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Writ Appeal No.3465 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2023

CORAM

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

**Writ Appeal No.3465 of 2019 &
CMP No.22199 of 2019**

- 1.The State of Tamil Nadu
Rep., by its Secretary to Govt.,
School Education Department,
Fort St., George, Chennai – 600 009.
- 2.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai – 600 006.
- 3.The District Elementary Educational Officer,
Vellore, Vellore District.
- 4.The Assistant Elementary Educational Officer,
Kandhili, Vellore District.
- 5.The Assistant Elementary Educational Officer,
Tirupattur, Vellore District.
- 6.The Assistant Elementary Educational Officer,
Alangayam, Vellore District.
- 7.The Assistant Elementary Educational Officer
Natrampalli, Vellore District.



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8.The Assistant Elementary Educational Officer,
Vellore Town, Vellore District.

... Appellants

Vs

1.K.Thanikachalam
2.P.C.Govindarasan
3.A.Parthasarathy
4.M.Kuppusamy
5.P.Kannappan
6.A.Selvaraj
7.K.Kailasam
8.S.Suguna Suseekaram
9.T.Susellabai
10.B.Malliga
11.P.Helen Suryabai
12.R.Nandhan
13.M.Govindan
14.P.Selvam
15.M.Selvaraj
16.P.Sundhara
17.A.Louis

... Respondents

PRAYER Writ Appeal filed under Clause 15 of Letter Patent against the order dated 25.02.2014 made in W.P.No.5188 of 2014.

For Appellants : Mr.K.V.Sanjeev Kumar Spl., GP

For Respondents : No Appearance

JUDGMENT

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

This Appeal has been directed against the order passed by the Writ



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Court, dated 25.02.2014, made in W.P.No.5188 of 2014.

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2. The petitioners/respondents were working as Elementary School Headmasters and retired from service as elementary school headmasters, to step up their pay on par with Selection Grade and Special Grade secondary grade teachers after 01.06.1988, the Government issued a Government Order i.e., G.O.No.234 of School Education Department, dated 10.09.2009. Under the said G.O., such enhanced pay on par with the secondary grade teachers with selection grade and special grade were directed to be given notionally for the purpose of calculating their pension.

3. In order to extend the said benefits, these petitioners/respondents who were similarly placed had approached the Writ Court and filed Writ Petition seeking mandamus to extend the benefit under G.O.No.234 to them also.

4. Considering the same, the learned Single Judge who heard the said Writ Petition along with some other Writ Petitions passed a common order



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on 25.02.2014, by giving a direction to consider the request made by the retired teachers by way of representation dated 02.09.2013 and pass orders thereon taking into consideration of the judgments already passed by the Division Bench of this Court in W.A.No.815 of 2010 etc., batch dated 07.07.2011.

5. Aggrieved over the said order only, the present appeal has been directed.

6. Heard Mr.K.V.Sanjeev Kumar, learned Special Government Pleader appearing for the appellants, who would submit that though number of orders have been passed including the order which has been referred by the learned Single Judge in the impugned judgment, in W.A.No.815 of 2010, dated 07.07.2011, subsequently, a Coordinate Bench of this Court, in the matter of ***D.Gunasekaran vs. State, in W.A.Nos.429 to 438 of 2018***, has taken the view that the retired teacher, who approached the Court of law to seek such benefit belatedly after 25 years cannot be accepted. Therefore, on the ground of laches, the decision taken by the Writ Court in that case,



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which was appealed before the Coordinate Bench was approved and as against the Division Bench order, a Special Leave Petition was filed in SLP Diary No.5529 of 2019 that was also dismissed by order of the Hon'ble Supreme Court, dated 01.04.2019.

7. Therefore, relying upon these decisions, the learned Special Government Pleader would seek indulgence of this Court to interfere with the order impugned where the said direction was given by the learned Single Judge to consider the request of the these petitioners/respondents in the light of the judgment passed by the Division Bench dated 07.07.2011 made in W.A.Nos.815 of 2010, etc batch.

8. We have considered the said submissions made by the learned Special Government Pleader appearing for the appellants and have perused the materials placed before this Court.

9. It is not only based on the Division Bench order referred to by the learned Single Judge in the impugned order, the said benefit had been extended to various retired teachers like the petitioners/respondents, but in sever-



al such orders passed by various single benches as well as the Division Bench of this Court, the benefit under G.O.No.234, was directed to be extended to those similarly placed persons.

10. Infact this bench recently had an occasion to consider the similar matters in W.A.No.2857 of 2019, etc., batch where by disposing of a set of Writ Appeals by our order dated 13.07.2023, we have passed the following order:-

21. Therefore the issue has been settled and concluded where those teachers who were initially working as Secondary Grade Teachers and subsequently earned promotion as Primary School Headmaster after 01.06.1988 are entitled to get the benefit of Selection Grade and Special Grade and accordingly the pay has to be necessarily revised, therefore based on the revised pay what are all the arrears of pay shall be paid to them and correspondingly their pension also to be revised and after revision of pension, the arrears of pension also shall be paid to them and they are entitled to continuously receive the same till their lifetime. 22. Insofar as this benefit conferred on them is concerned, absolutely there can be any quarrel as the issue raised, as stated supra, has been settled. Therefore following the earlier judgments passed by this Court including the latest one of the Co-ordinate Bench dated



05.07.2023, we are inclined to dispose of these writ appeals as well as the writ petitions to the following effect: (i) That the Writ Appeals in W.A.Nos.2857 of 2019, 1038 of 2017, 944 of 2017, 1663 of 2018, 1766 of 2018, 671 of 2018, 688 of 2018, 704 of 2018, 3738 of 2019, 3166 of 2019 and 957 of 2019 are deserved to be dismissed, accordingly they are dismissed and the writ petitions in W.P.Nos.25680 of 2011, 8962 and 8963 of 2011, 21852 of 2014, 15496 of 2014, 2112 of 2015, 22175, 22176, 22177, 22178, 22179, 22180, 22181, 22182 of 2015, 24456 of 2015, 12990 of 2016 and 22176 of 202 are allowed. (ii) As a sequel, the respective retired Teachers who earned the promotion as Primary School Headmasters after 01.06.1988 are entitled to get the benefit of salary dues as well as pension dues by way of arrears and that shall be calculated and be paid to the respective retired Teachers/Primary School Headmasters by the appellant Department within a period of three months from the date of receipt of a copy of this judgment.

23. With the above observations and directions, all these Writ Appeals and Writ Petitions are disposed of to the terms indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

11. Following this judgment subsequently also some of the Writ Appeals have been disposed of in the same line by this Bench.



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12. When that being so, it cannot be stated that present case alone is an isolated case, which would follow the decision made in ***Gunasekaran*** case (referred supra) on the ground of latches.

13. In this regard, it is to be noted that insofar as the pensionable benefit is concerned, it is a benefit being made to every retired Government servants like the present petitioners/respondents every month till their life time. When that being so, the cause of action arise every month, therefore, it can otherwise be called as continuous cause of action. When there is a continuous cause of action, the theory of latches would not apply to the case of this nature, therefore, on the ground of either delay or latches, the plea raised by them cannot be scuttled.

14. Moreover, that was not the issue before the learned Single Judge who ordered the said Writ Petitions in the order impugned.

15. It was the direction given by the learned Single Judge to



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consider the plea of these petitioners/respondents in the light of the judgment passed by the Division Bench dated 07.07.2011, made in W.A.Nos.815 of 2010, etc., batch and that judgment of the Division Bench has also become final. Therefore, in view of the consistent stand that has been taken by this Court at various point of time by the learned Single Judge as well as before various Division Benches, the benefit that has been accrued on these petitioners/respondents in view of G.O.No.234 are to be extended to these petitioners/respondents.

16. Therefore we do not find any error in the order passed by the learned Single Judge as it does not warrant any interference from this Court. We are inclined to dismiss this appeal and accordingly it is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

(R.S.K.,J.)

(K.B., J.)

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Speaking Order/Non Speaking Order

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