



W.A.No.3055 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.3055 of 2019
and C.M.P.No.19528 of 2019**

1.The Director of Elementary Education Officer
DPI Compound, Chennai 600 008.

2.The District Elementary Education Officer
Nilgiris District.

3.The Assistant Elementary Education Officer
Panchayat Union Elementary School
Kundril Kadavu, Nilgiris District.

4.The Headmaster
Panchayat Union Elementary School
Kundril Kadavu
Nilgiris District.

... Appellants

-Vs-

D.Selvarosebai

... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order
in W.P.No.24509 of 2010 dated 14.09.2018.

For Appellant : Mr.K.V.Sajeev Kumar
Special Government Pleader
For Respondent : No appearance



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J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the Writ Court made in W.P.No.24509 of 2010 dated 14.09.2018.

2. The^t respondent was a teacher, who was initially working as a Secondary Grade Assistant at an aided school from 03.06.1988 to 30.11.2006, she resigned from service and joined the Panchayat Union Primary School, Kundril Kadavu on 07.12.2006.

3. When the teacher was working from 03.06.1988 in the Management school, which was an aided school, she was considered for selection grade as she completed ten years of service by 03.06.1998. Accordingly, selection grade was given. Thereafter, since she worked upto 30.11.2006 and resigned from the post and joined in he Panchayat Union School ie., the present post with effect from 07.12.2006. Thereafter, as per the Government Orders which were in vogue, her total service had been taken into account. Therefore, on 03.06.2008, she was conferred with Special grade and accordingly her pay had to be fixed.



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4. In this context, it is the stand of the appellants that as per G.O.Ms.No.234, Finance and Pay Cell Department dated 01.06.2009, as per Para 4, the teacher, after completing 20 years of service will be eligible for special grade and thus, should be conferred such special or selection grade after 01.01.2006, the date on which the Sixth Pay Commission recommendation has been accepted. Such a grade shall be fixed by granting the benefit of one increment equal to 3% of the basic pay including grade pay in the same pay band and grade pay.

5. By adopting the aforesaid method as provided in G.O.No.234 referred to above, the appellant Department issued an order on 20.08.2010, which reads thus,

" Tmt.D.Selvarosebai now working as Secondary Grade Assistant at P.U.Primary School, Kundri Kadavu, who was serving in Aided School from 03.06.1998 to 30.11.2006 resigned from service and joined duty in P.U.Primary School, Kundril Kadavu and is serving in the same school till date.

The above individual was sanctioned Selection Grade in the post of Secondary Grade Assistant from 03.06.1998. Now the individual has been sanctioned Special Grade on completion of 10 years service and accordingly 3% increment has been sanctioned and the pay has been fixed from



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*03.06.2008 at Rs.11,860/- in the Pay band 5200-20200 +
G.P.2800/-.*

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*The individual is eligible to draw arrears from
03.06.2018.*

*Certified that necessary entries regarding pay fixation
has been entered in the service register."*

6. By virtue of this fixation, according to the respondent teacher, what was earlier drawn has not been taken into account. Only a new fixation pursuant to 01.01.2006 as per the Sixth Pay Commission recommendation having been taken into account and accordingly 3% increment on the conferment of special grade has been fixed on the teacher. By thus, the teacher will be in a disadvantageous position to draw earlier pay that she was drawing prior to her joining in the Panchayat Union School and by virtue of that disadvantageous position, the teacher was losing some financial benefit, and hence she challenged the order dated 22.08.2010 before the writ court.

7. The learned Judge, who heard the writ petition ultimately allowed the writ petition by order dated 14.09.2018, which is under challenge in this appeal.



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8. Questioning the order passed by the learned Judge, which is impugned herein, the learned Special Government Pleader appearing for the appellants would submit that the order dated 20.08.2010 has been passed strictly in consonance with G.O.Ms.No.234 and the fact remains that the teacher concerned has moved from a private aided school to Panchayat School only after 01.01.2006 and therefore, based on the Government Order and the Sixth Pay Commission recommendation, her pay has been fixed and what has been fixed was Rs.11,860/- in the pay band of Rs.5200-20200+Grade Pay 2800/-. Therefore, based on such pay the 3% increment as contemplated under Para 4 of G.O.No.234 has already been given by way of increment on the conferment of Special grade to the teacher. Therefore, the order dated 20.08.2010 which was impugned in the writ petition was strictly in consonance with the Government Order in vogue. Hence, it could not have been interfered by the learned Judge in the order impugned, he contended.

9. We have gone through the materials placed before us and heard the submissions made by the learned Special Government Pleader.



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10. In the order impugned, the learned Judge has extracted and relied upon G.O.No.992, Education Department dated 22.06.1979. Inter alia in the Government Order, the following has been stated.

" 4. The Government have carefully examined the (sic) and have decided that the relevant Panchayat Union Council Establishment Rules and the relevant Tamil Nadu Municipal Educational Service Rules be amended suitably to ensure the past services rendered by teacher prior to his/her resignation from one management school or from a Panchayat Union School or from a Municipal School are taken into account for the period of 10 years of service required for grant of grade. Pending issue of amendment to the Panchayat Union Establishment Rules and the Tamil Nadu Municipal Rules, the Government direct that the services rendered by a teacher under all kinds of managements, viz., Government Panchayat Municipal Corporation and aided agencies and also (sic) under the control of Director of Backward Classes and of Harijan and Tribal Welfare prior to his/her resignation, termination, transfer or migration should be counted for the required period of 10 years of service for the purpose of granting selection grade in that post excluding the period of breaks if any."

11. In the said G.O.No.992, it had been made clear that whatever be the Department under which a teacher is working, may be a Government



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School or Panchayat Union School or Municipality or Corporation School or Aided School or even Backward Class / Harijan and Tribal Welfare School, prior to his / her resignation or termination or transfer or regularisation, the service rendered by such teacher in those schools shall be taken into account for the purpose of conferring selection grade or special grade after 10 / 20 years respectively.

12. If that being so, the entire service rendered by the teacher from 03.06.1988 and also taking the period between the date of resignation and the date of joining in the new school have to be taken into account for the purpose of conferring those two status. Accordingly, when ten years was over by 03.06.1998, selection grade was conferred. Admittedly thereafter, before completing another ten years, since the teacher resigned the post on 30.11.2006 and joined on 07.12.2006 at the present Panchayat Union School and she would complete the second ten years ie., totally 20 years only on 02.06.2008 ie., on 03.06.2008 she would be eligible to special grade and that in fact has been conferred.

13. Here, the only question is that, while conferring such special grade on 03.06.2008, whether the 3% increment has to be given based on the basic pay that was drawn by the teacher prior to the teacher shifted to the



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Government school or based on the basic pay that has been fixed after she joined in the Government School / Panchayat Union School after 01.01.2006.

14. In this context, it is to be noted that, what has been drawn by the teacher prior to her shifting cannot be affected by virtue of the new fixation of pay under the Sixth Pay Commission recommendation with effect from 01.01.2006. It is also to be noted that the teacher was drawing the scale of pay of Rs.5900-200-9900/- for a special grade from 03.06.2008.

15. However, what has been now fixed by the appellant Department through the impugned order before the writ Court was Rs.5200-20200+Grade Pay 2800/-. The present fixation that has been made after 01.01.2006 of course may be acceptable to those who have newly joined in service, but insofar as the earlier incumbents who had put in service for more than ten years or nearly about 20 years since Government Order envisaging that those past services has to be taken into account for the purpose of conferring selection grade or special grade, such a fixation of special grade or selection grade shall not be disadvantageous to the teacher concerned, as by virtue of the new fixation, the earlier pay scale that was drawn by the teacher is getting reduced. That kind of disadvantageous situation cannot be faced by any employee like the teacher and therefore, if we draw a balance between



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G.O.No.234 and G.O.No.992 referred to above, both should go in unison to regulate the fixation of selection grade and special grade, of course by taking into account the total service of the teacher, combining the service in private school or management school as well as the present aided school and the total service, if it is taken into account, the actual pay that has been fixed and drawn by the teacher concerned, should not get affected or reduced by virtue of the present situation even under G.O.No.234.

16. If that being the legal position, based on the factual matrix, since it is an admitted case that the teacher already completed 20 years by 03.06.2008, therefore she would be eligible to get special grade. While conferring the special grade, even the special pay has to be fixed equal to 3% increment of the basic pay. That 3% increment must be given not based on the pay fixed subsequent to 01.01.2006, but based on the pay prior to 01.01.2006 as per the eligible pay she drawn.

17. When that being so, the order impugned in the writ petition fixing such a pay scale may not be justifiable and that is the reason why the learned Judge in the writ Court has interfered with the impugned order and after having set aside the same, direction was given to re-fix the special grade pay from 10.06.2008 onwards by re-fixing the salary as per the Sixth Pay



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Commission recommendation, more so in the light of G.O.No.992 dated

22.06.1979.

18. We do not find any error in the order of the learned Judge and we do not find any reason to interfere with the same. Accordingly, this writ appeal fails and hence it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. The order of the learned Judge by way of a direction in the order impugned shall be complied with by the appellant Department within a period of eight weeks from the date of receipt of a copy of this order.

(R.S.K.,J..) (K.B.,J.)

10.07.2023

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Headmaster

Panchayat Union Elementary School

Kundril Kadavu

Nilgiris District.



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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

KST

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10.07.2023