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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.01.2022

Pronounced on : 18.03.2022

CORAM

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

W.P.(MD)No.10812 of 2016

Dorairajan

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Secretariat of Education Department,
St. George Fort, Chennai.

2.The Director,
The Directorate of School Education,
Directorate of School,
College Road, Chennai- 6.

3.The Chief Educational Officer,
Karur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, to declaring that the Para 7 (3) of G.O.Ms.No.62, dated 09.03.2015, is unconstitutional and to consequently extend the benefit of G.O.Ms.No.62, to all the special teachers working under the respondents.

For Petitioner : Mr.S.Jayavel

For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Declaration, to declaring that the Para 7 (3) of G.O.Ms.No.62, dated 09.03.2015, is unconstitutional and to consequently extend the benefit of G.O.Ms.No.62, to all the special teachers working under the respondents.

2.The petitioner was appointed as Special Teacher Drawing on 18.07.1978. The petitioner has attained superannuation on 30.09.2009. The claim of the petitioner is that the Special Teachers are equivalent to Secondary Grade Teacher and the Secondary Grade Teachers were awarded Selection Grade and Special Grade in the post of Primary School Headmaster, under G.O.Ms.No.216, dated 22.03.1993.



The Government issued revised pay scale in G.O.Ms.No.62, Finance (CMPC) Department, dated 09.03.2015, has not granted any revision on pay to the Special Teachers. Therefore, the petitioner is seeking to quash the G.O.Ms.No.62, in so far as para 7 (3) of the said G.O.

3. The third respondent has filed a counter affidavit stating that the petitioner was appointed as Drawing Teacher at 18.07.1978. The petitioner was continuing as a Special Teacher Drawing without any promotion and therefore, the petitioner was granted Selection Grade on 19.07.1988 and then Special Grade on 19.07.1998. Thereafter, the petitioner attained superannuation on 30.09.2009, while she was working in Higher Secondary School, Thanthonimalai. The respondents have stated that on the recommendations of the Tamil Nadu 5th Pay Commission, a scheme of awarding Selection Grade and Special Grade was granted to the incumbent already moved or entitled to move those grades before the issuance a G.O.Ms.No.666, Finance (Pay Cell) Department, dated 27.06.1989 and they were allowed to revise the scale of pay as indicated in Appendix VII. Thereafter, the Government noticed that the Selection Grade levels were not uniform in the pre-revised pattern of placing the existing incumbents in Selection Grade on the immediate higher scale above that of the ordinary grade fixed in the revised pay structure and the Special Grade levelled immediately above that of the Selection Grade and it was also decided to extend Selection Grade and Special Grade to all the categories of posts in the scale of pay of Rs.750-945 and above up to the scale of pay of Rs.2500-4200.

4. Prior to the introduction of 5th pay commission, the post of Headmaster Primary School was not considered as a promotional post and the pay scale for Secondary Grade Teacher and the Primary School Head Master was same with an additional special allowance of Rs.5/- and Rs.10/- p.m. for the Primary School Headmaster. After the 5th Pay Commission, the Primary School Headmaster was considered as promotional post and a separate pay scale was fixed. The Government Office Assistant and Basic Servants Association, filed a petition in the Tamil Nadu Administrative Tribunal in O.A.No.1625 of 1991, wherein it was observed that the post of Record Clerk is not an avenue of promotion for Office Assistants for the reason, that only persons with prescribed qualification are appointed by transfer for the post of Record Clerk. The Tribunal has therefore, decided the para-4 of G.O.Ms.No.304, Finance (P.C) Department, dated 28.03.1990 is illegal and based on the directions of the tribunal the Government had examined and orders were issued in G.O.Ms.No.216, Finance Department, dated 22.03.1993, to protect certain special categories in the matter of awarding Selection Grade.



5. The contention of the respondents is that in G.O.Ms.No.216, nowhere it is stated that the Secondary Grade Teachers employed in High Schools or Higher Secondary Schools were also eligible for the scale of pay on par with the scale of pay in promotional post in Primary Schools under administrative control of the Directorate of Elementary Education. The petitioners were appointed as Secondary Grade Teacher in High School / Higher Secondary Schools under the Directorate of School Education and they are not entitled to the benefit the G.O.Ms.No.216, Finance Department, dated 22.03.1993, because the Teachers under the control of Director of School Education were having the avenue of promotion as B.T. Assistant and P.G. Assistant post, on the qualification as well as promotion to the post of High School and Higher Secondary School Headmasters and thereafter, District Educational Officer post on the seniority as well as according to the vacancies available in the Department. The Primary School Headmaster post is not available in High School and Higher Secondary School and therefore, the persons working in Secondary Grade Teacher in High School or Higher Secondary Schools like that of the petitioner cannot claim to place on par with the Primary School Headmaster. The said issue was already decided by the Administrative Tribunal in its judgment, dated 03.04.2002 in O.A.No.88, etc. and batch of 1996 filed by **S.Vanasundari and others vs the Director of School Education**. The Tribunal has held as follows:

"As already stated, we are not concerned with the case, where the applicants are similarly placed like the Secondary Grade Teachers in Elementary Schools. They are serving in different kinds of schools in different service, though the designation is same, when there is scope of promotion is one service, they cannot be treated on par with the Teachers employed in the other service. It is not as if somebody compelled them to enter into a particular service, where promotional opportunities are nil.

If they choose to enter into one service, they do so knowing about the service conditions in the said service.

As already stated even though there is no direct promotion to Secondary Grade Teachers in High Schools, there is scope for acquiring higher qualification to aspire for promotion posts.

For the foregoing reasons, I am of the view that the applicants are not entitled to succeed. Therefore, all the original applications are dismissed."



6. Therefore, the contention of the respondents is that the petitioner is not entitled to pay fixation of Selection Grade and Special Grade in the post of Primary School Headmaster.

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7. Heard Mr.S.Jayavel, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents and perused the materials on record.

8. The petitioner submitted that the issue is considered by the Full Bench of this Court, in R.A.No.227 of 2015 reported in (2017) 2 MLJ 257 (FB), where the Full Bench has been held that the benefits shall be calculated notionally and the monetary benefits shall be granted from 01.03.2017 and any writ petitions filed after 09.12.2016 shall not be entertained.

9. On perusal of the records it is seen that the petitioner was appointed as a Special Teacher Drawing in the year 1978. Since the Special Teachers are not considered for promotion, the Government has come forward to grant monetary benefits, if any person is stagnating at the same post for more than 10 years then they are eligible for Selection Grade and if they are stagnating for more than 20 years, they will be eligible for Special Grade. Admittedly, the petitioner was serving as a Special Teacher Drawing who is drawing a pay scale applicable to a Secondary Grade Teacher. The concept of awarding Selection Grade and Special Grade was withdrawn to G.O.Ms.No.666, Finance (Pay Cell) Department, dated 27.06.1989, since several representations were received by the Government. The Government has introduced the granting of Selection Grade and Special Grade through G.O.Ms.No.304, Finance (P.C) Department, dated 28.03.1990. The respondents have rightly granted the Selection Grade and Special Grade in the post of Secondary Grade Teacher to the petitioner in the year 1988 and 1998 respectively. The claim of the petitioner is that since the petitioner was not promoted as Primary School Headmaster, the petitioner is eligible to a pay fixation as applicable to the Primary School Headmaster, which is totally misconceived. So, the Government has issued G.O. Ms. No. 1381 Education Department dated 05.10.1990, wherein, it has been clearly stated that the persons who have been working as Secondary Grade Teacher and also has served Primary School Headmaster prior to 01.06.1988 will be considered for granting Selection Grade by calculating the service rendered as Secondary Grade Teacher and Primary School Headmaster. However, the Teachers who are not benefitted under G.O.No.1381 has challenged the said G.O. and the Tribunal has set aside the said G.O. stating that the qualification under G.O.No.1381 is illegal.



10. Therefore, the Government issued G.O. Ms. No. 300 Education, Science and Technology Department dated 07.04.1994, wherein the benefits granted under G.O.No.1381 was set aside and it was ordered for recovery also. The petitioner has never served as Primary School Headmaster at all. Therefore, the petitioner can never claim any pay fixation applicable to Primary School Headmaster post. On perusal of G.O.Ms.No.216, Finance Department, dated 22.03.1993, it is very clear that the persons who have served as a Secondary Grade Teacher have no promotional avenues, and they are eligible for Selection Grade and Special Grade. Since the Special Teacher Drawing is not eligible for promotion as Primary School Headmaster, the respondents have rightly granted Selection Grade and Special Grade in Secondary Grade post to the petitioner.

11. The contention of the petitioner that since the petitioner was not promoted as a Primary School Headmaster, the Selection Grade and Special Grade ought to have been fixed to the post under Primary School Headmaster is erroneous and it is totally misconceived, unjust enrichment and the petitioner is not entitled to.

12. Therefore the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

- 1.The Secretary,
Secretariat of Education Department,
St. George Fort, Chennai.
- 2.The Director,
The Directorate of School Education,
Directorate of School,
College Road, Chennai- 6.
- 3.The Chief Educational Officer,
Karur.

+1 CC to M/s.SPL GP (SR-13208[F] dated 21/03/2022)

+1 CC to M/s.S.JAYAVEL, Advocate (SR-13434[F] dated 22/03/2022)

Order made in
W.P. (MD) No.10812 of 2016
18.03.2022

SS/25.03.2022 : 6P/6C