

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Finance (Pay Cell) Department,
Secretariat, Chennai - 600 009.
2. State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
3. The Director of Elementary Education,
College Road, Chennai - 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to fix the scale of pay of the members of the petitioner association under the pre-revised scale of pay (Revised Scale of Pay Rules, 1996) and consequently fix the pay from the date of appointment as in the case of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel
for Mr.R.Sagadevan

For Respondents : Mr.R.Neelakandan, AAG
assisted by Mrs.S.Anitha, Spl. GP

ORDER

The writ on hand has been instituted by the Secondary Grade Seniority Teachers Association to direct the respondents to fix the scale of pay of the members of the Petitioner Association in pre-revised scale of pay (Revised Scale of Pay Rules, 1996) and consequently to fix the pay from the date of appointment, as in the case of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010.

2. The writ petitioner is an association formed by the Secondary Grade Teachers appointed on the basis of State seniority, as per the judgement of this Court. The petitioner association is a registered association. The writ petition is filed mainly on the ground that there is an anomaly in the matter of fixation of pay between the Secondary Grade Teachers who were appointed prior to 01.06.2009 and after 01.06.2009.

3. The learned Senior Counsel appearing on behalf of the writ petitioner association mainly contended that the Government issued G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, implementing the recommendations of the official committee for revision of scale of pay and allowances, etc., i.e, under the Tamil Nadu Revised Scale of Pay Rules, 2009. As per the said Rules, the existing scale of pay of Rs.4500-125-7000 as on 01.01.2006 was revised as Rs.5200-20200+2800 Grade Pay. As per the recruitment notification, through which the members of the petitioner association were appointed after 01.06.2009, they were fixed with a scale of pay of Rs.4500-125-7000. The Junior Engineers/Agricultural Officers, etc., made a representation to rectify the pay anomaly. The One Man Commission appointed by the Government made certain recommendations and in implementation of the said recommendations, the Government issued G.O.Ms.No.340, dated 26.08.2010.

4. The learned Senior Counsel made a submission that as per the Government Order, the benefit of revised scale of pay is extended in respect of the employees appointed on or after 01.06.2009 and therefore, the members of the petitioner association, who were appointed after 01.06.2009, are eligible for the revised scale of pay. In view of the said anomaly, representations were also made and the same was not considered by the respondents.

5. At the outset, it is contended that the Secondary Grade Teachers appointed before 01.06.2009 are getting basic pay of Rs.8,370/- and a total pay of Rs.11,920/- and the Secondary Grade Teachers appointed after 01.06.2009 are receiving total pay of Rs.8,750/-. In view of the said anomaly, the petitioner

association has made a representation to rectify the same, which was not considered.

6. The learned Additional Advocate General appearing for the respondents objected the contentions of the learned Senior Counsel for the petitioner by stating that the cut-off date for fixation of pay cannot be questioned, as the cut-off date is necessary to be fixed, for the purpose of implementation of pay scales for various categories in the Government Services. If at all the cut-off date caused certain anomalies, the said anomalies are to be considered only by the Government and in the present case, there is no such anomaly raised, as the Government Order in G.O.Ms.No.340 is not applicable to the case of the members of the petitioner association.

7. In this context, the learned Additional Advocate General reiterated that in G.O.Ms.No.340, dated 26.08.2010, orders were issued on the recommendation of the One Man Commission to the effect that to rectify the pay anomaly caused to the Junior Assistants recruited from among the Contract Assistants and Agricultural Officers by the Tamil Nadu Public Service Commission prior to 01.06.2009 and joined in Government service prior to 01.06.2009 or subsequently due to administrative reasons, by allowing them the fitment benefit. The Government extended such relaxation in respect of the said Junior Assistants, since they have been selected in the month of May, 2009 itself and majority of them joined prior to 01.06.2009 and few of them joined in service subsequently. It has been mentioned in the said Government Order that such fitment benefit would not be applicable to the appointments made after 01.06.2009. Therefore, the members of the petitioner association cannot compare themselves with the seniors who joined in service prior to 01.06.2009 in the pre-revised scale of pay.

8. The learned Additional Advocate General further contended that in G.O.Ms.No.340, it has been specifically mentioned that fitment benefit would not be applicable to the appointments made after 01.06.2009. The Pay Grievance Redressal Cell was also of the view that further extension of the benefit would not be appropriate as the issue can be taken back to the date on which vacancies arose. The Government is within its rights to review the requirement of staff and have them join on an appropriate date. Hence, the Committee found no justification to recommend an across the board implementation of fitment benefit in such cases. If such benefit is extended based on representations, then there would be no end to this and the very purpose of prescribing a cut-off date for availing the benefit would be defeated.

9. The Hon'ble Supreme Court in Civil Appeal No.1532 of 2005, S.C.Chandra and Others vs. State of Jharkhand and Others reported in (2007) 8 SCC 279, held that the fixation of pay is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. If there is complete and wholesale identity between the two groups, even the employees in the two groups are doing identical work, then they cannot be granted higher pay, if there is no complete and wholesale identity. It is further submitted that fixing the pay scales by the Courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State.

10. The learned Additional Advocate General made a further submission that fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by this Court may result in a cascading effect and reaction which can have adverse consequences in the routine administrative exercise of the executive. On the claim for relief on par with Central Government Teachers, it is for the petitioner herein to substantiate a clear cut basis of equivalent and a resultant hostile discrimination before becoming eligible to claim right on par with the post in which the writ petitioner has compared vis-a-vis an alleged discrimination. The petitioner has failed to place before this Court as to the nature of the duties of either categories and it is not possible to hold that the writ petitioner has been discriminated by the executive.

11. Further, fixation of pay is a concept which requires for its applicability completely and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula. Where the mode of recruitment, qualification and promotion are totally different in the category of Teachers in the State of Tamil Nadu and Central Government, there cannot be any application of the fixation of pay on par with State Government Teachers to Central Government Teachers.

12. Further, it is submitted that there are inherent difficulties on comparing and evaluating the work of different persons in different organizations. The person doing the same work may have different degrees of responsibilities, reliabilities and confidentialities and this would be sufficient for a valid differentiation. The judgment of the administrative authorities concerning the responsibilities, which is attached

to the post and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bonafide, reasonably and rationally was not open to interference by this Court.

13. The petitioners appointed on or after 01.06.2009 are directly appointed in the revised scales of pay. As such, employees who have not drawn pay in the pre-revised scales of pay, are not eligible for fitment benefit by a multiplication factor of 1.86 and the petitioners have no right to claim such benefit when they have been allowed pay fixation based on the minimum of the pay scale plus Grade pay applicable to the post and this mode of fixation is uniformly applicable to all category employees appointed as new recruits on or after 01.06.2009. The magnitude of the financial implication, in the event of conceding the prayer of the respondent would be enormous to which the State cannot afford to at this juncture, as more than 9 years have lapsed since the implementation of the revised pay scales with effect from 01.01.2016.

14. In view of the facts and circumstances, this Court is of the considered opinion that the relief as such sought for in the present writ petition cannot be granted.

15. Further, the learned Senior Counsel for the petitioner made a submission that the petitioner association is not insisting for grant of scale of pay on par with the Central Government Teachers. However, it is left open to the petitioner association to approach the respondents, if any grievance exists regarding any such discrimination or otherwise.

16. With the above observations, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Finance (Pay Cell) Department,
Secretariat, Chennai - 600 009.

2. The Secretary,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 600 009.

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

+1cc to Mr.R.Sagadevan, Advocate, S.R.No.43624

+1cc to the Government Pleader, S.R.No.43225

W.P.No.10546 of 2014

BR(CO)
RLP(27/07/2022)