



W.P.(MD)No.13256 of 2013

WEB COPY

***BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT***

|                             |                               |
|-----------------------------|-------------------------------|
| <i>Judgment Reserved On</i> | <i>Judgment Pronounced On</i> |
| <b>10.10.2022</b>           | <b>16.12.2022</b>             |

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

**W.P.(MD)No. 13256 of 2013**  
**and M.P.(MD)No.2 of 2013**

1. K.Suseela
2. S.Arulmary
3. M.Kulandaisamy
4. C.Lakshmi
5. K.Rajamanickam
6. K.R.Surendran
7. R. Ramahandran

... Petitioners

vs.

1. The State of Tamil Nadu,  
represented by its Principal Secretary to Government,  
Education Department,  
Secretariat, Chennai.
2. The Director of School Education,  
(Higher Secondary),  
College Road, Chennai – 6.

... Respondents



W.P.(MD)No.13256 of 2013

WEB COPY

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, to call for the records of G.O (Ms) No. 69 school Education (M1) Department dated 18.04.2013 issued by the 1st Respondent and quash the clauses 6 (ii), 6 (iii) and 6 (iv) as arbitrary and illegal and to consequentially direct the respondents to extend the benefits of G.O. Ms. No. 216, Finance (PC) Department, dated 22.03.1993 in the light of the orders passed by the Hon'ble Division Bench of this Court in W.P. (MD) No. 99713 of 2011 and batch., and accordingly to award selection/ special grade scale of pay with effect from 01.06.1988 and revision of pension benefits to them.

For Petitioners : Mr. Arul Vadivel @ Sekar

For Respondents : Mr.C.Baskaran  
Government Advocate (Civil Side)

### **ORDER**

This Writ Petition has been filed for issuance of Writ of ***Certiorarified Mandamus***, to quash the clauses 6 (ii), 6 (iii) and 6 (iv) in G.O.Ms.No.69 school Education (M1) Department, dated 18.04.2013 issued by the 1<sup>st</sup> Respondent and also sought for a consequential direction to the respondents to extend the benefits of G.O.Ms.No.216, Finance (PC) Department,



W.P.(MD)No.13256 of 2013

WEB COPY

dated 22.03.1993 in the light of the orders passed by the Hon'ble Division Bench of this Court in W.P. (MD) No. 99713 of 2011 and its batch., and accordingly to award selection / special grade scale of pay, with effect from 01.06.1988 and revision of pension benefits to the petitioners.

2. The contention of the petitioners is that they were appointed in the Secondary Grade Teacher post on various dates, as stated in the tabulation below:

| Sl. No. | Name            | Date of joining service | Date of selection grade | Date of special grade | Date of retirement |
|---------|-----------------|-------------------------|-------------------------|-----------------------|--------------------|
| 1.      | K. Suseela      | 02.12.1975              | 02.12.1985              | 02.12.1995            | 30.09.2005         |
| 2.      | S.Arulmary      | 01.07.1957              | 01.04.1974              | 01.06.1981            | 31.12.1995         |
| 3.      | M.Kulandaisamy  | 02.07.1957              | 01.04.1971              | 10.06.1981            | 31.01.1993         |
| 4.      | C.Lakshmi       | 22.01.1974              | 01.04.1984              | 01.04.1994            | 31.03.2010         |
| 5.      | K. Rajamanickam | 19.01.1984              | 18.01.1994              | 18.01.2004            | 31.01.2008         |
| 6.      | K.R.Surendran   | 30.06.1972              | 30.10.1982              | 07.05.1990            | 31.07.2007         |
| 7.      | R.Ramachandran  | 20.08.1979              | 20.08.1989              | 20.08.1999            | 30.12.2007         |

3. The contention of the petitioners is that, they belong to the same category of Secondary Grade Teachers and they are entitled to the benefit of



W.P.(MD)No.13256 of 2013

WEB COPY

G.O.Ms.No.216, Finance (PC) Department, dated 22.03.1993, in the light of the order passed by the Hon'ble Division Bench of this Court in W.P.(MD)No.9713 of 2011 and batch, dated 20.12.2011. Therefore, the respondents ought not to have passed the G.O.Ms.No.69 School Education (M1) Department, dated 18.04.2013, especially, clauses 6(ii), 6(iii) and 6(iv) and hence, the same is illegal. The petitioners have completed 20 years of service as secondary grade teachers. The contention of the petitioners is that they have completed 20 years of service and therefore, they are entitled to selection grade, special grade and after competition of 10 years and 20 years of service, respectively. Since the same was not granted by the respondents, these petitioners are before this Court by way of filing this writ petition.

4. These petitioners have relied on several various litigations filed by the other persons. Since the petitioners are similarly placed persons, now they are claiming the said benefits.

5. The respondents have not filed the counter. The Learned Government Advocate relied on the impugned order and submitted that in



W.P.(MD)No.13256 of 2013

WEB COPY

G.O.Ms.No.69 School Education (M1) Department, dated 18.04.2013 certain conditions were imposed for granting the benefits. The petitioners are not fulfilling those conditions and hence they are not entitled to. Hence, the respondents have rejected the claim of the petitioners. Since the petitioners are not entitled to the same and the respondents prayed to reject the writ petition.

6. Heard Mr. Arul Vadivel @ Sekar, the Learned Counsel appearing for the petitioner and Mr.C.Baskaran, learned Government Advocate (Civil Side), appearing for the respondents. Perused the material documents available on record.

7. From the tabulation as stated above, it has admitted by the petitioners themselves that they have joined service as Secondary Grade Teachers and has retired from service as Secondary Grade Teachers itself. All the petitioners were granted Selection Grade and Special Grade in the post of Secondary Grade Teachers. However, the claim of the petitioners is that, they ought to be granted Selection Grade and Special Grade applicable to the post of Primary School Headmaster. The petitioners have not served even a single day in



W.P.(MD)No.13256 of 2013

WEB COPY

the post of Primary School Headmaster. Since the petitioners were not granted the promotion post of Primary School Headmaster and the petitioners were stagnating in the Secondary Grade Teachers post, the petitioners were granted Selection Grade and Special Grade in the post of Secondary Grade Teachers. In such circumstances, the claim of the petitioners is absolutely illegal. Without serving in the post of Primary School Headmaster, these petitioners are not entitled for Selection Grade and Special Grade applicable to the post of Primary School Headmaster.

8. The concept of granting Selection Grade and Special Grade are elaborately dealt with by this Court in W.P.(MD)No.3186 of 2016 and 3186 of 2016, wherein it has been held as under:

*“This issue was dealt elaborately in a similar case rendered in W.P.(MD) No. 3186 / 2016 vide order dated 21.01.2022 and the relevant portion is extracted hereunder:*

*“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*



W.P.(MD)No.13256 of 2013

WEB COPY

*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,*



W.P.(MD)No.13256 of 2013

WEB COPY

*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 / special grade in G.O. 1381 was quashed and the benefit already disbursed*



W.P.(MD)No.13256 of 2013

WEB COPY

*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*



W.P.(MD)No.13256 of 2013

WEB COPY

*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 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



W.P.(MD)No.13256 of 2013

WEB COPY

*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 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**



W.P.(MD)No.13256 of 2013

WEB COPY

*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. 270** School Education (G2) Department dated 20.09.2010, **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 20.09.2010 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.O.s*

*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.*



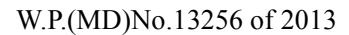
W.P.(MD)No.13256 of 2013

WEB COPY

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 / 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*



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*



W.P.(MD)No.13256 of 2013

WEB COPY

*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. Therefore for the issue “whether the petitioner is eligible to get selection grade and special grade, even after promoted to the promotion post”, this Court is of the definite opinion that “the claim is illegal and unjust enrichment”.*

*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 selection grade itself is wrong, since the petitioner was already promoted as Middle School HM on*



W.P.(MD)No.13256 of 2013

WEB COPY

*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 for the issue “whether the petitioner is eligible to get selection grade and special grade, even after promoted to the promotion post”, this Court is of the definite opinion that “the claim is illegal and unjust enrichment”.*

*22. 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*



W.P.(MD)No.13256 of 2013

WEB COPY

*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 killed 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.***

*23. For the reasons stated above the writ petitioners are not entitled to the benefits of the G.O. 210 dated 14.08.2009 and the writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.”*

In the present case the petitioners are seeking to grant Selection Grade and Special Grade in the Primary School HM post, but the petitioners did not serve as Primary School HM at all. Moreover, the petitioners were granted Selection Grade and Special Grade in the post of Secondary Grade Teachers post. Hence the petitioners are not entitled to the Selection Grade and Special Grade for the post of Primary School HM post.



W.P.(MD)No.13256 of 2013

WEB COPY

**9.** The petitioners are claiming the benefits based on the G.O. Ms. No. 1381, which is already cancelled vide order passed in O.A. No. 2899, 3009 and 3010 of 1989 by the Tribunal. Based on the said order of the Tribunal the Government had passed G.O. Ms. No. 300, thereby cancelled the earlier G.O.Ms.No.1381. Now the petitioners are seeking their claim, based on the cancelled G.O. and several similarly placed persons are claiming same benefits through the cancelled G.O., Hence, the petitioners are not entitled to claim any benefits, based on the cancelled G.O., since the said G.O. was cancelled by the Tribunal. Since these petitioners were already granted Selection Grade, Special Grade in the post of Secondary Grade Teachers, the petitioners are not entitled to Selection Grade, Special Grade, for the post of Primary School Headmaster. Therefore, this writ petitions cannot be entertained and the same is liable to rejected.

**10.** Accordingly, this Writ Petitions stand dismissed. No Costs. Connected MP is closed.

Index : Yes / No

**16.12.2022**



W.P.(MD)No.13256 of 2013

WEB COPY

Internet : Yes  
ksa

To

1. The Principal Secretary to Government,  
State of Tamil Nadu,  
Education Department,  
Secretariat, Chennai.
2. The Director of School Education,  
(Higher Secondary),  
College Road, Chennai – 6.



WEB COPY



W.P.(MD)No.13256 of 2013

**S.SRIMATHY, J**

ksa

**Order made in**  
**W.P.(MD)No. 13256 of 2013**

***16.12.2022***