



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.2899 of 2016

Saraswathy

:Petitioner

..VS..

1.The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai -9.

2.The Principal Accountant General (A & E),
Tamil Nadu, Chennai -18.

3.The Director of Elementary Education,
DPI Campus, Chennai -6.

4.The Additional Assistant Elementary Educational
Officer, Nanguneri, Tirunelveli District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Mandamus directing the respondents to grant selection / special grade in the post of Headmaster of Elementary School by counting entire service rendered prior to 1.6.1988 with all consequential benefits including payment of arrears, allowances and are-fixation of pension on that basis and payment of arrears flowing there from within stipulated time as may be fixed by this Court as per G.O.Ms.No.234, School Educational (G2) Department, dated 10.09.2009.

For Petitioner : M/s. T. Ebenezer

For R1, R3 and R4 : Mr. D. Farjana Ghoushia
Special Government Pleader

For R2 : Mr. P. Gunasekaran



O R D E R

This Writ Petition has been filed for issuing a direction to the respondents to grant selection / special grade in the post of Headmaster of Elementary School by counting entire service rendered prior to 1.6.1988 with all consequential benefits including payment of arrears, allowances and are-fixation of pension on that basis and payment of arrears flowing there from within stipulated time as per G.O. Ms. No.234, School Educational (G2) Department, dated 10.09.2009.

2. The petitioner was appointed as Secondary Grade Teacher on 06.04.1966 in Panchayat Union Primary School. Thereafter, he was sanctioned Selection Grade on 06.04.1976 and obtained Special Grade on 06.04.1986. Thereafter, the petitioner was promoted as Elementary School Headmistress on 18.06.1991 and retired from service on 29.02.2004. The contention of the petitioner is since the Primary School Headmaster and the Secondary Grade Teacher was having same scale of pay before 01.06.1988, the promotions to the post of Primary School Headmaster were not made on seniority basis and hence, the juniors irrespective of seniority had the post of Headmaster. In 5th pay commission the Primary School HM was considered as promotion post and higher pay scale was granted from 01.06.1988 and the juniors promoted as Headmaster were made eligible to get Selection and Special Grade in the post of Headmaster. The issue was challenged before the Administrative Tribunal and the Court has directed to count the entire period of service of the Secondary Grade Teachers and Headmaster before 01.06.1988 and to award selection /special grade in the post of Headmaster. The Government in G.O.Ms.No.234 School Education Department dated 10.09.2009 granting benefits to 63 persons. Since the petitioner falls under the same category, she is seeking to confer the same benefits on the petitioner.

3. The respondents have filed counter stating the petitioner has already been conferred with Selection Grade and Special Grade in the post of Secondary Grade Teachers post. Thereafter, the petitioner was promoted as Primary School Headmaster on 18.06.1991. When the petitioner was promoted as Headmaster in the year 1991, the claim of the petitioner is to grant Selection Grade in the post of Primary School Headmaster from 06.04.1976 itself is meaningless especially when the petitioner has become Headmaster in the year 1991 that too without holding the post of Primary School Headmaster prior to 1991. The petitioner was granted Special Grade in the post of Primary School Headmaster from the date of her appointment as Primary School HM from 18.06.1991 as per G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008 in R.C. No.948/A1/2015, dated 15.06.2015 of the Additional Assistant



Elementary Educational Officer, Nanguneri and her pay was fixed at Rs.2000/- on 18.06.1991 in the Special Grade Scale of pay of the post of Headmaster Primary School being 2000-60-2300-75-3200 and her annual increments regulated accordingly. Thereafter, from 01.01.1996 the petitioner's pay was refixed in Special Grade with Primary School Headmaster being 8000-275-13500 and her annual increments regulated accordingly till 01.10.2003. Based on the above refixation and regulation of pay of the petitioner in the post of Special Grade Headmaster, Primary School, her retrial benefits were revised by the Accountant General, Madras vide P16 /3 / REV / 11617373 PPO No.C131900/168 dated 27.08.2015 and the same is paid to the petitioner. As such what are all due to the petitioner was already paid and nothing more is due to the petitioner. Under the circumstances, the present Writ Petition is misconceived and the respondents prayed to dismiss the writ petition.

4. Heard Mr. T. Ebenezer the Learned Counsel appearing for the petitioner, Mrs. D. Farjana Ghoushia, the Learned Special Government Pleader appearing for the respondents 1, 3 and 4 and Mr. P. Gunasekaran Learned Counsel appearing for respondent 4 and perused the materials available on record.

5. The issue of Selection Grade and Special Grade was dealt with in W.P.(MD) No.3186 / 2016 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 27.06.1089 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 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.

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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



The petitioner is eligible for Selection Grade and Special Grade is the post of Secondary Grade Teacher and the same granted on 06.04.1976 and 06.04.1986 respectively. The petitioner is eligible for Selection Grade and Special Grade is the post of Primary School HM 18.06.2001 and 18.06.2021 since the petitioner was appointed as HM on 18.06.1991. Since she attained superannuation on 29.02.2004 she will not be eligible for Special Grade since it falls on the date after retirement date. The petitioner is eligible for Selection Grade in the post of Primary School HM on 18.06.2001, she was conferred with Special Grade itself on 01.01.1996 and also benefits of G.O. Ms. No. 207 on 15.06.2015 and consequential effects was granted in pensionable benefits also. In spite of the same the petitioner is seeking the benefits of G.O.Ms.No.234 and claiming to calculate the entire service period from 1966 to 2004 and again selection grade in the post of Primary School Headmaster which is atrocious. The petitioner was retired in the year 2004 and this writ petition is filed in the year 2016. As held in the judgment rendered in W.A.No.312 of 2011, dated 09.12.2015 any such dead claims or stale claims cannot be reviewed by way of writ petition. The writ petition is hit by delay and latches on this ground also the writ petition is liable to be dismissed. The claim of the petitioner is unjust enrichment and therefore, the writ petition is dismissed. Infact this Court is of the considered opinion to impose cost on the petitioner. However, taking her age factor in consideration this Court is not imposing any cost on the petitioner.

`7. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

trp

To

1.The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai -9.



2.The Principal Accountant General (A & E),
Tamil Nadu,
Chennai -18.

3.The Director of Elementary Education,
DPI Campus,
Chennai -6.

4.The Additional Assistant Elementary Educational Officer,
Nanguneri,
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MGJ(05.03.2022) 11P 5C