



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2021

Pronounced on : 25.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) Nos. 3186 and 3187 of 2016 and
WMP(MD).Nos.2793 of 2794 of 2016

V. Jothi Chandra

... Petitioner
in W.P(MD) No. 3186 of 2016

T. Valliammai

... Petitioner
in W.P(MD) No. 3187 of 2016

..Vs..

1. The State of Tamil Nadu,
rep. By its Secretary,
Department of School Education,
Fort. St. George,
Chennai - 600 006.

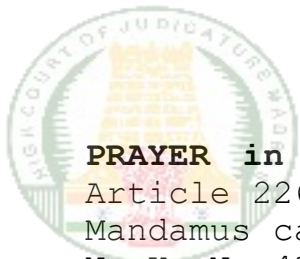
2.The Director of Elementary Education,
College Road,
Chennai - 600006.

3.The District Elementary Education Officer,
Nagercoil,
Kanyakumari District.

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

... Respondents
in both Writ Petitions

PRAYER in W.P(MD) No.3186 of 2016 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.41151/Aa1/09, dated 09.09.2014 on the file of the respondent No.3 and quash the same and award forthwith Selection Grade and Special Grade to the petitioner in the post of Middle School Headmaster by reckoning and computing the petitioner's service rendered in the cadres of Graduate Teacher (23.11.1973 to 12.10.1988) and Middle School Headmaster (13.10.1988 to 30.04.2006) by extending the benefit of G.O.Ms.No.210, Department of School Education (G1) dated 14.08.2009 to the petitioner within the time stipulated by this Court.



PRAYER in W.P(MD) No.3187 of 2016 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.41151/Aa1/09, dated 09.09.2014 on the file of the respondent No.3 and quash the same and award forthwith Selection Grade and Special Grade to the petitioner in the post of Middle School Headmaster by reckoning and computing the petitioner's service rendered in the cadres of Graduate Teacher (11.01.1982 to 20.12.1988) and Middle School Headmaster (21.12.1988 to 30.09.2006) by extending the benefit of G.O.Ms.No.210, Department of School Education (G1) dated 14.08.2009 to the petitioner within the time stipulated by this Court.

For Petitioner in
both W.Ps. : Mr. T.LAJAPATHI ROY, Advocate

For Respondents in : Mr. D. FARJANA GHOUISA
both W.Ps. Special Government Pleader

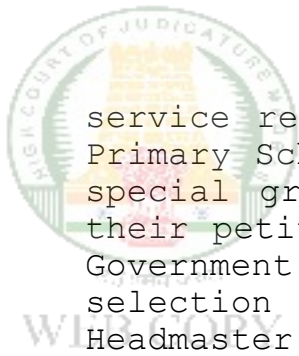
C O M M O N O R D E R

These two writ petitions have been filed to quash the impugned order dated 09.09.2014 and consequently direct the respondents to sanction Selection Grade and Special Grade for the post of Middle School Headmaster by reckoning and computing the petitioner's service rendered in the Cadres of Graduate Teacher and Middle School Headmaster by extending the benefit of G.O.Ms.No.210, Department of School Education, dated 14.08.2009.

2. The petitioner in W.P. (MD). No. 3186 of 2017 was appointed as the School Assistant Teacher on 23.11.1973 and his probation was declared on 08.07.1977 Forenoon. The petitioner was granted Selection Grade on 08.07.1987. Then, the petitioner was promoted as Middle School Headmaster on 12.10.1988 and had attained superannuation and retired on 30.04.2006.

3.The petitioner in W.P. (MD). No. 3187 of 2017 was appointed as B.T. Assistant on 11.01.1982, received Selection Grade in the B.T. Assistant post on 10.01.1992, then promoted as Middle School HM on 21.12.1988, then finally retired on 20.12.2006.

4.The grievance of the petitioners are that they were not granted Selection Grade and Special Grade on completion of 10 years and 20 years respectively. Some of the teachers approached the Administrative Tribunal seeking benefit of counting entire period of



service rendered even prior to the promotional post of Headmaster, Primary Schools and Middle Schools for awarding selection grade and special grade for the post of Headmaster. The Tribunal allowed their petitions for 65 persons. After the petition was allowed, the Government issued G.O.Ms.No.210, dated 14.08.2009 by sanctioning the selection grade and special grade in the post of Middle School Headmaster by considering the service in the cadre of Graduate Assistant Teacher prior to 01.06.1988. The said G.O. restricted to 65 persons but when the similar claim was made by some other persons, the Government passed G.O.Ms.No.190, School Education (G1) Department, dated 12.07.2010. Since the petitioner is also similarly placed person, has submitted several representations to the respondents including the last representation dated 21.12.2014. The similarly placed persons filed W.P.Nos.9058 to 9064 of 2012 and this Court vide order dated 18.07.2012 directed the respondents to consider the selection grade and special grade pay in the light of G.O.Ms.No.210. Since the said order was not complied, Contempt notice was issued and the respondents passed an order denying the selection grade and special grade. Again that order was put to challenge in the W.P.Nos.17311 to 17317 of 2013 and the Hon'ble Court allowed the writ petitions vide order dated 30.10.2013. The respondents denied the selection grade and special grade by impugned order dated 09.09.2014 on the sole ground that G.O.Ms.No.210 is applicable only to the persons mentioned thereunder and who are retired prior to 30.09.1994, but on perusal of the G.O.Ms.No.146, School Educational (G1) Department, dated 19.06.2012 would reveal that there is no restrictions to the benefit of G.O.Ms.No.210 instead there is only an extension of the benefit of G.O. 210 to some 260 persons who have obtained court orders.

5.The respondents have filed counter stating that petitioner Jothi Chandra was appointed as School Assistant Teacher on 23.11.1973 and was awarded selection grade on 08.07.1987 and then promoted as Middle School HM on 12.10.1988 and then retired on 30.04.2006. The petitioner T. Valliammai was appointed as B.T. Assistant on 11.01.1982, received Selection Grade in the B.T. Assistant post on 10.01.1992, then promoted as Middle School HM on 21.12.1988, then finally retired on 20.12.2006. The petitioner is not entitled to G.O. Ms. No. 210, 190 and 146 since the petitioner name is not found in the said G.O.s. After the impugned order dated 09.09.2014 was passed the petitioner has approached this Court by filing this Writ Petition in the year 2016 i.e. after the lapse of two years and the claim is hit by latches.

6.Heard the Learned Counsel for the petitioner and the Learned Special Government Pleader for the respondents and perused the materials placed on record.

7.The concept of selection / special grade is that the government employees are entitled to "selection grade" if the person **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

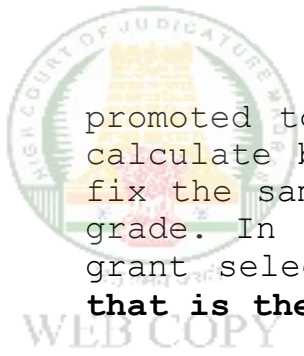


Court at the earliest point of time and there was total mess in this issue.

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.**

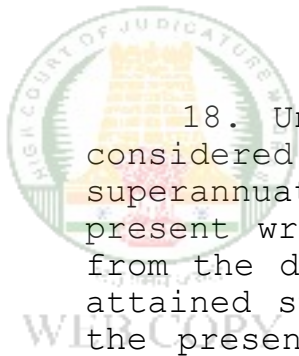
13. Thereafter numerous government orders were passed. This Court has passed an order in W.P. No. 29644 / 2003 and 29645 / 2003 dated 21.03.2008 covering 61 persons and to implement the order the **G.O. Ms. No. 234** School Education (G2) Department dated 10.09.2009 was issued wherein, the **Secondary 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. 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.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.

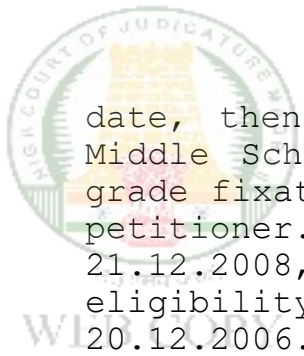


18. Under this background the present two writ petitions are considered. In W.P.(MD)No.3186/2016 the petitioner has attained superannuation and retired in the year 2006 and has filed the present writ petition in the year 2016, after a lapse of 10 years from the date of retirement. The petitioner in W.P.(MD)No.3187/2016 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.

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.



25. For the reasons stated above the writ petitioners are not entitled to the benefits and the writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar (CS-III)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

To:

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort. St. George,
Chennai - 600 006.

2.The Director of Elementary Education,
College Road,
Chennai - 600006.

3.The District Elementary Education Officer,
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Kanyakumari District.

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

+2 cc to Mr.T.LAJAPATHI ROY, Advocate, SR.Nos.2526 & 2527

+2CC to Special Government Pleader SR.Nos.2595 & 2603

Pre Delivery Order made in
W.P(MD) Nos. 3186 and 3187 of 2016 and
WMP(MD) .Nos.2793 of 2794 of 2016
25.01.2022

SA (28.02.2022) 9P 9c