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WP.No.301/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.301/2017

M.Shanmugam

... Petitioner

Versus

1.The Government of Tamil Nadu
rep.by its Secretary to Government
School Education Department
Fort St George, Chennai-9.

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

3.The Chief Educational Officer
Vellore, Vellore District.

4.The Headmaster
Government Higher Secondary School
Nellorepettai, Vellore District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the proceedings of the 1st respondent in Letter NO.6510/CC1[2]/2016-2 dated 02.09.2016 and quash the same and further



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direct the 1st respondent to implement the order passed in WP.No.882/2016 dated 11.01.2016.

For Petitioner : Mr.M.Prabavathi
For RR 1 to 3 : Mr. V.Nanmaran, AGP

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to the proceedings of the 1st respondent, Secretary to Government, School Education Department. Government of Tamil Nadu, in Letter No.6510/CC 1[2]/2016-2 dated 02.09.2016 and quash the same and direct the 1st respondent to implement the order passed in WP.No.882/2016, order dated 11.01.2016.
- (2) Even before proceeding with the facts of the case, it must be stated that WP.No.882/2016 had also been filed by the petitioner herein in the nature of mandamus, seeking consideration of a representation given by the petitioner herein on 17.05.2015. The order passed in that particular writ petition by a learned Single Judge was not to consider it positively, but rather to consider the representation and pass orders on merits and in accordance with law. It never



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contemplated that the representation should be accepted and in accordance with the representation, an order should be passed in favour of the petitioner herein.

- (3) The writ petitioner M.Shanmugam, who was aged 70 years at the time of filing of the writ petition, had been appointed on 06.09.1967 as Secondary Grade Teacher at Municipal High School at Gudiyatham in Vellore District. He was then awarded selection grade on 06.09.1977 and special grade on 06.09.1987. He was then transferred to Government Higher Secondary School at Nellorepettai in Gudiyatham in Vellore District. He retired from service by applying for voluntary retirement on 31.10.2002. He claimed that the Government of India had issued a letter on 28.01.2013 to count the Grade Pay for the purposes of pension. He also claimed that various State Governments had implemented that particular direction, but that the Government of Tamil Nadu had not implemented such direction. Claiming that the said direction should be implemented, the petitioner had first given a representation and filed a writ petition for mandamus and consequent to the mandamus which was issued, the impugned order had been



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passed by the 1st respondent.

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(4) In the impugned order, it had been stated as follows:-

"5.The State Government has the right to design the pay and pension structure of its employees within the available resources of the State. Accordingly, the recommendations of the Official Committee were accepted and orders issued in G.O.Ms.No.235, Finance [Pay Cell] Department, dated 01.06.2009. As was done in earlier revisions, parity has been allowed among pre-2006 pensioners. In addition, it is provided to ensure the minimum pension at fifty percent of the minimum of the pay in the Pay Bank Plus Grade Pay.

6.The Government, after considering various factors including financial constraints had taken a policy decision to give complete parity to past pensioners s between pre-1996 pensioners and post 1996 pensioners and modified parity between pre-2006 and post 2006 pensioners.

7.It is not mandatory on the part of the State Government to adopt the Government of India's orders issued in F.No.38/37/08-P&PW[A] dated 28.01.2013, to step up the pension of the pre-2006



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pensioners upto 50% of the sum of minimum of the pay in Pay Band and Grade Pay as arrived at with referred to the fitment tables.

8.The resource position of the Central Government cannot be compared with that of the State Government. Due to various legal interventions, a number of Government orders have been issued with huge impact on State Finance which is unsustainable in the long run. The further revision of pension and other retirement benefits without considering financial constraints of the State will lead to more financial stress and the State cannot implement development and infrastructure schemes.

9.In the above circumstances, the request of the petitioner to review the pension pre-2006 pensioners based on the OM.F.No.38/37/08-P&PW[A] dated 28.01.2013 is not feasible of compliance and therefore, rejected."

- (5) Cogent reasons have been given as to the prerogative of the State Government to implement some of the recommendations as given by the 6th Central Pay Commission and such implementation would be based on the availability of finances of the State Governments and it



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must be kept in mind that the petitioner is not the only beneficiary of the financial resources. The Government will have to provide for the welfare of not only pensioners like the petitioner, but also as a welfare State, provide schemes for the benefit of the general public including women, children, cutting across all classes of Society. A few of the recommendations of the 6th Pay Commission had been put in place by the State Government. It could be done only relating to the financial resources available. The State Government cannot be expected to run in debt merely to comply with all the directions of the Central Pay Commission.

- (6) It is contended on behalf of the respondents that the State Government had appointed a One Man Commission to examine which of those of the directions from the 6th Pay Commission which could be implemented and thereafter, G.O.Ms.No.235, Finance [Pay Cell] Department, dated 01.06.2009 had been issued. That particular Government Order has not been questioned or challenged by the petitioner herein. He lays a claim on the basis of the representation given by him and on the basis of the mandamus issued, which



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mandamus was to examine such representation on merits and in accordance with law. In accordance with law would mean in accordance with the guidelines prescribed by the State Government and the guidelines prescribed by the State Government were enunciated in the Government Order in G.O.Ms.No.235, Finance [Pay Cell] dated 01.06.2009. There is no quarrel raised by the petitioner that the benefits under the said Government Order had not been extended to him. As correctly pointed out on behalf of the respondents, the petitioner is an employee of the State Government and his promotion and other aspects are governed by the Rules which are put in place by the State Government and the disciplinary authority is also the State Government. Therefore, the order passed by the State Government in G.O.Ms.No.235, dated 01.06.2009 alone will be applicable to the petitioner herein.

- (7) There are no merits raised in the writ petition and the same stands **dismissed**. No costs.

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Internet : Yes



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To

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C.V.KARTHIKEYAN, J.,

AP

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