



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.24354 of 2016
and
W.M.P.No.20831 of 2016

A. Umarani

.. Petitioner

Vs.

- 1.The State of Tamilnadu
Rep. by its Principal Secretary to Government,
Finance Department,
Fort St. George, Chennai – 600 009.
- 2.The State of Tamilnadu
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai – 600 009.
- 3.The Director of School Education,
DPI Complex, College Road,
Chennai – 600 006.
- 4.The Joint Director of School Education (Vocational),
O/o. The Director of School Education,
DPI Complex, College Road,
Chennai – 600 006.
- 5.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Madurai District,
Madurai.



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6. The District Educational Officer,
Usilampatti,
Madurai District,
Madurai.

7. The Head Master,
Government Boys Higher Secondary School,
Valasaiyur Post – 636 122,
Salem District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned recovery order issued by the 7th respondent in Na.Ka.No.98/2013-2014 dated 03.04.2013 and the Letter issued by the 1st respondent in Letter No.66858/CMPC/2013-2 dated 22.08.2014 and to quash the same and consequently forbearing the respondents from reducing the existing Scale of Pay with allowances granted to the petitioner.

For Petitioner .. Mr. M. Saravanakumar

For Respondents .. Mr. T. K. Saravanan, Govt. Advocate.

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records pursuant to the impugned recovery order issued by the 7th respondent in Na.Ka.No.98/2013-2014 dated 03.04.2013 and the



Letter issued by the 1st respondent in Letter No.66858/CMPC/2013-2 dated 22.08.2014 and to quash the same and consequently forbear the respondents from reducing the existing Scale of Pay with allowances granted to the petitioner.

2.The petitioner was regularized on 16.10.1992 as Vocational Instructor and working as Vocational Instructor in Government Boys Higher Secondary School, Valasaiyur, Salem District. The petitioner was granted selection grade pay from 16.10.2002. The petitioner was then granted Special Pay with effect from 20.10.2012. At that stage, the Government had issued G.O.Ms.No.162 Finance Department dated 13.04.1998 along with a letter dated 08.11.2010 issued by the 1st respondent for those posts for which there were no promotional avenue. It had been stated that the selection grade pay and the special grade pay shall be paid and allowed as indicated in the schedule thereof. The grade of pay was also fixed.

3.It had been contended by the petitioner that the 1st respondent had granted selection grade pay to the petitioner for the posts of Vocational Instructor at Rs.9300-34800 with grade pay of Rs.4800/-. The petitioner



raised grievance against the Letter dated 22.08.2014 issued by the 1st respondent.

4.It had been stated that under the 5th Pay Commission dated 01.01.1996, the pay had been fixed at Rs.5500-175-9000 as scale of pay for BT Assistant. Thereafter, G.O.Ms.No.162, Finance (Pay Cell) Department dated 13.04.1998 was passed revising the pay scales. The petitioner finally placed reliance on G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018. It is contended that since Vocational Instructors do not have a promotional avenue, selection grade pay and special grade pay for Vocational Instructors should take notional effect from 01.01.2006 and with monetary benefit from 01.01.2011.

5.Mr. T. K. Saravanan, learned Government Advocate, on the side of the respondents, however, contended that the petitioner is actually entitled for monetary benefits only from the year 2013.

6.This is an issue which the respondents will have to workout. My attention is drawn to an order of the Madurai Bench in a similar issue in



W.P.(MD) No.17314 of 2014, A. Selvin and others Vs. The State of

Tamilnadu and others, dated 20.04.2022, wherein, it had been stated as follows:

“2. The petitioners are working as Vocational Instructors in Government Higher Secondary School, Tirunelveli and some of the writ petitioners were superannuated.

3. The learned counsel for the petitioner would submit that the issue regarding granting scale of pay to the selection grade and special grade Vocational Instructor was challenged in W.P(MD)Nos.2654 of 2018 etc., batch and this Court vide order, dated 19.03.2018 has allowed the writ petitions by holding that selection grade Vocational Instructor are entitled to be paid selection grade scale of pay Rs.15600-39100+GP 5400 admissible with monetary benefits from 01.04.2013. The Government has taken the issue into consideration based on the orders passed by this Court and has passed the G.O.No.306, Finance (CMPC) Department, dated 12.09.2018, wherein, it has been stated that the vocational instructors are eligible for the same payment and it has also been held in paragraph-8 as under:-

“8. The above orders shall be applicable to all the Vocational Instructors who were awarded Selection Grade prior to 01.01.2006 and those



awarded Selection Grade between 01.01.2006 and 31.05.2009 and opted for the revised scales of pay on that date irrespective of the fact as to whether they filed separate Writ Petitions or not."

4. The Government Order has held the revised scale of pay as applicable irrespective of the fact as to whether they filed separate writ petitions are not. Following the Government Order, this Court is allowing the writ petition directing respondent to implement the Government Order as far as the writ petitioners are concerned, within a period of four weeks from the date of receipt of a copy of this order. No costs.

7.The same order would also ennure to the petitioner herein. The petitioner would be entitled for the benefit under G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018. In the said Government Order it had been stated that those who had been awarded selection grade / special grade between 01.01.2006 and 31.05.2009 and opted for a revised scale of pay would be entitled to the benefit of G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018, irrespective of the fact that they had filed separate writ petitions or not.



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8.It had been contended that the additional pay which the petitioner had obtained between 2011 and 2013 should be recovered, but again this is an issue which the respondents will have to workout. Let me not interfere on that working, but only direct extension of the benefit of G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018. Let necessary proceedings may be issued by the respondents, in accordance with G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018,.

9.Reliance had been placed by the respondents on the ratio laid down in **2015 (4) SCC 334, State of Punjab V. Rafiq Masih**. A learned Single Judge of the Madurai Bench had also placed reliance on the said judgment in **W.P. (MD) Nos. 2654 of 2018, L. Natarajan Vs. The State of Tamil Nadu and others** and as a matter of fact, in a string of writ petitions. In the said order, the learned Single Judge had held as follows:

“3. The scale of pay of Vocational Instructor was revised to 9300-34800+GP4600. This is the scale of pay payable to ordinary Vocational Instructor. Those who have put in 10 years of service would move to Selection Grade.



Their revised scale of pay was 15600-39100+GP5400. This is the evident from the proceedings of the Principal Accountant General, Chennai, dated 14.07.2014.

4. In the said proceedings, it has been mentioned that such a revision of scale of pay was admissible with monetary benefit only from 01.04.2013. But, by subsequent letter dated 22.08.2014, the Government took a stand that the revised selection grade scale of pay for the Vocational Teachers would also be 9300-34800+GP 4800. This runs counter to the earlier G.O.Ms.263 dated 22.07.2013. The said subsequent Government letter is impugned in these writ petitions.

5. The subsequent Government letter suffers from two errors. Firstly, it equates Vocational Instructor with BT Assistant. Such an equation is not sustainable for more than one reason. BT Assistant has more than one promotional avenue. Vocational Instructor remains Vocational Instructor during their entire career. That apart in G.O.263 dated 22.07.2013, what was laid down was the revised scale of pay for ordinary Vocational Instructor. Ordinary Vocational Instructor would get a Grade Pay of Rs.4,600 but then a selection grade Vocational Instructor will get a Grade Pay



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of Rs. 5,400/-.

6. *A Government letter cannot prevail over a Government order issued under Article 162 of the Constitution of India. But then, as per the proceedings of the Principal Accountant General, Chennai, the monetary benefits can be given only from 01.04.2013. If they have been mistakenly given from the earlier date, the excess pay has to be recovered.*

7. *The learned counsel appearing on behalf of the writ petitioner placing reliance of the Hon'ble Supreme Court of India in 2015 (4) SCC 334 [State of Punjab v. Rafiq Masih] held that an order of recovery may not be made. Though the Hon'ble Supreme Court made it clear that only if it would cause hardship, recovery ought not be effected. In this case, some of the writ petitioners who have retired are very much getting pension. Therefore, the order of recovery will not cause hardship to them.*

8. *The Standing Counsel appearing on behalf of the Principal Accountant General, Chennai, submits that the objection was made in the year 2011. That apart, the proceedings dated 14.07.2014 of the Principal Accountant*



General, Chennai, are not under challenge.

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9. Therefore, these writ petitions are partly allowed by holding that selection grade Vocational Instructor are entitled to be paid selection grade scale of pay Rs.15600-39100+GP 5400 admissible with monetary benefits from 01.04.2013. No costs. Consequently, connected miscellaneous petitions are closed.

10.The learned Single Judge had stated that pay scale of Rs.15600-39100+GP 5400 as admissible with monetary benefits from 01.04.2013. Even though G.O.Ms.No.306 would be applicable, it would be applicable with this particular restriction to the petitioner. This would mean that the petitioner is entitled for monetary benefits from 01.04.2013.

11.It had been further contended that excess pay should be recovered from the petitioner, I would relegate that particular aspect to the respondents, but would reiterate that the petitioner is entitled for monetary benefit from 01.04.2013.



12. In view of the above reasoning, it is held that the writ petitioner is entitled for monetary benefits only from 01.04.2013. It is made clear that G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018 would apply to the petitioner herein. The order of the learned Single Judge in the batch of writ petition in W.P. (MD) No.2654 of 2018 etc., was passed on 19.03.2018 and subsequent to that G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018, had been passed. Therefore, even though there appears to be a conflict in the orders of the two learned Single Judges, the order in W.P.(MD) No.17314 of 2014 dated 20.04.2022 which had taken into consideration G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018 alone would be applicable to the petitioner herein.

13. Viewed from that particular angle, I hold that G.O.Ms.No.306 Finance (CMPC) Department dated 12.09.2018 would apply to the petitioner. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

17.07.2023

Index: Yes/No



Internet: Yes/No

Neutral Citation: Yes/No

Speaking order: Yes/No

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To

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C.V.KARTHIKEYAN,J.

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