



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.14408 of 2016

and

W.M.P. (MD)No.10670 of 2016

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K.Chidambaram ... Petitioner

vs

1. The Director of Elementary Education,
College Road, Chennai 600 006

2. The District Elementary Educational Officer,
Trichy District.

3. The Additional Assistant Elementary Educational Officer,
Musiri, Trichy 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 entire records which culminated in passing the order in proceedings Na.Ka.No.3242/D4/2016 signed on 22.04.2016 on the file of the second respondent, quash the same and consequently, direct the respondents to award selection grade/special grade to the petitioner in the cadre of Elementary School Headmaster within a time to be stipulated by this Court.

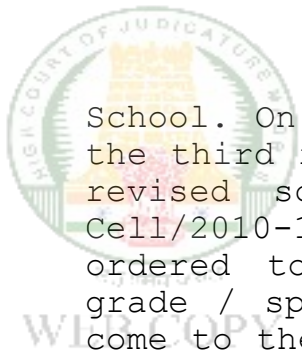
For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.V.Omprakash
Government Advocate (Civil side)

O R D E R

This Writ Petition is filed to quash the impugned order, dated 22.04.2016 and consequently, direct the respondents to award selection grade / special grade to the petitioner in the cadre of Elementary School Headmaster.

2. The brief facts of the case are that the petitioner was appointed as Secondary Grade Assistant on 21.07.1988. While the petitioner was working, he acquired B.A., English and B.Ed., as further qualification. On completion of ten years of service in the cadre of Secondary Grade Assistant, the petitioner was conferred with selection grade on 21.07.1998. On 18.06.2001, the petitioner was promoted as Primary School Headmaster. On 27.11.2006, the petitioner was conferred with further promotion to the post of B.T., Assistant. On 02.06.2008, the petitioner was promoted to the post Headmaster of Middle School and posted in the Panchayat Union Middle



School. On 04.01.2014, the petitioner submitted a representation to the third respondent and requested to fix the pay scale in the pre-revised scale in the light of Government Letter No.63305/Pay Cell/2010-1 dated 08.11.2010. In the Government letter, it was ordered to revise the scale of pay who were awarded selection grade / special grade between 2006-2009. If the above letter has come to the effect, the petitioner's scale of pay ought to be fixed in the pay band of Rs.15,600-39,100+5,400 (GP). Since the petitioner was on the promotional ladder, he could not get higher scale of pay or re-fixation to pay as per the Government letter referred to above, whereas the petitioner's juniors are getting higher pay than the petitioner. The petitioner's representation was returned by stating that only after completion of ten years of service in the cadre of Headmaster Primary School, the petitioner will be entitled to the selection grade. Against which the petitioner has preferred an appeal to the second respondent and the second respondent remitted back to the third respondent and directed him to pass appropriate orders on the basis of the Government orders in force. The third respondent again rejected, vide order, dated 25.11.2014. The petitioner submitted a representation, dated 05.07.2014 to the second respondent for protecting his pay in as much as the scale of pay revised in the promotional post is lesser than the one which the petitioner received in the lower post. The petitioner placed reliance to Rule 4 (3) of the Pay Commission Rules and requested to step up the pay. Since the petitioner's representation was not considered, the petitioner has preferred a writ petition in W.P.(MD) No.43 of 2016 and this Court, vide order, dated 03.02.2016 directed the respondents to pass orders. Pursuant to such direction, the second respondent passed the impugned order dated 22.04.2016.

3. The third respondent has filed a counter affidavit stating that the petitioner was promoted periodically. Therefore, there is no question of granting selection grade / special grade. The petitioner relied on the Government letter, dated 08.11.2010. As per the Government letter, it was ordered that the revised scale of pay of the employers who were awarded selection grade / special grade between 2006-2009. As per the above said Government letter, in "Note" it has been stated as under:

"Note: the above Selection Grade/Special Grade scales of pay indicated above takes notional effect from 01.01.2006 with monetary benefit from 01.01.2007 and is applicable only to employees awarded Selection Grade / Special Grade prior to 01.01.2006 and employees who have opted for revised scale of pay on a subsequent date after 01.01.2006 i.e., on date of selection Grade/Special Grade and in whose cases their ordinary Grade scales of pay have been revised further based on the recommendations of one Man Commission / further Government orders". The petitioner was not awarded prior to 01.01.2006. The petitioner not to be



fixed in the pay band of Rs.15,00-39,100+5,400 (GP)".

Hence the respondents prayed to dismiss the writ petition.

4. Heard Mr.V.Panner Selvam, learned Counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for the respondents.

5. It is seen from the records that the petitioner was appointed in various post as under:

ஆசிரியரின் பணி சார்பான விவரங்கள்

வ.எண்.	பணிசார் விவரம்	தேதி
1	முதன் முதலாக இடைநிலை ஆசிரியராகப் பணி நியமனம் பெற்ற நாள்	21.07.1988
2	இடைநிலை ஆசிரியர் பணியில் தேர்வு நிலை பெற்ற நாள்	21.07.1998
3	தொடக்கப் பள்ளி தலைமையாசிரியர் பதவி உயர்வு பெற்ற நாள்	18.06.2001
4	(ஆங்கில) பட்டதாரி ஆசிரியராகப் பதவி உயர்வு பெற்ற நாள்	27.11.2006
5	நுடநிலைப் பள்ளி தலைமையாசிரியராகப் பதவி உயர்வு பெற்ற நாள்	02.06.2008

6. The Selection/Special Grade are granted if any employees are stagnating in the same post for more than ten years/twenty years. In the present case, the petitioner joined the service on 21.07.1988 as Secondary Grade Assistant. Therefore, the respondents have rightly conferred the Selection Grade on 21.07.1998. Thereafter, the petitioner was promoted as Primary School Headmaster on 18.06.2001. If the petitioner continued under Secondary Grade Teacher then he would have got the Special Grade on 21.07.2008. Since the petitioner was promoted as Primary School HM in the year 2001, he was not conferred with Special Grade in the Secondary Grade Assistant post.

7. The petitioner was promoted as Primary School HM in the year 2001, but the again the petitioner was promoted as B.T. Assistant on 27.11.2006. If the petitioner had continued in the Primary School Headmaster post then he would have been granted the post of Selection Grade on 18.06.2011. Likewise, the petitioner again conferred with the promotion to the post of Middle School Headmaster on 02.06.2008. Since the petitioner was **"not stagnating"** in any post, he was not entitled to Selection Grade/Special Grade subsequently.

8. This Court has considered regarding the issue of Selection Grade/Special Grade elaborately in W.P.(MD)No.3186 of 2016 and the same 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



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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



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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.

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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

<https://hcservices.ecourts.gov.in/hcservices> 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



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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.

9. Hence the petitioner is not entitled to the selection grade and special grade since the petitioner was granted promotion periodically. Since the petitioner was not conferred any selection grade and special grade prior to 01.01.2006 in the post of Primary School Headmaster and therefore this Court is of the considered opinion the petitioner is not entitled to the benefits as stated in the Government Letter No.63305/Pay Cell/2010-1 dated 08.11.2010 and the claim of the petitioner is rejected.

10. *"The Pay anomaly among the employees can be rectified only if the petitioner is claiming with another Teacher, if both are on the same cadre and the same post"*. In this case, the petitioner has not compared with anyone. Therefore, the same cannot be considered. For these reasons, the writ petition is devoid of merits.

11. Hence the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)



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.

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To

1. The Director of Elementary Education,
College Road, Chennai 600 006
2. The District Elementary Educational Officer,
Trichy District.
3. The Additional Assistant Elementary Educational Officer,
Musiri, Trichy District.

+1 CC to M/s.SPL GP (SR-13938[F] dated 23/03/2022)

W.P. (MD)No.14408 of 2016

22.03.2022

RD(24.05.2022) 10P 5C