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W.A.Nos.973 to 979 and 981 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.A.Nos.973, 974, 975, 976, 977, 978, 979 and 981 of 2020

N.Subramanian	...	Appellant in W.A.No.973/2020
A.Malliga	...	Appellant in W.A.No.974/2020
P.Muthusamy	...	Appellant in W.A.No.975/2020
S.Rajagopalan	...	Appellant in W.A.No.976/2020
K.Shanmugam	...	Appellant in W.A.No.977/2020
R.Saradhamani	...	Appellant in W.A.No.978/2020
P.Chennaiimalai	...	Appellant in W.A.No.979/2020
N.Arunachalam	...	Appellant in W.A.No.981/2020

-Vs-

- 1.The Government of Tamil Nadu
Rep.by its 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 Branch Officer
Office of the Principal Accountant General
(A&E), Tamil Nadu, 361, Anna Salai
Chennai 600 018.
- 4.The District Educational Officer
Karur District, Karur.



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5.The Block Educational Officer /
The Assistant Elementary Educational
Officer, K.Paramathi Panchayat Union
K.Paramathi, Karur District.

... Respondents in
all W.As

Common Prayer : Writ Appeal under Clause 15 of the Letters Patent against the common order in W.P.Nos.381, 389, 390, 449, 385, 461, 388 ad 387 of 2019 dated 25.03.2019.

In all W.As.

For Appellants	:	Mr.A.S.Kaizer
For Respondents	:	Mr.K.V.Sajeev Kumar Special Government Pleader -for RR 1, 2, 4 and 5 Mrs.Hema Muralikrishnan - for R3

COMMON JUDGMENT

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

Since this batch of writ appeals arise out of the common order passed by the writ court dated 25.03.2019 made in the respective writ petitions along with some other writ petitions, with the consent of the learned counsel for both parties, all these writ appeals were heard and are disposed of by this common judgment.

2. The facts in nut shell are as follows; that these appellants have joined as Secondary Grade Teachers prior to 01.06.1988 at various schools



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under the respondent State. Prior to 01.06.1988, the scale of pay for Secondary Grade Teacher as well as Elementary School Headmaster or Primary School Headmaster was one and the same. In fact, the post of Elementary School Headmaster and the Secondary Grade Assistant are interchangeable. Therefore, there was no separate seniority list prepared. Anyone can be posted as a Headmaster and vice versa.

3. When that being so, on and from 01.06.1988, when the State Government implemented the Fifth Pay Commission recommendations, two different scales of pay has been fixed, by which the Secondary Grade Teacher's pay starts with Rs.1200/-, whereas the pay of Elementary School Headmaster starts with Rs.1400/-. By virtue of this two different scale of pay, two cadre has been created. Therefore, the Elementary School Headmaster post became a promoted post. All this had happened after 01.06.1988.

4. Insofar as the Secondary Grade Teachers and the Primary School Headmasters joined prior to 01.06.1988 is concerned, since the post was interchangeable with same scale of pay, if they continued in the same scale of pay as per the Rules which were in vogue, they would be conferred the Selection Grade after completion of ten years and after completion of another ten years ie., total 20 years they will be conferred the status of Special Grade.



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5. When that being so, those who have completed some long years of service prior to 01.06.1988, whether would be considered for the purpose of conferment of the status if they become Elementary School Headmaster after 01.06.1988 was the question, where, the Government had taken a decision that whoever holding the post on 01.06.1988 alone would be considered for the purpose of conferment of status of such Selection Grade or Special Grade, as the case may be, taking into consideration the services rendered by them prior to 01.06.1988 even in the post of Secondary Grade Teacher.

6. That decision of the Government was put under challenge by so many other people who have been subsequently posted as Elementary School Headmaster, but were not holding the post of Elementary School Headmaster as on 01.06.1988. The reason being that, because of the posts were interchangeable, some of the juniors were holding the post of Headmaster on 01.06.1988 whereas some of the seniors could not hold the post and subsequently they might have been posted as Elementary School Headmaster. Therefore, irrespective of their seniority since Selection Grade and Special Grade were denied to them, in order to redress the anomaly, those people have approached the Tamil Nadu Administrative Tribunal, where orders have been passed that, those who got posted as Elementary School Headmaster after 01.06.1988 also would be eligible and entitled to calculate



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their past service for the purpose of Selection Grade and Special Grade even if they were holding the post of Elementary Headmaster after 01.06.1988.

7. That was the order passed by the Tamil Nadu Administrative Tribunal and the same was accepted by the Government and they issued a Government Order in G.O.Ms.No.234, School Education Department on 10.09.2009, but the thing is that, while issuing G.O.Ms.No.234, it was issued only in respect of 63 people and the benefit has been extended taking into account the grievance of 63 people who approached the Tamil Nadu Administrative Tribunal. However, subsequently so many similarly placed persons like the present appellants also approached this Court, where orders have been passed following the orders already passed by the Tribunal, which was of course accepted by the Government by issuing G.O.Ms.No.234. Therefore, such a benefit which has been extended under G.O.Ms.No.234 had been extended to the similarly placed persons who had subsequently approached this Court.

8. When that being the position, the present appellants since were similarly placed, their conferment of Selection Grade and Special Grade as per G.O.Ms.No.207 and G.O.Ms.No.234 having been considered, was to be conferred and based on which the service benefits by way of salary arrears as



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well as pensionary benefits with revised pension have to be calculated and be paid, which was sought for by these petitioners. However, that was rejected by orders of the respondent State / Department.

9. Aggrieved over the said orders dated 19.12.2014 these petitioners / appellants filed separate writ petitions respectively as stated supra before the writ Court. These writ petitions, along with the connected writ petitions, were heard jointly and disposed of by the common order of the learned Judge dated 25.03.2019, where the learned Judge, even though has traced all the aforesaid happenings and history of the issue, had ultimately held that the orders were passed in 2014, but the same was challenged in the writ petitions by these petitioners / appellants only in January 2019. Therefore, six years have elapsed and hence it can be treated as laches and for that reason alone the relief sought for by them can be denied. Accordingly, these appellants' prayer was rejected by the impugned order dated 25.03.2019.

10. Heard Mr.A.S.Kaizer learned counsel for the appellants, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents 1, 2, 4 and 5 and Mrs.Hema Muralikrishnan, learned counsel for the third respondent in all these appeals.



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11. The learned Special Government Pleader has made an attempt to sustain the order, which is impugned herein by stating that, these appellants who filed writ petitions belatedly after five years ie., in the year 2019 challenging the order passed by the authorities in the year 2014, they can only be treated as fence-sitters and those fence-sitters are not entitled to get the same relief that has been given by the Government to the similarly placed persons who approached the Court in time. This proposition has been held by the Hon'ble Supreme Court in more than one occasion. Therefore, if such a proposition is applied to the present facts of the case, these appellants / petitioners are not entitled to get the same relief as that of the similarly placed persons who obtained the relief by virtue of their timely approaching this Court by filing necessary petitions. However, in the case of the petitioners / appellants they had admittedly approached this Court only after five years period. Therefore it can very well be construed as laches and hence the said finding given by the writ Court in the order impugned is to be sustained, the learned Special Government Pleader contended.

12. However, Mr.A.S.Kaizer learned counsel for the appellants, by way of reply, had stated that it is not the first time these appellants / petitioners have approached this Court in the year 2019. In fact, they approached this Court in 2011, where some enforceable orders have been passed in their



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favour. Subsequently, the Government has passed orders in the year 2014, as against which orders only the present writ petitions were filed.

13. The learned Judge has not decided the said writ petitions on merits except stating that there was delay in approaching this Court. In this context, it is to be noted that the benefit for which the people approached this Court of law is pensionary benefits as well as salary arrears. It is a settled proposition that, this kind of pensionary benefits as well as salary arrears is a continuous cause of action because, till death all these petitioners are entitled to get the pension. Therefore, what is the revised pension that they are entitled to by virtue of the revised scale of pay by extension of the benefit under G.O.Ms.No.234, such kind of benefit by way of revision of pension if it is paid to these petitioners, that would be paid till their last breath. Therefore, it is a continuous cause of action and it cannot be stated that it is an one time measure to be taken in favour of the appellants / petitioners. So, it is a settled proposition that, when there is a continuous cause of action, the question of delay or laches does not arise, especially while invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

14. Moreover, insofar as these petitioners / appellants are concerned, as rightly stated by the learned counsel for the appellants, they have already



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approached this Court at the earliest point of time ie., in the year 2011.

Therefore, they cannot be stated that they have been in long slumber in not approaching this Court for getting their relief.

15. Therefore, the view taken by the learned judge and the reasons given for rejecting the writ petitions only on the ground of laches cannot be approved by this Court and the order impugned is liable to be interfered with. Resultantly, the following orders are passed in these writ appeals.

- (a) That the impugned order dated 25.03.2019 passed by the writ Court insofar as these appellants are concerned is set aside.
- (b) As a sequel, the impugned orders before the writ court passed in 2014 by the respondents as against the present appellants, also are set aside.
- (c) Consequently, the appellants are entitled to get the benefits conferred under G.O.Ms.No.234 dated 10.09.2009 as has been given to the 63 people in the said Government Order, the reason being that the benefit that has been extended under G.O.Ms.No.234 even though was restricted to some persons, it cannot be treated as a relief-in-personam but a relief-in-rem. Once it becomes relief-in-rem, it has to be extended to all the similarly placed persons, and they cannot be expected to approach the Court of law. That kind of



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attitude cannot be expected to be shown by the respondent State.

(d) Therefore, there shall be a direction to the respondents to extend the benefit under G.O.Ms.No.234 dated 10.09.2009 it shall be calculated and be paid with arrears to these appellants / petitioners within a period of twelve (12) weeks from the date of receipt of a copy of this order.

16. With the above directions, all these writ appeals are allowed. No costs.

(R.S.K.,J..) (G.A.M.,J.)
24.11.2023

Index : Yes/No
Internet : Yes/No
KST



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**R.SURESH KUMAR, J.
AND
G.ARUL MURUGAN, J.**

(Order of the Court was made by **R.SURESH KUMAR, J.**)

This matter is taken on board at request of the learned counsel appearing for the petitioner 'for being mentioned'.

2. Accordingly, the order dated 24.11.2023 in paragraph No.15 in the operative portion, clause (b), it has been mentioned as '2014' as the year of the impugned order. But it is the year of 2017. Since it is a typographical error, the same shall be rectified and corrected order copy be given to the parties by the Registry.

**(R.S.K., J.) (G.A.M., J.)
29.02.2024**

vji