



W.P.No.4895 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.4895 of 2016
and
W.M.P.No.4249 of 2016

K.Sivakami

.. Petitioner

VS

1.The Government of Tamilnadu
Rep. By Secretary to Government
School Education Department,
Fort St.George, Chennai – 09.

2.The Director of School Education,
College Road, Chennai – 6.

3.The Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai.

4.The Accounts Officer,
O/o. Accountant General (A&E)
Anna Salai, Chennai – 18.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus Calling for the records of the 4th respondent in No. PEN12/III/II/ ENG/20590 3/12-13/ADK dated 01.08.2012 and the records of the 3rd respondent issued in Na.Ka.No. 9851/A1/2012 dated 05.11.2012 and quash the same and issue a consequential direction to the respondents to restore the pay of the petitioner as Rs.1760/- as on 28.09.1992 and at Rs.6900/- with effect from 01.01.1996 with monetary benefit from 1998 and add Rs.750/- from 02.11.2011 as Personal Pay to the post of Headmaster and add the same for pay fixation and pensionary benefits and arrive at a last drawn pay and send the revised pension proposal to the Accountant General for



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sanction and to disburse the arrears of salary for the period of re-employment for a period from 01.04.2012 to 31.05.2012 to the petitioner.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mr.S.Ravikumar
Special Government Pleader
for R1 to R3
Ms.Hema Muralikrishnan
for R4

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking records of the fourth respondent, No. PEN12/III/II/ ENG/20590 3/12-13/ADK dated 01.08.2012 and the records of the third respondent, in Na.Ka.No. 9851/A1/2012 dated 05.11.2012 and quash the same and issue a consequential direction to the respondents to restore the pay of the petitioner at Rs.1760/- as on 28.09.1992 and at Rs.6900/- with effect from 01.01.1996 with monetary benefits from 1998 and also to add Rs.750/- from 02.11.2011 as personal pay to the post of Headmaster and send revised pension proposal to the office of the Accountant General for sanction and for disbursement of arrears of salary.

2. The petitioner herein had originally joined service as



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B.T. Assistant on 09.10.1985 at NCP Municipal Higher Secondary School, Dharapuram Municipality, the then Erode District. Municipal teachers became recognised as Government servants with effect from 01.06.1986. They were governed under the Rules framed under Article 309 of the Constitution and called as Tamil Nadu Municipal Educational Services Rules.

3. The petitioner was promoted as P.G. Assistant on 14.07.2008 and as Headmaster of the High School on 05.11.2008. She was further promoted as Higher Secondary School Headmaster on 02.11.2011 and retired from service on attaining the age of superannuation on 31.03.2012. Thereafter, she was re-employed for a period of two further months in April and May, 2012.

4. On her retirement, the third respondent, had forwarded a proposal to the Accountant General / the fourth respondent for sanction of pension vide proceedings dated 11.05.2012. In the said proposal, the last drawn pay was fixed at Rs.29,970/- in the scale of pay of Rs.15600- 39100 + 5400 GP.

5. The fourth respondent had raised objections on 01.08.2012 and had returned the pension proposal claiming that



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the petitioner was drawing the pay of Rs.1700/- in the time scale of Rs.1400 – 40 – 1600 – 50 – 2300 – 60 – 2600, which is the scale of pay available for Ordinary Grade of B.T. Assistant. The petitioner was granted Selection Grade on 28.09.2012 and, therefore, it is claimed that the pay should have been fixed only at Rs.1700 + 50 in the scale of pay of Rs.1640 – 60 – 2600 – 75 – 2900.

6. It was however complained by the fourth respondent that the pay of the petitioner was fixed at Rs.1700 + 50 + 10 personal pay equivalent to Rs.1760/- and entered in the a service register. It was therefore stated that this grant of Rs. 10 of personal pay thereby increasing the basic pay of the petitioner from Rs.1750/- to Rs.1760/- was an erroneous calculation and the pension proposal was therefore returned by the fourth respondent.

7. There was yet another issue with respect to personal pay which was sanctioned at Rs.750/- from 01.01.2011 and it was stated that it should have been only Rs.500/- and not Rs.750/-. With respect to this particular aspect of difference between Rs.500 as personal pay or Rs.750/- as personal pay, the stand of the fourth respondent is that the third respondent can give a revised



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proposal and in view of that particular fact, this Court need not enter into any further discussion on that aspect.

8. The only issue which will now have to be examined is the claim of fourth respondent that the pay band of the petitioner should have been Rs.1700 + Rs.50 instead of Rs.1700 + 50 + Rs.10 as personal pay.

9. Consequent to raising objection to the grant of Rs.10/- as personal pay to the petitioner herein and its spiralling effect right through the service of the petitioner herein, impugned proceedings has been passed by the fourth respondent seeking readjustment of the pay scale of the petitioner herein at Rs.1700/- + 50/- and not as Rs.1700/- + 50 +10 as personal pay and for consequent recovery of the additional emoluments or pay received by the petitioner. That order is put into test in the present writ petition.

10. Learned counsel for the petitioner, stated that the petitioner herein was employed as Ordinary Grade B.T. Assistant. While employed as Ordinary Grade B.T. Assistant, the pay particulars of the petitioner was Rs.1700/-. The increment for ordinary Grade B.T. Assistant was 50/-. The pay comes to



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Rs.1750/. However, the petitioner was, even before being granting Selection Grade as B.T. Assistant, promoted as Headmaster. When promoted as Headmaster, the pay of the petitioner was revised at Rs.1760/-.

11. It is contended by the learned counsel for the petitioner that to step up the pay, namely, between Rs.1750/- which was the pay when the petitioner was drawing as in Ordinary Grade B.T. Assistant to Ordinary Grade Headmaster which is Rs.1760/-, the difference of Rs.10/- was treated as personal pay by the third respondent in their pay given to the petitioner herein and as entered in the service register.

12. Learned counsel for the fourth respondent, however, has raised objections to this particular grant of Rs.10/- as personal pay and has stated that the pay should have remained only at Rs.1700/- + 50/-. In this connection, learned counsel placed reliance on G.O.(Ms).No.304 dated 28.09.1990 wherein, it had been very specifically stated that the Government Order in which the revised Selection / Special Grade as per V Pay Commission was issued by the Government and the highest slab at Rs.1760/- in the Selection Grade of Rs.1640-2900 would be applicable only to



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those who had moved to Selection Grade prior to 27.06.1989. The petitioner had moved to Selection Grade only subsequent to 27.06.1989 and it is therefore contended that the scale of the petitioner should only be Rs.1750/- and not 1760/-.

13. It is further contended on behalf of the fourth respondent that this adjustment by adding Rs.10/- as personal pay was in violation of the Rules, particularly G.O.(Ms).No.304 and it is further contended that the petitioner in her affidavit has placed reliance on G.O.No.304 and if reliance is placed on the said G.O., the pay of the petitioner should only be Rs.1750/- and not Rs.1700 + 50 + 10 as contended by the petitioner herein.

14. Learned Special Government Pleader who appears on behalf of respondent nos. 1 to 3 placed reliance on the counter affidavit filed wherein they had placed reliance on the Tamil nadu Fundamental Rule No.22 (1) (35)(ii). Even before entering into a discussion on applicability of the said fundamental rule, it would be relevant to extract the same:-

".. 22.(1) (35)(1) The pay of the Government servants appointed to Selection Grade posts shall be fixed as indicated below:-

(i) Where there is a corresponding stage after adding one increment in the ordinary grade, at



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the same stage in the Selection Grade;

(ii) Where there is no corresponding stage as referred to in clause (i) above, at the lower stage in Selection Grade and the difference between that stage and the amount worked out as indicated in clause (i) above shall be treated as "Personal Pay". Personal Pay due to the fixation of pay in Selection Grade shall be continued to be drawn till the individual is moved to another post and this "Personal Pay" shall be taken into account for the purpose of fixation of pay on appointment to the higher pose or to the Special Grade;

(iii) Where after adding one increment in the ordinary grade, the amount is less than the minimum of the Selection Grade scale of pay, at such minimum.

(2) The service from the date of last increment in the ordinary grade post shall be allowed to be counted for increment in the Selection Grade.

(3) The above said mode of fixation shall also apply to Government servants appointed to Special Grade Posts and Special temporary posts."

15. The reasoning of the respondent nos. 1 to 3 was that, when there is a corresponding stage after adding of increment in the ordinary grade, and there is a lower stage at the selection grade, the difference should be treated as personal pay. In the instant case, the petitioner was drawing Rs. 1700 + 50 in Ordinary Grade as B.T. Assistant. When the petitioner was promoted as Selection Grade B.T. Assistant the initial pay was Rs.1760/-. To



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make up this Rs.10/-, reliance is placed on the Fundamental Rules where it is provided that the difference of Rs.10/- can be treated as personal pay.

16. The issue, therefore, before this Court is about addition of Rs.10/- which is treated as personal pay while the petitioner was originally granted salary. To make it clear, the scale was Rs.1640 + 60 which would mean Rs.1700/- in the first instant case and Rs.1760/- in the second instance.

17. When the petitioner was moved to Selection Grade, the pay should be 1760/-, but the scale of pay was Rs.1700/- + 50/-. To make up this particular Rs.10/-, it was treated as personal pay. This is the effect of the interpretation of fundamental rules as stated. To repeat, clause (ii) is extracted once again :-

"(ii) Where there is no corresponding stage as referred to in clause (i) above, at the lower stage in Selection Grade and the difference between that stage and the amount worked out as indicated in clause (i) above shall be treated as "Personal Pay". Personal Pay due to the fixation of pay in Selection Grade shall be continued to be drawn till the individual is moved to another post and this "Personal Pay" shall be taken into account for the purpose of fixation of pay on appointment to the higher pose or to the Special Grade;"

(Emphasis supplied)



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18. It is very clear that in the instant case there is no corresponding stage of Rs.1760/- since the pay band is Rs.1700 + 50, at the lower stage in the selection grade and the petitioner was moved to Selection Grade as B.T Assistant and there is a difference between that particular stage namely Rs.1760/- and the amount worked out, namely Rs.1750/-, the difference should be treated as personal pay and that is how the petitioner had been drawing Rs. 10/- as personal pay.

19. When viewed from this particular angle, I find that there is no discrepancy committed by the respondents with that grant of Rs.10/- as personal pay when the petitioner was moved from Ordinary Grade as B.T. Assistant to Selection Grade B.T. Assistant. The reasoning of the fourth respondent has been without proper examination of FR 22(1)(35)(ii) which clearly explains the position.

20. The issue whether the Fundamental Rules were to override the Government Order or not is not to put to question in this particular case as the Fundamental Rules are very clear and it has been very specifically stated that the difference between the



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stage will have to be treated as personal pay.

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21. Therefore, with respect to the two objections raised by the fourth respondent, it is held as follows:-

(i) with respect to the objection that the pay of the petitioner should be re-worked as Rs.1700 + 50 on movement from Ordinary Grade to Selection Grade B.T Assistant, the objection is not correct and the grant of Rs.10/- as personal pay is proper.

(ii) the claim of the respondents with respect to Special Pay as between Rs. 750/- and Rs.500/- is left open and the third respondent is directed to submit revised pension proposals to the fourth respondent and upon receipt of the same, the fourth respondent may examine the said issue in accordance with the rules and regulations.

22. Let there be not be any further recovery against the petitioner's pay till the further proposal relating to Rs.750/- – Rs.500/- personal pay is submitted to the third respondent to the fourth respondent.

23. Writ petition stands partly allowed. No costs.
Connected miscellaneous petition is closed.



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Index:Yes/No
Neutral Citation:Yes/No
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C.V.KARTHIKEYAN,J.

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