



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.01.2022

Pronounced on : 17.02.2022

CORAM

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

W.P. (MD)No.877 of 2017

V.Karuppiah ... Petitioner

vs.

1.The District Elementary Educational Officer,
Tuticorin District, Tuticorin.

2.The Additional Assistant Elementary
Education Officer,
Vilathikulam, Tuticorin District.

... Respondents

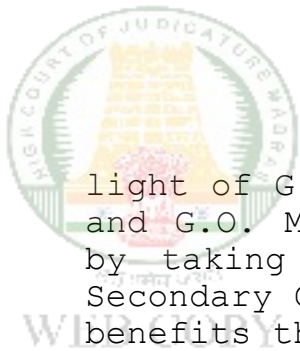
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 2nd respondent in Na.Ka.No.170/A2/16, dated 02.03.2016 and to quash the same as illegal and consequently to direct the respondents to grant the petitioner Special /Selection Grade in the post of Primary School Head Master in the light of G.O.Ms.No.207, School Education Department, dated 30.09.2008 and G.O.(Nilai)No.234, School Education Department dated 10.09.2009, by taking into account of his service rendered in the post of Secondary Grade Assistant and to pay him the monetary and pensionary benefits thereon.

For Petitioner : Mr.M.Jerin Mathew
for Mr.M.E.Ilango

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the 2nd respondent in Na.Ka.No.170/A2/16, dated 02.03.2016 and consequently to direct the respondents to grant the petitioner Special / Selection Grade in the post of Primary School Head Master in the



light of G.O.Ms.No.207 School Education Department, dated 30.09.2008 and G.O. Ms. No.234, School Education Department dated 10.09.2009, by taking into account of his service rendered in the post of Secondary Grade Assistant and to pay him the monetary and pensionary benefits thereon.

2.The brief facts of the case are that the petitioner was initially appointed as Secondary Grade Teacher on 01.03.1982 and the service was regularized on 02.03.1982, then completed the probation on 01.03.1984. The petitioner was granted Selection Grade in the post of Secondary Grade Teacher on 02.03.1998. Thereafter, the petitioner was promoted as Elementary School Head Master on 17.01.1997 and again promoted as Middle School Head Master on 01.06.2000. The petitioner has attained superannuation on 30.06.2005.

3. The first respondent has filed counter affidavit stating that the petitioner was appointed and regularized on 02.03.1982 and has completed his probation on 01.03.1984. He worked as a Secondary Grade Teacher until 16.07.1997. Thereafter, the petitioner was promoted as Primary School Head Master from 17.07.1997. The petitioner is claiming the benefits under G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008 and G.O.Ms.No.234, School Education (G2) Department, dated 10.09.2009. The contention of the respondents is that since the petitioner has not served as Primary School Head Master as on 01.06.1988, the petitioner is not entitled to the benefits of G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008 and G.O.Ms.No.234, School Education (G2) Department, dated 10.09.2009. The contention of the respondents that if the petitioner was again promoted as Middle School Head Master from 01.06.2000, the petitioner is claiming the benefits of G.O.No.210, School Education (G1) Department, dated 14.08.2009, G.O.No.190, School Education (G1) Department, dated 12.07.2010 and G.O.No.146, School Education (G1) Department, dated 19.06.2012. The petitioner is not entitled to these three G.O.s. Since as on 01.06.1988, the petitioner was not at all promoted as Middle School Head Master. A person who was serving as Middle School Head Master as on 01.06.1988 alone are entitled to the said G.O.s. Since the petitioner was promoted on 01.06.2000, the petitioner is not entitled to the benefits on the said three G.O.s.

4. Heard Mr.M.Jerin Mathew, learned Counsel appearing for the petitioner and Mr.D.Sachi Kumar, learned Additional Government Pleader appearing for the respondents.

5. The grievance of the petitioner is that he was not granted Selection Grade and Special Grade on completion of 10 years and 20



years by calculating the service of Secondary Grade Teacher + Primary School HM + Middle School HM posts. 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 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 27.06.1989 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 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 / 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. 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.

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. 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 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 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."

6. The petitioner's appointment was regularized on 02.03.1982 as Secondary Grade Teacher. The petitioner is entitled to Selection Grade on 02.03.1992. However, the respondents have granted Selection Grade in the post of Secondary Grade Teacher on 02.03.1998. Then, the petitioner was promoted as Primary School Head Master even prior to the granting of Special Grade, i.e., on 17.07.1997. Thereafter, the petitioner was promoted as Middle School Head Master on 01.06.2000. Now, the petitioner is claiming to grant Selection Grade and Special Grade in the post of Middle School Head Master by calculating the entire service as Secondary Grade post, then in Primary School Head Master post and Middle School Head Master and fix the special grade in the post of Middle School Headmaster. The concept of granting Selection Grade and Special Grade is when a person is stagnating in a post without promotion for more than ten years, the person will be entitled to Selection Grade. Likewise, if the petitioner is stagnating in a same post for more than twenty years without any promotion, then, the person will be entitled to Special Grade Pay. Admittedly, in the present case the petitioner was serving as a Secondary Grade Teacher for more than ten years and the respondents have rightly granted the Selection Grade in the post of Secondary Grade Teacher post. Now, the petitioner is seeking Selection Grade / Special Grade in the post of Middle School Head Master by calculating the Secondary Grade Post and the Primary School Headmaster post. Once, the petitioner is granted any promotion, then there is no question of any stagnation in a post and therefore the petitioner is not entitled to Selection Grade / Special Grade. The petitioner is relying on certain G.O.s and those G.O.s were passed in order to comply with the orders of the Court and in order to avoid contempt. The employee is eligible for Selection Grade/Special Grade, if they are not promoted and stagnating in the same post. Once promoted the employee is not entitled to any Selection Grade / Special Grade. In other words, **the employee is entitled to either Selection Grade / Special Grade or promotion and not both.** The prayer of the petitioner is misconceived and if the claim is granted it is totally unjust enrichment.



7. Therefore, the petitioner is not entitled to Selection Grade in the post of Middle School Head Master by calculating the entire service of Secondary Grade Teacher and Primary School Headmaster post. And the writ petition is liable to be dismissed. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2022

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 District Elementary Educational Officer,
Tuticorin District, Tuticorin.

2.The Additional Assistant Elementary
Education Officer,
Vilathikulam, Tuticorin District.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-6730[F] dated 17/02/2022)

+1 CC to M/s.SPL GP (SR-7098[F] dated
18/02/2022)

Order made in
W.P. (MD) No.877 of 2017
17.02.2022

MGJ(03.03.2022) 10P 5C