



W.P.(MD)No.4928 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.11.2021

DELIVERED ON : 21.07.2022

CORAM

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

W.P.(MD)No.4928 of 2016

and

W.M.P.(MD)No.4425 of 2016

V.Ponnuthai

... Petitioner

vs.

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

2.The Commissioner of Rehabilitation and Disabled,
Jawaharlal Inner Circle Road,
K.K.Nagar,
Chennai 600 078.

3. The District Social Welfare Officer,
Sivagangai District,
Sivagangai 630 561.

4. The District Disabled Rehabilitation Officer,
Sivagangai District,
Sivagangai 630 561.

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

... Respondents



PRAAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, 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 quash the same and direct the respondents to extend the petitioner to 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 within a stipulated period.

For Petitioner : Mr.B.Alagarsamy

For Respondents : Mr.J.K.Jeyaseelan,

Government Advocate (Civil side) for R1toR4

Mr.J.Banathan for R5

ORDER

This Writ Petition has been filed challenging the impugned order passed in G.O.Ms.No.69 School Education (M.1) Department dated 18.04.2013 consequently direct the respondents to extend 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 passed in W.P.(MD)No.8747 of 2009 in accordance with G.O.Ms.No.62 Finance (PC) Department dated 09.03.2015.

2. The brief facts of the case are that the petitioner was appointed as Secondary Grade Teacher on 24.08.1977 and was granted Selection / Special Grade



after completion of 10 / 20 years of service i.e., on 27.07.1991 and 27.07.2001 respectively and that the petitioner attained the age of superannuation on 31.03.2003 and retired without any promotion. The petitioner was working in the fifth respondent's school, which was a private aided school.

3. The contention of the petitioner is that Secondary Grade Teachers appointed in High/Higher Secondary School have no opportunity to get promotion based on their Secondary Grade qualification and seniority. But in the Elementary Education Department, Secondary Grade Teachers had the chance of getting promotion as Primary School Headmaster and Middle School Headmaster. Before the introduction of 5th pay commission both the Secondary Grade Teachers working in High/Higher Secondary Schools and Primary School Headmaster were given the same time scale of pay. After introduction of the 5th pay commission, the Primary School Headmaster post was declared as promotion post with the scale of pay, which is more than the Secondary Grade Teachers scale of pay and the following are the scales of pay paid to the posts as given below:

Secondary Grade Primary School Headmasters:

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

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

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



Secondary Grade Teachers in High/Higher Secondary Schools:

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

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

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

4. To remove the disparity, the Government issued G.O.Ms.No.216 Finance (Pay Cell) Department dated 22.03.1993 and 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.”

5. 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:



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“(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 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.”

6. Teachers serving in the High School were aggrieved and one of the teacher viz., Govindarajan, who is a Special Grade Secondary Grade Teacher in Government Higher Secondary School had filed O.A.No.8276 of 1997 in Tamil Nadu Administrative Tribunal praying to direct the respondents to refix the time scale of pay as 2000-60-2300-75-3200 and pay the arrears and consequential benefits with effect from 01.06.1988 as per G.O.Ms.No.216 dated 22.03.1993. Aggrieved over the same, the Government has preferred an appeal by way of filing writ petition in W.P. (MD)No.8747 of 2009 with enormous delay and the same was dismissed with cost



on 14.07.2009 with cost. Aggrieved over the same, the respondents have preferred a Special Leave Petition in C.C.No.2746 of 2010 and the same was dismissed on 23.04.2010. In order to implement the order of the Tribunal, the respondents have issued G.O.Ms.No.258 School Education (M.1) Department dated 06.09.2010 restricting the benefit only to the said applicant namely Thiru.N.Govindarajan.

7. It is the contention of the petitioner that similarly placed person had filed W.P.(MD)No.9713 of 2011 and the same was allowed vide order dated 20.12.2011. In the meanwhile, the first respondent has issued G.O.Ms.No.69 School Education (M.1) Department dated 18.04.2013 stating that the benefits of G.O.Ms.No.258 extended only to 2570 Secondary Grade Teachers i.e., 2044 individuals in Government High / Higher Secondary Schools and 526 individuals in Aided Schools and the same will not be applicable to the teachers, who approach the Court in future. Aggrieved over the said order, the petitioner has made several representations and through Teachers' Associations also had submitted a representation dated 14.11.2015 requesting them to extend the benefits conferred in G.O.Ms.No.258. The respondents failed to do so and aggrieved over the same this Writ Petition is filed.

8. The respondents relied on the impugned order stating that the Government has every right to issue Government orders restricting the benefits to certain class or set of employees. Accordingly, in the present case, G.O.Ms.No.69 dated 18.04.2013



extends the benefits granted in G.O.Ms.No.258 dated 06.09.2010 only to certain individuals. Therefore, the respondents pray to dismiss the writ petition.

9. Heard Mr.B.Alagarsamy, learned Counsel appearing for the petitioner and Mr.J.K.Jeyaseelan, learned Government Advocate (Civil Side) appearing for the respondents 1 to 4.

10. 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 she is not granted any promotion.

11. It is seen from the records that the petitioner was appointed as a Secondary Grade Teacher on 24.08.1977 and the petitioner was continuing in the Secondary



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Grade Teacher post for more than 10 years without any promotion. The petitioner was granted Selection Grade on 27.07.1991. Thereafter, the petitioner was not promoted. After the completion of 20 years, since the petitioner was not promoted, the petitioner was awarded Special Grade on 27.07.2001. The petitioner has attained the age of superannuation on 31.03.2003. The petitioner was serving in the fifth respondent school, which is a private management High 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 / 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



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Grade respectively. The petitioner is entitled to special pay for stagnating in the same post for more than 30 years on 24.08.2007.

12. The petitioner is claiming the promoted post scale of pay without being promoted to the said post. The petitioner is not eligible for scale of pay granted to the promoted post. In other words, the petitioner is eligible for Selection Grade and the Special Grade in the post of Secondary Grade Teacher and not in the scale of pay applicable to the post of Primary School Headmaster or Middle Class Headmaster. Moreover, the petitioner was serving in a minority institution, where the management has right to confer promotion to any eligible candidate.

13. The official respondents have no right to direct the school to confer any promotion to the petitioner. In such circumstances, the petitioner cannot have any right to claim any promotion. Moreover, the petitioner was granted Selection Grade and Special Grade for stagnating in a Secondary Grade Post without promotion. The Writ Petition is devoid of merits. Hence, this Writ Petition is dismissed. Consequently connected miscellaneous petition is closed.

21.07.2022

Index : Yes / No
Internet : Yes
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