



W.P.(MD)No.3953 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.11.2021
DELIVERED ON : 07.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.3953 of 2016
and
W.M.P(MD)No.3538 of 2016

J.Ponnuthai

... Petitioner

Vs.

1.The State represented by
The Principal Secretary to Government,
School Education Department,
Fort.St.George,
Chennai 600 009.

2.The Director of School Education,
College Road,
Chennai 600 006.

3.The Chief Educational Officer,
Sivagangai 630 561.

4.The District Educational Officer,
Sivagangai 630 561.

5.The Correspondent,
C.S.I. High School,
Manamadurai 630 606,
Sivagangai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call the records of the first respondent made in G.O.(Ms)No.69 School Education (M.1) Department dated 18.04.2013 and quash the same and to direct the respondents to extend to the petitioner's husband Late Thiru.P.Pitchaimuthu the benefit of G.O.(Ms).No.258 School Education (M.1) Department dated 06.09.2010 which was implemented in pursuance of the order dated 14.07.2009 of the Hon'ble Division Bench in W.P.No.8747 of 2009 and in accordance with G.O.(Ms)No.62 Finance (PC) Department, dated 09.03.2015.

For Petitioner : Mr.B.Alagarsamy
For Respondents : Mr.D.Farjana Ghoushia
Special Government Pleader
for R.1 to R.4

ORDER

This writ petition has been filed to call for the records of the first respondent made in G.O.(Ms).No.69 School Education (M.1) Department, dated 18.04.2013 and to quash the impugned order made in Government Letter No. 34248/School Education 3(1)/2015-1 dated 02.11.2015 and to direct the respondent to extend the petitioner the benefit of G.O.(Ms).No.258 School Education (M.1) Department dated 06.09.2010 which was implemented in pursuance of the order, dated 14.07.2009 of the Hon'ble Division Bench in



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W.P.No.8747 of 2009 and in accordance with G.O.(Ms).No.62 Finance (CMPC) Department, dated 09.03.2015.

2. The brief facts of the case are that the petitioner was appointed as Secondary Grade Teacher on 27.10.1969 and was awarded Selection / Special Grades after completion of 10 - 20 years of service on 27.10.1979 and 27.10.1989 respectively and retired on superannuation on 30.06.1996 as Secondary Grade Teacher from the C.S.I. High School, Manamadurai 630 606, Sivagangai District, without any promotion. The contention of the petitioner is that the Secondary Grade Teachers appointed in High/Higher Secondary Schools have no opportunity to get promotion based on their Secondary Grade qualification and seniority. Once a Secondary Grade Teacher is appointed in the High/Higher Secondary Schools, he will retire as a Secondary Grade Teacher without any promotion in the same cadre by rendering 25 to 35 years of service. But in the Elementary Education, Secondary Grade Teachers had the chance of getting promotion as Primary School Headmasters and Middle School Headmasters. Before the introduction of the Fifth Pay Commission recommendation, both the Secondary Grade Teachers working in High/Higher Secondary Schools and



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Primary School Headmasters were given the same time scale of pay benefits upto 01.06.1988. But after the introduction of the Fifth Pay Commission recommendation, the Secondary Grade Teachers who were holding the post of Primary School Headmasters in Elementary Education, were given higher time scale of pay than that of the Secondary Grade Teachers working in High/Higher Secondary Schools. In the Fifth Pay Commission, the following time scale of pay was given to the following posts as given below:

“Secondary Grade Primary School Headmasters:

Ordinary Grade... Rs.1400-50-2300-60-2600

Selection Grade... Rs.1640-60-2600-75-2900

Special Grade... Rs.2000-60-2300-75-3200

Secondary Grade Teachers in High/Higher Secondary Schools:

Ordinary Grade... Rs.1200-30-1560-40-2040

Selection Grade... Rs.1400-50-2300-60-2600

Special Grade... Rs.1640-60-2600-75-2900”

3. Hence, there was a disparity between the similarly situated persons viz., the Primary School Secondary Grade Teacher and High / Higher Secondary School Secondary Grade Teacher. In order to remove the disparity, the



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Government issued G.O.(Ms).No.216 Finance (Pay Cell) Department, dated 22.03.1993. The operative portion of the said Government Order in para 3(ii) reads as follows:

“3(ii) : In respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28-03-1990 (in the date of issue of the Government Order second read above) although there is promotion post in Primary Schools. As measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the teachers should be made eligible for Selection/Special Grades as in Annexure-I in the Government Order second read above.”

4. Thereafter, the Government Order in G.O.Ms.No.62 Finance (CMPC) Department dated 09.03.2015 was passed, wherein the para 3(ii) of G.O.Ms.No. 216 was modified as follows:

“(1) In respect of Secondary Grade Teachers in High Schools/Higher Secondary Schools there is no promotion post for them. Whereas there is a promotion post for the Secondary Grade Teacher in Primary Schools viz., Primary School Headmaster which envisages the restrictive proviso in para 4 of the G.O.M.S.No.304 Finance(PC) Department dated 28.03.1990. As a



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measure of uniformity in the Selection Grade / Special Grade scales of pay of Secondary Grade Teachers Government directed that the Secondary Grade Teachers in all schools be made eligible for the Selection Grade / Special Grade scales of pay as indicated in the Annexure-I to the Government order third read above.”

5. Among the others, one, Thiru.N.Govindarajan, a Special Grade Secondary Grade Teacher in Government Higher Secondary School, Kundadam, Erode District, had filed O.A.No.8276 of 1997 before the Hon'ble Tamil Nadu Administrative Tribunal praying to direct the respondents to refix his time scale of pay as Rs.2000-60-2300-75-3200 and also to direct to pay the arrears and consequential benefits with effect from 01-06-1988. The Hon'ble Tribunal allowed the said petition, vide order dated 07.10.1998 against which, the respondents preferred the writ petition in W.P.No.8747 of 2009 with enormous delay and the Hon'ble Division Bench dismissed the writ petition on 14.07.2009 with cost and confirmed the order of the Tribunal. The respondents preferred a Special Leave Petition in C.C.No.2746 of 2010 and the same was dismissed on 23.04.2010. Consequently, the respondents implemented the order by G.O. (Ms).No.258 School Education (M.1) Department, dated 06.09.2010 restricting



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the benefit only to Thiru.N.Govindarajan who was the applicant in the original application. Since the petitioner is similarly placed, he has come up with this writ petition.

6. In the meanwhile, the first respondent issued a blanket G.O.(Ms).No.69 School Education (M.1) Department, dated 18.04.2013 stating in para 6(1) that the benefits conferred in G.O.Ms.No.258 School Education (M.1) Department, dated 06.09.2010 be extended only to 2570 Secondary Grade Teachers i.e., 2044 individuals in Government High/Higher Secondary Schools and 526 individuals in Aided Schools stated in Annexure I and II of the Government Order.

7. The learned counsel for the petitioner relied on the judgment in ***W.P.No. 8747 of 2009 (The state of Tamil Nadu Rep. By Director of School Education (Higher Secondary) Chennai-6 and others -VS- N.Govindarajan and another)*** and explained that the said writ petition was dismissed by imposing cost on the Government. In the judgment of the Hon'ble Supreme Court in C.A.No.4582 of 1992 (Director of School Education -VS- A.N.Kandasamy and another reported in (1998) 8 SCC 26) it was held that the petitioner is entitled to G.O.(Ms).No.216.



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Relied on the said judgment, the petitioner is claiming the same benefits. The respondents have not preferred any appeal. However, the respondents relied on the impugned order wherein it has declined the benefit of granting the selection grade for the entire service of the petitioner.

8. Heard Mr.B.Alagarsamy, learned counsel for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate (Civil Side) for the respondents and perused the records.

9. The issue of granting Selection Grade and Special Grade has been dealt with by this Court in W.P.(MD) No. 3186 of 2016 in the case of Jothi Chandra and W.P.(MD) No.3187 of 2016 in the case of T. Vallimmai, where it has been held that the employee is eligible for Selection Grade if the person is stagnating in a post without promotion for 10 years and Special Grade if the person is stagnating in a post without promotion for 20 years. If promotion is granted then the person is not eligible for Selection Grade / Special Grade. In short the person is either eligible for promotion or Selection Grade / Special Grade and not eligible for both. Therefore the petitioner herein is eligible for Selection Grade / Special Grade since he is not granted any promotion.



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10. It is seen from the records that the petitioner is serving as a Secondary Grade Teacher in a High School without any promotion for the past 25 years. If the Government employee is stagnating in the same post without any promotion, then the Government employee is entitled to selection grade. If the employee is still stagnating in the same position without promotion for more than 20 years, the employee is entitled to Special Grade Pay. In the present case, the petitioner was granted Selection Grade and Special Grade for 10-20 years. Now, the petitioner is claiming to calculate the entire period and fix the scale of pay that is applicable to the Primary School Headmaster and grant Selection Grade and Special Grade. In short, the petitioner is seeking promotion as a Primary School Headmaster as well as Selection Grade and Special Grade. The employee is either entitled to promotion or Selection Grade and Special Grade and not for both.

11. The petitioner was serving in the fifth respondent school, which is a Private Aided Minority School. Promotion to the post of Primary School Headmaster and Middle School Headmaster is conferred based on the vacancy available. Since it is private management school, it has every right to appoint /



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promote any person of their choice. Seniority is not the only criteria to promote a person in the private school, but merit and ability is the criteria. The official respondents cannot interfere in the said appointment or promotion granted by the Management school. The Correspondent by taking into consideration the eligibility of the candidates in their institution would take a decision to appoint / promote a person. The official respondents have no right to direct them to promote them based on seniority and if such direction is issued, the same would amount to interference in the administration of the minority institution which is against law and the judgment delivered by the Hon'ble Supreme Court in T.M.A. Pai Foundation v. State of Karnataka, reported in (2002) 8 SCC 481 and other judgments. If any person is stagnating in a post, then the said person is eligible for Selection Grade and Special Grade. In the present case, since the petitioner was stagnating for more than 10 / 20 years, the petitioner was confirmed with the Selection Grade and the Special Grade respectively.

12. In the present case the petitioner was appointed as Secondary Grade Teacher on 27.10.1969 and was awarded Selection Grade on 27.10.1979 and Special Grade on 27.10.1989 in the post of Secondary Grade Teacher. Since the



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petitioner was stagnating in the post of Secondary Grade Teacher without promotion, the petitioner was granted selection grade and special grade. In such circumstances the petitioner cannot claim that even though he was not promoted as Primary School HM, he should be granted promotion scale of pay and fix selection grade pay of Primary School HM and special grade pay of Primary School HM. The petitioner retired on superannuation on 30.06.1996. If any person had rendered service in the same post and stagnating in the same post without any promotion for 30 years, then a stagnation increment is eligible. The petitioner would be entitled to the benefits of stagnation increment if the petitioner had serviced 30 years in the Secondary Grade post without promotion as per G.O.(Ms).No.241 Finance (PC) Department, dated, 01.04.1981 and G.O. (Ms).No.562 Finance PC Department, dated, 28.09.1998. In the present case the petitioner had not stagnated for 30 years and hence he is not entitled to the 30 years increment. The petitioner is not eligible for any other benefits as claimed by the petitioner, more so is not eligible for the benefits of G.O.(Ms).No.258 and 62 as claimed in the prayer. Hence the petition is devoid of merits and is liable to be dismissed.



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13. The Secondary Grade Teachers who are working in Elementary Education Department are entitled to promotion and the Secondary Grade Teachers who are working in School Education Department are not entitled to promotion. Hence, they should be conferred promotion of Primary School Headmaster and fix Primary School Headmaster salary, Selection Grade and Special Grade for Primary School Headmaster. When the petitioner was already granted the Selection Grade and Special Grade in the post of Secondary Grade Teacher, the claim of the petitioner would amount to unjust enrichment. The concept of Selection Grade and Special Grade itself was an incentive to boost the teacher who was stagnating without promotion for more than 20 years. When that is already granted in the post of Secondary Grade Teacher, the claim of the petitioner to grant the Selection Grade and Special Grade in the post of Primary School Headmaster will never arise. The petitioner is seeking promotion as the Primary School Headmaster and Selection Grade / Special Grade in the Primary School Headmaster post which is unknown to the service jurisprudence. Hence the claim of the petitioner is absolutely illegal and the writ petition deserves to be dismissed.



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14. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes

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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 Principal Secretary to Government,
School Education Department,
Fort.St.George,
Chennai 600 009.
- 2.The Director of School Education,
College Road,
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- 3.The Chief Educational Officer,
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S.SRIMATHY, J

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Pre-delivery Order made in
W.P.(MD)No.3953 of 2016

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