



WEB COPY



W.P. No.17821 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.17821 of 2021

and

W.M.P. Nos.19026 and 19028 of 2021

K.V. Saraswathi

... Petitioner

vs.

1. The Government of Tamil Nadu
represented by the Secretary to Government
Finance Department,
Fort St. George,
Chennai - 600 009.

2. The Secretary,
Government of Tamil Nadu
School Education Department,
Fort St. George,
Chennai - 600 009.

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

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

5. The Regional Joint Director,
Treasury Accounts Department,
Nandanam,
Chennai - 600 035.



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6. The Treasury Officer,
District Treasury,
Tiruvallur,
Tiruvallur District.

7. The Block Educational Officer,
(Formerly Assistant - Elementary Educational Officer)
Thiruvelangadu Panchayat Union,
Thiruvelangadu
Tiruvallur District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st and 6th respondents in relation to the orders issued in Government letter No.60024/C.M.P.C./2000-1, (Finance Department), dated 18.09.2000 and in Na.Ka.No.7568/K2/2018, dated 29.10.2020 issued by the 1st and 6th respondents respectively and quash the same, and issue a consequential direction to the respondents to fix the pay of deceased pensioner K.Varadapillai in the selection grade post of primary school Headmaster which he held at the time of retirement and allow 50% pay of selection grade scale of pay of Primary School Headmaster, as pension continuously and then fix family pension of the petitioner accordingly and grant arrears of pension and family pension consequently to the petitioner.

For petitioner

: Mr.R. Saseetharan

For respondents

: Mr.V. Ravi,

Spl. Govt. Pleader for R1, R5 and R6

Mr.C. Sathish,

Government Advocate for R2, R3,

R4 and R7



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ORDER

WEB COPY This writ petition has been filed challenging the reduction of pay and pension payable to the petitioner's husband Late K.Varadapillai, who was in public service under the impugned order dated 18.09.2000 and 29.10.2020.

2. The impugned order came to be passed pursuant to the directions given by this Court on 10.02.2020 in W.P. No.7568 of 2017. The said writ petition was filed by the petitioner's husband K.Varadapillai when he was alive. According to K.Varadapillai, his pay has to be fixed in the scale of Primary School Head Master. Aggrieved by the alleged wrong fixation of his pay, K.Varadapillai filed the above mentioned writ petition.

3. This Court by its order dated 10.02.2020 in W.P. No.7568 of 2017 has quashed the impugned order dated 01.03.2017, which is the earlier pay fixation order and remanded the matter back to the respondents for fresh consideration for re-fixing the scale of pay of the petitioner therein and consequently revise the pensionary benefits. Further, the respondents were directed to pass final orders on merits and in accordance with law, after affording an opportunity of hearing to K.Varadapillai(writ petitioner therein), within a period of twelve weeks



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from the date of receipt of a copy of the said order. By the very same order dated 10.02.2020 in W.P. No.7568 of 2017, the recovery order issued against the petitioner therein to recover the alleged excess payments was set aside on the ground of delay. Thereafter, the impugned order dated 29.10.2020 came to be passed by the respondents rejecting the request made by K.Varadapillai(writ petitioner therein) seeking for refixation of his pay. Aggrieved by the same, the petitioner herein, who is K.Varadapillai's wife has filed this writ petition, since K.Varadapillai died on 17.01.2021.

4. A counter affidavit has been filed by the respondents reiterating the contents of the impugned order and they have categorically stated that the petitioner is not entitled for refixation of pay for K.Varadapillai.

5. The petitioner has challenged the impugned order on the following grounds :-

- a) No opportunity of hearing was granted either to K.Varadapillai (while he was alive) or to the petitioner,
- b) By total non application of mind to G.O. Ms. Nos.200 and 235, which entitles K.Varadapillai for refixation of his pay at the time when he retired from service.



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6. Admittedly, no opportunity of hearing was granted either to

K.Varadapillai or his legal representatives which includes the petitioner, who is his wife in the impugned proceedings.

7. The contentions of the petitioner that have been raised in this writ petition have not been considered in the impugned order. Since, K.Varadapillai is no more, the petitioner, who is his wife ought to have been heard before passing final orders.

8. This Court by its order dated 10.02.2020 passed in W.P. No.7568 of 2017 has made it clear that K.Varadapillai(writ petitioner therein) must be afforded an opportunity of hearing. Having failed to do so, necessarily the impugned order has to be quashed and the matter has to be remanded back to the respondents for fresh consideration on merits and in accordance with law. The respondents have also not considered the contentions raised by the petitioner including the contention that as per G.O. Ms.No.200, dated 18.05.1999 and G.O. Ms.No.235, dated 01.06.2009, the pay has to be fixed on the date when the petitioner retired from service. The petitioner retired from service as a Primary School Head Master on 30.06.1986.

9. The petitioner's contention is that erroneously the pay was fixed for K.Varadapillai in the scale of Secondary Grade Teacher, though he



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retired from service as a Primary School Head Master and therefore, according to the petitioner, the scale of pay ought to have been fixed in the scale of Primary School Head Master. All these factors have not been considered in the impugned order.

10. For the foregoing reasons, the impugned order dated 29.10.2020 is hereby quashed and the matter is remanded back to the respondents for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting her or her authorised representative one personal hearing. The respondents are directed to pass final orders, within a period of four weeks from the date of receipt of a copy of this order.

11. In case of any admitted arrears of pay, which is payable to K.Varadapillai, the same shall be paid to the petitioner.

12. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2



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ABDUL QUDDHOSE, J.

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