



WP.No.11164 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.11164 of 2014

and

M.P.No.2 of 2014

D.Venkatesan

.... Petitioner

vs

1. The Government of Tamil Nadu,
rep. by secretary to Government,
School Education Department,
Fort St.george,
Chennai - 600 009.
2. The Director of Elementary Education,
College Road,
Chennai - 600 006.
3. The District Elementary Educational Officer,
Cuddalore District,
Cuddalore.
4. The Assistant Elementary Educational Officer,
Keerapalayam Panchayat Union,
Cuddalore District.
5. The Accountant General,
Teynampet,
Chennai - 600 018.

.... Respondents



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WEB COPY Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondents Nos.5, 3 and 4 in relation to the proceedings No.PEN20/VI/12005712/P6/11-12/ADK dated 17.11.2011 and in Na.Ka.No.3929/A1/2013 dated 078.09.2013 and in Na.Ka.No.0270/211/2012 dated 17.01.2013 respectively and quash the same and issue a consequential direction to the respondents to restore the selection grade scale of pay of petitioner in the post of Pre-Vocational Instructor on 02.06.1990 and the special grade scale of pay on 02.06.2000 and issue a consequential direction to the respondents to release the amount of Rs.1,01,580/- with interest @ 18% per annum and to fix his last drawn pay and grant all consequential pensionary benefits.

For Petitioner : Mr.Balan Haridas
for Mr.R.Saseetharan

For respondents : Mr.A.M.Ayyathurai,
Government Advocate for R1 to R4
Mr.V.Vijay Shankar for R5

ORDER

This writ petition has been filed challenging the proceedings dated, 17.11.2011, 07.09.2013 and 17.01.2013 passed by the 5th, 3rd and 4th respondents respectively and consequently, direct the respondents to restore the selection grade scale of pay of petitioner in the post of Pre-

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Vocational Instructor on 02.06.1990 and the special grade scale of pay on 02.06.2000 and to issue a consequential direction to the respondents to release the amount of Rs.1,01,580/- with interest @ 18% per annum and to fix his last drawn pay and grant all consequential pensionary benefits.

2. The petitioner was initially appointed as part time Vocational Instructor on part time basis in the year 1980 in Panchayat Union Middle School, Kavalakudi, Cuddalore District and thereafter, promoted as full time Vocational Instructor (craft Instructor) w.e.f. 02.06.1980. The post of pre Vocational Instructors in Middle Schools carries the same scale of pay of Higher Grade Teachers, whereas the craft Instructor in the High School are given scale of pay of Rs.610-1075 which is equal to scale of pay of Secondary Grade Teacher though both are doing same work i.e., teaching vocational subjects, namely weaving, drawing, tailoring etc. on the ground that there is a difference in academic qualification. The required academic qualification for the post of pre Vocational Instructor is ESSLC (8th std. pass) whereas the required qualification for the post of Craft Instructor at High School is SSLC pass. Therefore, by the G.O.No.136 dated 05.09.1986,



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the government has directed that Craft Instructor with SSLC qualification shall be allowed Secondary Grade Teachers Scale of pay of Rs.610-1075 irrespective of fact that whether they are working in High Schools or at middle schools. In the same Government Order, the Government has allowed 3 years time to the VIII Standard pass craft Instructor to pass SSLC qualification and then they will be allowed Secondary grade Teacher scale of pay of Rs.610-1075. The petitioner passed SSLC qualification in March 1986 and in possession of SSLC qualification as on 05.09.1986 when the above said G.O. was issued. By proceedings dated 13.11.1986, the pay of petitioner was fixed in the scale of pay of Rs.610-1075 as per G.O.Ms.No.1366 dated 05.09.1986. By another G.O.Ms.No.1105 dated 22.08.1989, the Government has granted Selection grade Scale of pay of Rs.705-1230 and Special Grade of pay of Rs.780-1385 to the Craft Instructors working in the Middle Schools on par with craft Instructor working in High Schools subject to the condition that they should qualify themselves with SSLC qualification. The Selection Grade and Special Grade is to be awarded on completion of 10 and 20 years of service respectively. By letter dated 18.01.1986, the Government has clarified that the benefit of



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Secondary Grade Teachers Scale of pay of Rs.610-1075 shall take effect from 01.10.1984 notionally with monetary benefit from 01.04.1986.

3. By proceedings dated 22.06.1995, the petitioner was granted Selection Grade scale of pay from 02.06.1990 counting 10 years service from 01.06.1980 when the petitioner was appointed as Pre vocational Instructor in Middle School, initially. By another proceedings dated 26.07.2000, the petitioner was granted Special Grade from 02.06.2000 on completion of 20 years of service in the post of Craft Instructor. On 30.11.2011, the petitioner retired from service after a regular promotion as B.Ed., Head Master and Assistant Elementary Educational Officer.

4. The Accountant General, by proceedings dated 17.11.2011, has objected that the petitioner has passed SSLC in 1986 and the Secondary Grade Teacher Scale of Pay is given only on 05.09.1986 and therefore, the Selection Grade is admissible only from 05.09.1996, but the selection grade is given from 02.06.1990. After two years, the Assistant Elementary Educational Officer by impugned proceedings dated 17.01.2013 has



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modified the date of selection grade to that of 01.04.1996 from 02.06.1990 and granted selection grade only from 01.04.1996 and special grade from 01.04.2006 and refixed the pay after retirement. The third respondent by impugned proceedings dated 07.09.2013 has arrived the alleged excess sum paid to the petitioner is Rs.1,01,580/- and ordered to recover the same from the gratuity payable to the petitioner. Hence, the writ petition has been filed with the aforesaid relief.

5. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and the learned counsel appearing for the 5th respondents.

6. Learned counsel for the petitioner would submit that similar issue has been dealt with by the Hon'ble Division Bench of this Court and the Division Bench of this Court in W.P.No.12066 of 1999, by order dated 27.07.2001, held that the selection grade has to be granted by counting the service right from the date of first appointment as craft instructor in Middle School and thereafter, as High School on acquiring SSLC qualification and



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that there is no condition in G.O.Ms.No.1366 dated 05.09.1986 and G.O.Ms.No.1105 dated 22.08.1989 that in awarding Selection and Special Grade, the service shall be counted only from the date on which Higher Scale of pay is granted. Further, the writ petition filed by the State Government against the order of the learned Administrative Tribunal is dismissed. In support of the above contention, he would also rely on a decision reported in 2007 W.L.R.1000 (Y.Chellammal v. State of Tamilnadu).

7. Learned Government Advocate would submit that in the instant case, an over payment was effected due to wrong fixation of pay. The pay of the petitioner is fixed under a bonafide mistake and the beneficiary has no right to retain the same. In the fixation order made by the respondents, it was clearly mentioned that in case of wrong fixation and when it is pointed out by the audit authorities, the amount shall be recovered from the salary. Hence, the respondent had rightly passed the order of recovery and the same need not be interfered with.



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8. This Court considered the submissions made on either side and perused the materials available on record.

9. A learned Judge of this Court had dealt with a similar case with similar facts and circumstances of the present case, wherein the learned Judge has passed the following order.

“7. It is not in dispute that the Government, in order to equate the Craft Teachers in Middle Schools in respect of their salary on par with their counterparts in High Schools, has prescribed minimum general qualification for the post as SSLC by G.O.Ms.No.1366, Education Department, dated 5.9.1986. In the said Government Order, it is also made clear that in respect of Craft Teachers who are already in service in Middle Schools with lesser qualification, viz., 8th Standard and 7th Standard, they shall be allowed to acquire the minimum qualification within a period of three years.

8. It is also not in dispute that all these three petitioners have acquired their SSLC within the time stipulated in the said Government Order. By subsequent G.O.Ms.No.1105, Education Department, dated 22.8.1989, while granting selection grade and special grade to Middle School Teachers, relevant scales of pay have been fixed to all



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*Craft Teachers of High Schools working in all kinds of Management, subject to the condition that they should qualify themselves with SSLC. It is also stated that the selection grade and special grade pay shall take notional effect from 1.10.1984 for the purpose of fixation of pay in those scales with monetary benefits from 1.4.1986. Under a similar circumstance, when a Craft Teacher was appointed in the year 1970 and he was qualified with SSLC on 5.4.1986 and representation was made to the authorities to confer the benefits of selection grade as per the said G.O.Ms.No.1105, Education Department, dated 22.8.1989 and also G.O.Ms.No.1366, Education Department, dated 5.9.1986 and the same was rejected on 22.11.1990, when that was challenged in the Tamil Nadu State Administrative Tribunal by filing Original Application, the Tribunal has allowed the application and directed the authorities to give selection grade notionally with effect from 1.10.1984, however, with monetary benefits from 1.4.1986. When the Government has challenged the said order of the Tribunal, in the case of **District Educational Officer, Tiruvannamalai and others v. K.T.Margasakayam, a Division Bench of this Court consisting of V.S.Sirpurkar,J. (as he then was) and V.Kanagaraj,J. by order dated 27.7.2001 passed in***



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W.P.No.12066 of 1999, while confirming the said order of the Tribunal has held as follows:

"The learned counsel appearing on behalf of the Government attacked this order on the ground that in fact when the relevant Government Orders came on the field the respondent was not covered by them. It was tried to be argued that the respondent after his initial appointment was transferred to Polur Panchayat Union middle school which school was upgraded into a high school and at that time, the respondent had not even passed the S.S.L.C. examination and had only passed the 8th standard examination. It was conceded that the respondent has passed the SSLC examination on 5.4.1986 and had qualified himself for drawing the pay scale of Rs.610-20-730-25-955-30-1075 which was intended for the post high school craft teachers. What was forcefully argued before us was that the respondent teacher could not have asked for counting his middle school services for selection grade as that service was on the



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lower pay scale. It was tried to be argued that after the said teacher was granted higher pay scale, if he continued for ten years on that pay scale then alone, he was entitled to the selection grade. In fact, this argument was made before the Tribunal also and the Tribunal has refuted this argument and, in our opinion, correctly. What will be seen from G.O.Ms.No.1105, dated 22.6.1989 is that the craft teachers in the middle schools were made eligible for the selection grade and special grade scales of pay on par with the craft teachers of the high school. However, in that Government Order, there was no condition imposed that this advantage was to be given only on completion of the ten years of service only as a high school craft teacher. The learned counsel also relied on the Government letter dated 4.10.1990 to suggest that the services rendered in the posts carrying equal and higher scales of pay alone could be taken into account for his grant of selection grade or special grade in case of the respondent, since



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he was working as middle school craft teacher that service could not be taken into account for the purpose of awarding selection grade. The Tribunal has refuted this argument on the basis of the contents of paragraph-2 of G.O.Ms.No.1366, dated 5.9.1986 as also the other G.O.Ms.No.1105, dated 22.8.1989. We are in complete agreement with the Tribunal on the interpretation of the relevant Government Orders in question. The Tribunal has also taken the example of the Headmaster of the primary schools and has drawn parallel. In our opinion, the language of the concerned Government Orders is clear enough to suggest that the concerned respondent was undoubtedly entitled to the selection grade on account of his services right from 1970 as middle school craft teacher and thereafter, his services as High School craft teacher for which he had also acquired a proper qualification, i.e., SSLC in the year 1986. In our opinion, there is no necessity to interfere with the order of the Tribunal in which the



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findings are recorded in a proper manner."(Emphasis supplied)

9. *Following the above cited Division Bench judgement, similar orders have been passed by this Court in P.Rajendran v. The District Elementary Educational Officer, Tirunelveli & others in W.P.No.42763 of 2002 dated 3.12.2002 and subsequently in S.Arputha Amala Ritabai v. The Director of Elementary Education, College Road, Chennai-6 in W.P.No.29235 of 2004 dated 5.11.2004.*

10. *In the case in W.P.No.29235 of 2004 the facts as narrated are also similar to that of the case on hand. The learned Judge, has narrated the facts of the case in paragraph-2 is as follows:*

"The petitioner has questioned the impugned order dated 22.11.2000 of the first respondent and the consequential order dated 18.6.2002 of the second respondent in denying the selection and special grade pay scale to the petitioner, to which she is entitled to as per G.O.Ms.No.1105, Education (MU-1(2) Department dated 22.8.1989. By the impugned orders, the said conferment and correspondingly the salary also were sought to be reduced on the ground that



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the petitioner had not completed ten years of service as selection grade Craft Teacher with the qualification of S.S.L.C. "

By following the abovesaid judgement of the Division Bench, the learned Judge has set aside the order of recovery.

11. There is also one another fact which has to be considered in these cases, that the petitioners have been conferred selection grade based on the abovesaid Government Orders even in the year 1990 and have been paid salary and the recovery is sought to be made nearly after nine years without giving any opportunity to the petitioners. Even assuming otherwise, these are not cases wherein by the positive conduct of the petitioners they have acquired certain benefits illegally. On the other hand, the benefits have been conferred by the authorities based on the two Government Orders. In such circumstances, the impugned orders are vitiated by the violation of the basic principles of natural justice and on the said ground also, the impugned orders are liable to be set aside. In view of the same, the writ petitions are allowed. No costs."

10. Since the facts of the present case is squarely covered by the aforesaid judgments of this Court, this Court has no hesitation to hold that the fact which has to be considered in this case is that the petitioner has been



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conferred selection grade based on the above said Government Orders even in the year 1990 and had been paid salary and the recovery is sought to be made nearly after eleven years without giving any opportunity to the petitioner. Hence, the impugned orders dated 17.11.2011, 07.09.2013 and 17.01.2013 passed by the 5th, 3rd and 4th respondents respectively are hereby set aside and as a sequel, the respondents shall restore the selection grade scale of pay of petitioner in the post of Pre-Vocational Instructor on 02.06.1990 and the special grade scale of pay on 02.06.2000 and also the respondents shall release the amount of Rs.1,01,580/- at the rate of 9% per annum from the date of recovery, if already recovered. The respondents are also directed to fix his last drawn pay with all consequential pensionary benefits.

11. The Writ Petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking/Non-speaking order
vsi

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