



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.9815 of 2019

S.Simhachalam

... Petitioner

-vs-

1.The Government of Tamil Nadu,
Rep., by its Secretary,
Department of School Education,
Fort St. George, Secretariat, Chennai-600 009.

2.The Director of Elementary Education,
D.P.I.Campus, College Road,
Nungambakkam, Chennai-600 006.

3.The District Educational Officer,
Nagercoil, Kanyakumari District.

4.The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.

5.The Accountant General,
(Accounts & Entitlements)
No.259, Anna Salai,
Block No.3, 2nd Floor,
D.M.S.Compound, Chennai-600 018.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.000134/E2/2017, dated 17.03.2017 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the respondents to provide selection grade of pay in the post of Middle School Headmaster with the effect from December, 1989 and Special Grade Scale of pay from December, 1999 within the time stipulated by this Court.

For Petitioner : Mr.S.Louis
For RR1 to 4 : Mr.V.Om.Prakash,
Government Advocate
For R5 : No appearance



O R D E R

The order dated 17.03.2017 passed by the 2nd respondent is sought to be quashed in the present writ petition.

2.The direction sought for is to sanction and award Selection Grade of Pay in the post of Middle School Headmaster with effect from December, 1989 by extending the benefit of G.O.(Ms) No.210, School Education Department, dated 14.08.2009.

3.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 he 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 petitioner 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 Government Advocate appearing on behalf of respondents 1 to 4 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 in the same post without promotion for 10 years and entitled to "special grade" if the person is stagnating in the same post without promotion for 20 years. The G.O. Ms. No. 666 Finance (Pay Commission) dated 27.06.1989 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



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 / 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 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 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 / 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 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.

11. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Deputy Registrar (A/c)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

abr

To

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

2. The Director of Elementary Education,
D.P.I. Campus, College Road,
Nungambakkam, Chennai-600 006.

3. The District Educational Officer,
Nagercoil, Kanyakumari District.

4. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.

+1 CC to M/s. SPL GP (SR-6778[F] dated 17/02/2022)

W.P. (MD) No.9815 of 2019

16.02.2022

SAR(CO)

GC(03.03.2022) 9P 6C