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W.P.No.23786 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23786 of 2019

R.Janarthanam

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by its
Secretary, School Education Department,
Fort St. George,
Chennai – 600 009.

2.The District Educational Officer
Nagapattinam,
Nagapattinam District.

3.The Block Educational Officer
Vedaranyam,
Nagapattinam District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondent to extend the benefits of G.O.Ms.No.210, School Education (G1) Department, dated 14.08.2009 in light of the Division Bench of this Court order in W.A.No.73/2019 dated 26.03.2019 and pay all revised pension and other arrears.



For Petitioner : Mr.R.Sreedharan
For Respondents : Mr.S.Yashwanth
Additional Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the respondent to extend the benefits if G.O.Ms.No.210, School Education (G1) Department, dated 14.08.2009 in light of the Division Bench of this Court order in W.A.No.73/2019 dated 26.03.2019 and pay all revised pension and other arrears to the petitioner.

2. The petitioner states that he was initially appointed to the post of Special Teacher (P.E.T) on 03.12.1971. Thereafter, he was promoted to the post of B.T. Assistant on 05.07.1997 and subsequently, he was again promoted to the post of Middle School Headmaster on 05.07.1994. Finally, the petitioner served in the post of Additional Elementary Educational Officer and retired from service after reaching the age of superannuation on 30.04.2003.



WEB COPY

W.P.No.23786 of 2





3. The petitioner states that he is entitled for Selection Grade of Pay in the post of Middle School Headmaster by extending the benefit of G.O.(Ms) No.210, School Education Department, dated 14.08.2009. As far as the petitioner is concerned, the benefit claimed by the petitioner is relating to the Fifth Pay Commission, which was implemented with effect from 01.06.1988. The writ petition itself is filed in the year 2019 after several years. Thus, this Court is of the considered view that the petitioner has not pursued the matter vigilantly during the relevant point of time. Therefore, such belated claims cannot be entertained.

4. The learned counsel for the petitioner made a submission that the petitioner was pursuing the matter and they filed writ petition on earlier occasion.

5. Be that as it may, even in case, the petitioner pursued the matter, this Court is of an opinion that the issues raised by the petitioners are no more *res integra*.



6. This Court has elaborately considered all the Government Orders in this subject and passed an order on 25.01.2022 in W.P.(MD) Nos. 3186 and 3187 of 2016.

7. The learned Additional Government Pleader appearing on behalf of the respondents made a submission that the facts in the writ petitions on hand as well as the facts decided by this Court in W.P.(MD) Nos.3186 and 3187 of 2016 are identical.

8. For better appreciation, the relevant paragraphs of the order dated 25.01.2022 are extracted herein below:-

“7. The concept of selection / special grade is that the government employees are entitled to “selection grade” if the person is stagnating is the same post without promotion for 10 years and entitled to “special grade” if the person is stagnating is the same post without promotion for 20 years. The G.O. Ms. No. 666 Finance (Pay Commission) dated 27.06.1089 was issued cancelling the selection / special grade. Thereafter the scheme of granting selection / special grade was



reintroduced vide G.O. Ms. No. 304 Finance (Pay Commission) Department dated 28.03.1990. In partial modification in paragraph 9 of the G.O. 666, the G.O. 304 was issued granting the selection / special grade.

8. In Education Department prior to 01.06.1988 the post of Secondary Grade Teacher and Primary School Headmaster in Government Schools and Panchayat Union Schools are interchangeable and considered as same post. The grade pay of the Secondary Grade Teacher and the grade pay of the Primary School Headmaster are same, with an additional special pay to the Headmaster. After 01.06.1988 the post of Headmaster is a promotion post and in V pay Commission the Headmaster were paid Rs. 1400-2600 without special pay and the Secondary Grade Teacher were paid 1200-2040. The teachers who had worked in the Panchayat Schools / Government Schools in Secondary Grade Post were allowed to serve as Headmaster of Primary School with extra allowance to the post of Headmaster post. After 01.06.1988 the post of Headmaster is made as promotion post. Therefore a claim was submitted to add the service of Secondary Grade Post and Headmaster of Primary School for calculating the



selection grade and special grade. The government issued G.O. Ms. No. 1381 Education Department dated 05.10.1990 wherein selection / special grade was granted to teachers who were holding the HM post on 01.06.1988 be awarded selection / special grade in the revised scales on or after 01.06.1988 by computing the “Secondary Grade Teacher and Primary School HM prior to 01.06.1988”. The G.O. also states that “at the post of HM carries higher scale of pay above that of the Secondary Grade Teachers, those promoted as HM after 01.06.1988 shall be allowed fixation of pay in the post of HM as provided under Fundamental Rules 22B. The persons promoted after 01.06.1988 opposed to fix under Fundamental Rules 22B and they prayed to grant selection / special grade as granted to HM by taking both secondary grade service and HM post. Since the same was declined, those persons filed petition before Tribunal in O.A. No. 2899, 3009 and 3010 of 1989 and the Tribunal has held that the classification is wrong and set aside the paragraph 3 and 4 of the G.O. Ms. No. 1381.

9. Hence the Government issued a G.O.Ms.No. 300 Education, Science and Technology Department dated 07.04.1994 wherein the grant of selection /



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special grade in G.O. 1381 was quashed and the benefit already disbursed were ordered for recovery. In the G.O. it has been categorically stated that the service of HM post alone will be taken for granting selection / special grade. In other words, the Secondary Grade post will not be taken into account while counting the service for Primary School HM. Unfortunately, the G.O. Ms. No.300 dated 07.04.1994 was not brought to the knowledge of this Court at the earliest point of time and there was total mess in this issue.

10. In the meanwhile, the government issued G.O. Ms. No. 216 Finance (Pay Commission) Department dated 22.03.1993, extending the selection / special grade to the “Secondary Grade Teachers in Middle School”, since they will not be having any promotional opportunities. It is pertinent to note that the G.O. is not stating to calculate both the Secondary Grade post + Primary School HM post to grant selection / special grade. It simply states to grant selection / special grade to Secondary Grade Teachers working in Middle School, since they are not having promotional opportunities. Until this period the issue was settled, however later point of



time this G.O. 216 dated 22.03.1993 was misinterpreted.

11. Thereafter, the issue started exploding when the teachers in order to retain the wrong benefits granted under G.O. 1381 (which G.O. was quashed by Tribunal) started filing writ petitions and the wrong started perpetuating. Writ petition was filed in W.P. No.8079 / 2005 and vide order dated 28.04.2008 the writ petitions were allowed. In another writ petition vide order dated 18.04.2001 the government was directed to consider the claim. Since several writ petitions were filed and allowed, helplessness gripped the government. Hence pending writ petitions the government issued G.O. Ms. No. 207 School Education (G2) Department dated 30.09.2008 and G.O. states that pension benefits shall be granted and the government would incur an additional expenditure of Rs.1,87,93,225/- and this is subject to the out come of the pending writ petitions.

12. Then the issue turned to an extreme level wherein the G.O. Ms. No. 210 School Education (G2) Department dated 14.08.2009 was issued. In this the teachers prayed to calculate the Secondary Grade Post service + Primary School HM service and thereafter fix the service in Middle School HM post



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and grant Selection / Special Grade. The said G.O. granted the benefits to the persons mentioned in the G.O. Then in G.O. Ms. No. 190 School Education (G1) Department dated 12.07.2010 was issued extending to some more persons by taking the Secondary Grade post + Primary School HM and grant selection / special grade in Middle School HM post. A correction G.O. was issued in G.O. Ms.No. 230 School Education (G1) Department dated 10.08.2010. Then G.O. Ms. No. 146 School Education (G1) Department dated 19.06.2012 was issued to some more persons to calculate Secondary Grade post + Primary School HM was taken to grant Middle School HM selection / special grade. In this G.O. it has been stated that more than six crores would be the financial implications for the 260 teachers. As pointed out supra the employee is entitled to selection / special grade if a person is “stagnating” in the same post. But now the teachers would be promoted as Primary School HM, then also they will demand to calculate the period of service in Primary School HM post. Then again the person would be promoted to Middle School HM, then also the person will demand to calculate both the secondary grade service + primary school HM and



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fix the same in Middle School HM post and grant selection / special grade. In short the entire service should be taken into account to grant selection / special grade. That too “along with promotion”, that is the high light of the issue.

13. Thereafter numerous government orders were passed. This Court has passed an order in W.P. No. 29644 / 2003 and 29645 / 2003 dated 21.03.2008 covering 61 persons and to implement the order the G.O. Ms. No. 234 School Education (G2) Department dated 10.09.2009 was issued wherein, the Secondary Grade post + Primary School HM was calculated. Again based on court's order G.O. Ms. No. 270 School Education (G2) Department dated 20.09.2010 was issued. Likewise based on court's order, G.O. Ms. No. 216 School Education (G2) Department dated 30.12.2011, G.O. Ms. No. 179 School Education (Elementary2) Department dated 06.09.2013, G.O. Ms. No. 180 School Education (S.E. 3(1)) Department dated 06.09.2013, G.O. Ms. No.181 School Education (S.E.3(1)) Department, dated 06.09.2013 were issued, wherein the Secondary Grade post + Primary School HM was calculated.

14. These G.O. were passed in a fond hope



that this issue will come to an end, but the issue could not see the end at all, inspite of so many G.Os.

15. This Court has allowed several petitions and the government finally filed review application in Rev. Appl. No. 227 / 2015 and the same was referred to Full Bench. The review application was taken up along with

several writ appeals and writ petitions, wherein it was held the issue cannot be reagitated again and has held that the benefits shall be notionally calculated and the monetary benefits shall be payable on and from 01.03.2017.

16. This Court rejected the claims in several petitions and one such case is the order dated 09.12.2015 passed in W.A. (MD) No. 312 / 2011 in Division Bench headed by Justice V. Ramasubramanian and Justice N. Kirubakaran has held in paragraph 5, “that the employees who were in service in 1997-1998 as well as in the year 2002 did not rise a little finger either at the time of when the original applications were filed in the year 1997-1998 or at the time when the original application were allowed by the Tribunal in the year 2002”. And rejected the dead and stale claims.

17. Thereafter the Rev. Appl. (MD) No. 35 /



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2018 dated 19.03.2018, W.A. 34 / 2017 dated 03.01.2019 and W.A. 73 / 2016 dated 03.01.2019 was passed dismissing the review applications / writ appeals filed by the government.

18. Under this background the present two writ petitions are considered. In W.P.(MD)No.3186/2016 the petitioner has attained superannuation and retired in the year 2006 and has filed the present writ petition in the year 2016, after a lapse of 10 years from the date of retirement. The petitioner in W.P.(MD)No.3187/2016 attained superannuation and retired in the year 2006 and has filed the present writ petition in the year 2016, after a lapse of 10 years from the date of retirement. Hence this Court following the order dated 09.12.2015 passed in W.A. (MD) No. 312 / 2011, rejects the claim of the petitioner on the ground of delay and latches, since the dead and stale claims cannot be entertained.

19. The petitioners relied on G.O. Ms. No. 210, 190 and 146 and these G.O.s are passed in order to implement the orders of this Court. The petitioners ought to establish their right based on any provisions of law, rules, regulations and any government order passed based on the any policy decision of the



government. In other words, if the government order is passed on the basis of the policy decision of the government i.e. G.O. passed in rem is applicable to all. The petitioners cannot claim any right to any government order which were passed in order to obey the orders of the Court i.e. government order passed to person specific / “in persona” cannot be cited to claim any right. In fact several writ petitions are filed citing the G.O.s which were passed to obey the orders of this Court, if that is discouraged then pendency of the writ petitions would be considerably reduced.

20. This Court is of the considered opinion each case ought to be dealt with on its own merits. In the present case, the writ petitioner in W.P.(MD)No. 3186/2016 was regularized on 08.07.1977 in School Assistant Teacher post, had received Selection Grade on 08.07.1987 in the School Assistant Teacher post. Then promoted as Middle School HM on 12.10.1988. Then the petitioner received Selection Grade on 12.10.1998 in the post of Middle School HM. Then the petitioner is eligible for Special Grade on 12.10.2008, but since the petitioner retired on 30.04.2006, two years before the eligibility for Special Grade. Now the petitioner is seeking to take



the two years from School Assistant Teacher post and grant Special Grade in the post of Middle School HM. Incidentally the petitioner has already received Selection Grade in the post of School Assistant Post. If the claim of the petitioner is accepted then the claim would be two selection grade for the same period which is absolutely illegal claim. Moreover as stated supra the selection / special grade cannot be granted once the promotion is granted to the petitioner.

21. The petitioner in W.P.(MD) No. 3187 / 2016 was appointed as B.T. Assistant on 11.01.1982, received Selection Grade in the B.T. Assistant post on 10.01.1992 and the said disbursement of selection grade itself is wrong, since the petitioner was already promoted as Middle School HM on 21.12.1988. If the 1988 is taken as promotion date, then the petitioner is eligible for selection grade in the Middle School HM post on 21.12.1998, since the earlier selection grade fixation is wrong, this selection grade was not granted to the petitioner. The petitioner would be eligible for special grade on 21.12.2008, but the same was not granted, since two years prior to eligibility for special grade the petitioner retired from service on 20.12.2006.



Moreover as stated supra the selection / special grade cannot be granted once the promotion is granted to the petitioner. Therefore, this Court is of the definite opinion that the petitioners are not eligible to get selection grade / special grade after promotion by taking both “pre promotion” post and “post promotion” post and the claim is illegal and unjust enrichment.

22. In fact the Tribunal has rightly held at the earliest point of time while considering G.O.1381 that when the scale of pay is different for two services, then both services cannot be taken for calculating 10 years / 20 years, more so when one service has less pay and the other service has more pay. The Secondary Grade Teacher has less pay and the primary school Headmaster has higher pay and Middle school Headmaster has still more higher pay. Then, any two services or any three services cannot be taken to calculate 10 years or 20 years to grant selection grade or special grade respectively.

23. The teachers are seeking to grant selection grade and special grade by calculating the service in Secondary Grade Teacher post and the promoted post of Primary School Headmaster. Also claiming to calculate the Secondary Grade post and Primary



School Headmaster post along with the Middle School Headmaster post and grant special grade. In short the teachers are claiming both the promotion and as well as selection grade and special grade for their entire service. The concept has entirely changed by this plea to calculate the entire service including the promotion post. The claim to grant Selection Grade / Special Grade after availing promotion is illegal and unjust enrichment. The basic concept of Selection Grade / Special Grade is tampered with to obtain illegal claim. The very concept of granting selection grade and special grade is buried by these kind of writ petitions. This Court is of the considered opinion that the teachers are either eligible for promotion or for Selection / Special Grade and the teachers are not eligible for both.

24. The wrong claim of selection grade / special grade by calculating two or three different services were the subject matter from 1991 onwards, the Government passed several orders to put an end to the claim, this Court passed orders to put an end to the claim, but still several claims are arising until 2022. Therefore, this Court is of the considered opinion that illegal claim should end and this Court



WEB COPY

W.P.No.23786 of 2



is putting a big full stop to the illegal claims by this order.”

9. It is to be noted that the writ petitioner was retired from service and the present writ petition is filed after becoming pensioner and claiming the service benefits pertaining to the year 1988.

10. In view of the order (cited *supra*), this Court is of the opinion that the petitioner is not entitled for the relief as such sought for in the present writ petition and liable to be rejected.

11. Accordingly, the Writ petition stands dismissed. No costs.

28.11.2022

Jeni
Index : Yes
Speaking order



W.P.No.23786 of 2

To

- 1.The Secretary,
School Education Department,
State of Tamil Nadu
Fort St. George,
Chennai – 600 009.
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W.P.No.23786 of 2



S.M.SUBRAMANIAM, J.

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