



W.P.No.33709 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.12.2022
Pronounced on	20.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.33709 of 2018

1.S.Radhamani

2.M.Mahadevan

... Petitioners

Vs.

1.The Government of Tamil Nadu
rep. by the Secretary to the Government,
School Education Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Director of Elementary Education,
College Road,
Nungambakkam, Chennai-600 006.

3.The District Elementary Education Officer,
Kanchipuram,
Kanchipuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, directing to quash the letter dated 11.09.2013 bearing Ref. No.24631/D.3/2012-2 by a



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suitable amendment to the G.O. Ms. No.146 of Education Department dated 19.06.2012 and consequently directing the respondents to extend the benefits of G.O. Ms. No.210, School Education Department dated 14.08.2009 insofar as the petitioners are concerned and accordingly to award Selection/Special Grade scale of pay in the post of B.T. Grade Middle School Headmaster to the petitioners by counting their lower grade Secondary Grade Assistant service, Elementary School Head Master Services as has been granted to similarly placed persons through G.O. Ms. No.210, School Education Department dated 14.08.2009.

For Petitioner : Mr.Shivakumar
for M/s.Shivakumar & Suresh

For Respondents : Mr.K.H.Ravikumar, GA

O R D E R

The Government in G.O. (Ms) No.210, School Education (G1) Department, dated 14.08.2009 had awarded Special Grade and Fixation of pay to 65 Middle School Graduate Headmasters by counting their services rendered prior to 01.06.1988 in the post of Secondary Grade Teachers and Primary School Headmasters. Claiming the benefits of G.O.(Ms) No.210 dated 14.08.2009, both the petitioners herein have filed the present Writ Petition.



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2. The brief facts of the claim made by these two retired Headmasters are as follows:-

a) While the first petitioner was appointed as a Higher Grade Teacher on 01.09.1969 and his services were regularised as Secondary Grade Teacher on 01.02.1971 and later promoted as B.T. Grade Headmaster on 10.01.1986, the second petitioner was appointed as Higher Grade teacher on 01.09.1967 and his services were regularised as Secondary Grade Teacher on 26.01.1969 and he was thereafter promoted as B.T. Headmaster on 20.11.1982. Both the petitioners herein have retired from their services on 31.10.2003 and 31.08.2003 respectively. The first petitioner was awarded selection grade scale of pay on 10.01.1996, by taking into account of his completion of 10 years of continuity of service in the post of B.T. Headmaster from 10.01.1986 to 09.01.1996. Likewise, the second petitioner's services between 21.11.1982 to 20.11.1992 in the post of B.T. Headmaster was taken into account and he was awarded selection grade of pay on 21.11.1992.

b) On the basis of the recommendations of the Fifth Pay Commission, 65 Graduate School Headmasters had filed Original



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Applications before the Tamil Nadu Administrative Tribunal (Tribunal), seeking for grant of Special Grade and Fixation of Pay, by counting their services rendered prior to 01.06.1988 in the post of Secondary Grade Teachers and Middle School Headmasters. By virtue of favourable orders passed by the Tribunal, as well as the orders of this Court, the Government had passed G.O. (Ms) No.210, School Education (G1) Department, dated 14.08.2009, by awarding Special Grade of Pay, as per the recommendations of the Fifth Pay Commission, to the 65 Graduate School Headmasters, who had filed the cases before the Tribunal, by counting their services prior to 01.06.1988 in the post of Secondary Grade Teachers / Primary School Headmasters upto 31.05.1988. Likewise, similar benefits of G.O. (Ms) No.210, dated 14.08.2009 were also extended to 260 Middle School Headmasters, sanctioning the Special Grade of Pay to them by counting their services rendered in the post of Secondary Grade Teachers / Primary School Headmasters / Middle School Headmasters prior to 01.06.1988 through G.O. (Ms) No.146, School Education Department, dated 19.06.2012.

c) When the petitioners herein had approached this Court earlier in W.P.No.9029 of 2011, this Court by its order dated 07.04.2011 had



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directed the respondents to consider the petitioners' claim within a stipulated time. However, their claims were not considered under G.O. (Ms) No.146, dated 19.06.2012. Thereafter, the petitioners had given representations to the third respondent on 28.01.2013 and 19.04.2013. Pursuant to which, two separate orders dated 11.09.2013 were passed against the petitioners herein respectively. The petitioners' claim was rejected stating that since the orders in G.O. (Ms) No.146, dated 19.06.2012 was granted in favour of the Middle School Headmasters, who were appointed prior to 01.06.1988 and retired before 30.09.1994 and since the petitioner had retired after 30.09.1994, their claim for sanction of Special Grade of Pay prior to 01.06.1998, cannot be considered. Challenging these orders, the present Writ Petition has been filed.

3. Heard Mr.Shivakumar, learned counsel for the petitioners and Mr.K.H.Ravikumar, learned Government Advocate appearing on behalf of the respondents.

4. When identical orders, like the impugned order dated 11.09.2013, came to be challenged by similarly placed retired Middle School Headmasters before an Hon'ble Division Bench of this Court in



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a batch of Petitions in **W.P.No.32551 of 2014 & etc. batch [D.Ramasamy & Others Vs. The State of Tamil Nadu rep. by its Secretary, School Education (G1) Department, Chennai & Others]**, the Hon'ble Division Bench by its order dated 26.03.2019, had allowed the claim, by placing reliance on the earlier batch of Writ Appeals in **W.A.No.34 of 2017 etc., batch dated 03.01.2019 [The Secretary to Government, School Education Department, Chennai and Others Vs. S.Stanislaus passed in W.A.No.34 of 2017 & etc., batch dated 03.01.2019]** and directed the Government to revise the pension / family pension of the concerned employees by revising the Selection / Special Grade granted to them in the light of G.O. (Ms) No.210, dated 14.08.2009 and by counting their past services prior to 01.06.1988. The relevant portion of the order reads as follows:-

“These intra-court appeals and connected writ petitions are in respect of the benefit granted by the Government in G.O.Ms.No. 210 School Education (G1) Department dated 14.08.2009. The writ petitions filed by some of the employees were allowed by the Writ Court. The State has come up with the intra-court appeals challenging the said orders. Some of the writ petitions were dismissed by the learned



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Single Judge. The unsuccessful writ petitioners have come up with the intra-court appeals challenging the same. Similarly, the writ petitions in W.P. Nos. 5659/2012 etc. are filed claiming the benefit of the Government Order in G.O.Ms. No. 210 School Education (G1) Department dated 14.08.2009. The writ petitions are posted before us pursuant to the orders passed by the Honourable The Chief Justice.

2. When the appeals and the writ petitions are taken up for hearing, Mr.C. Munusamy, learned Special Government Pleader (Education), by producing a copy of the judgment dated 3 January, 2019 in Writ Appeal Nos. 34 of 2017 etc batch submitted that the issue is no longer res integra in view of the judgment delivered by the Co-ordinate Bench cited supra.

3. The Division Bench, after extracting various Government Orders and the decisions rendered by Courts on the subject, finally issued string of directions in paragraph No.8 of the judgment. The operative portion of the said judgment is extracted hereunder:

"8. ...Following the above decision, all the writ appeals are dismissed. The appellants are



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directed to grant the benefits of G.O.Ms. No. 210 School Education (G1) Department, dated 14.08.2009, to all the respondents and fix their pay in Selection Grade / Special Grade in the post of Middle School Headmaster, by counting the service rendered as Secondary Grade Teacher/Primary School Headmaster/Elementary School Headmaster, from the date of their promotion to the post of Middle School Headmaster, if they were not given the same already, with all monetary benefits and the pensionary benefits with arrears till the date of his death. Though, Mr.C. Munusamy, learned Special Government Pleader (Education) sought four months time to complete the exercise of revising the pay in the Selection Grade / Special Grade to the respondents, and consequently revise the pension / family pension, considering the long period of litigation, which the retired employees / members of the family of the retired employees have to undergo, litigation expenses etc., we, deem it fit, to direct the appellants, to fix the pay in the Selection Grade / Special Grade, within a period of four weeks, from the date of receipt of a copy of this judgment and consequently the appellants are further directed to revise the pension / family pension, and disburse both arrears of salary and



differential pension, within a period of eight weeks, thereafter. Consequently, connected civil miscellaneous petitions are closed. No costs."

4. Since the issue has already been decided by the Division Bench, there is no need for a further adjudication in the present intracourt appeals and writ petitions. We therefore dispose of the intra-court appeals and connected writ petitions on board in terms of the judgment dated 3 January, 2019 in Writ Appeal No. 34 of 2017 etc batch.

5. We direct the State to revise the pension / family pension of the concerned employees and disburse arrears of salary and differential pension depending upon the facts of each case and taking into account the directions given by the Division Bench in the judgment dated 3 January, 2019 in W.A. No. 34 of 2017 etc., batch. No costs. Connected miscellaneous petitions are closed."

5. Both the petitioners herein are identically placed as that of the retired employees, whose cases were ordered favourably by the Hon'ble Division Bench of this Court in the aforesaid decisions.



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6. In yet another decision of the Hon'ble Division Bench in the case of *S.Stanislaus (supra)* dated 03.01.2019 and another decision of the Hon'ble Division Bench of this Court in ***The Principal Secretary to Government, School Education (G1) Department, Chennai Vs. M. Natarajan in W.A.(MD) No.1420 of 2017, dated 20.11.2017,*** had once again extended the benefits of G.O. (Ms) No.210, dated 14.08.2009 to the retired employees. In view of the aforesaid two decisions of the Hon'ble Division Benches, the petitioners herein would also be entitled for the benefits of G.O. (Ms) No.210, dated 14.08.2009.

7. The learned Government Advocate had placed reliance on the three decisions of the learned Single Judges of this Court namely, in the case of ***A. Ramasamy & 4 Others Vs. State of Tamil Nadu rep. by its Secretary, School Education Department, Chennai & another passed in W.P.(MD) No.8911 of 2019 etc.; V. Jothi Chandra and another Vs. The State of Tamil Nadu rep. by its Secretary, Department of School Education, Chennai & 3 others in W.P.(MD) Nos.3186 & 3187 of 2016 dated 25.01.2022 ; and T.Ganesan and another Vs. The Government of Tamil Nadu rep. by the Principal Secretary to Government, School Education***



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Department, Chennai passed in W.P.No.34489 of 2019 dated

12.12.2019 and submitted that the benefits in G.O.(Ms) No.210, dated 14.08.2009 were extended only to the persons, who had approached the Court. He further submitted that the petitioners herein, who had approached the Court belatedly, are not entitled for the benefits of counting their services prior to 01.06.1988.

8. In all the aforesaid three decisions, the learned Single Judges of this Court had not placed reliance on the decisions of the two Hon'ble Division Benches viz., *D.Ramasamy's case (supra)* and *S.Stanislaus's case (supra)*. Furthermore, the ground taken in the case of *V.Jothi Chandra (supra)*, the learned Single Judge had placed reliance on the decision of the Hon'ble Division Bench in ***W.A.(MD) No.312 of 2011 dated 09.12.2015*** and rejected the claim of the petitioner. The relevant portion of the order reads as follows:-

"16. This Court rejected the claims in several petitions and one such case is the order dated 09.12.2015 passed in W.A. (MD) No. 312 / 2011 in Division Bench headed by Justice V. Ramasubramanian and Justice N. Kirubakaran has held in paragraph 5, "that the employees who were in service in 1997-1998 as well as in the year 2002 did not rise a little finger either at



the time of when the original applications were filed in the year 1997-1998 or at the time when the original application were allowed by the Tribunal in the year 2002". And rejected the dead and stale claims.

17. Thereafter the Rev. Appl. (MD) No. 35 / 2018 dated 19.03.2018, W.A. 34 / 2017 dated 03.01.2019 and W.A. 73 / 2016 dated 03.01.2019 was passed dismissing the review applications / writ appeals filed by the government.

18. Under this background the present two writ petitions are considered. In W.P.(MD)No.3186/2016 the petitioner has attained superannuation and retired in the year 2006 and has filed the present writ petition in the year 2016, after a lapse of 10 years from the date of retirement. The petitioner in W.P.(MD)No.3187/2016 attained superannuation and retired in the year 2006 and has filed the present writ petition in the year 2016, after a lapse of 10 years from the date of retirement. Hence this Court following the order dated 09.12.2015 passed in W.A. (MD) No. 312 / 2011, rejects the claim of the petitioner on the ground of delay and latches, since the dead and stale



claims cannot be entertained."

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9. As stated earlier, the learned Single Judge in *V.Jothi Chandra's case (supra)* had not referred to the two Hon'ble Division Benches' orders in the batch of cases, which directly dealt with the issue in hand. Furthermore, the Hon'ble Division Bench judgment relied upon by the learned Single Judge relates to rejection of the claim of the petitioners on the ground of delay and laches. In *S.Stanislaus's case (supra)*, the issue with regard to the delay and laches were also gone into and held that, fixation of pension is a continuous cause of action and therefore, the stand taken by the Government on laches, was rejected. The relevant portion of the order reads as follows:-

"8. Though Mr. C.Munusamy, learned Special Government Pleader (Education) states that long after their reinstatement, respondents have approached this Court and that a huge amount has to be paid, that cannot be a ground to deprive the respondents of their entitlement to selection grade / special grade to pay which the appellants ought to have paid. Courts have held that in the matter of fixation of pay and pension, there is a continuing cause and for the above said reason, we are not inclined to accept



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the said contention. Following the above decision, all the writ appeals are dismissed. The appellants are directed to grant the benefits of G.O.Ms.No.210, School Education (G1) Department, dated 14.08.2009, to all the respondents and fix their pay in Selection Grade / Special Grade in the post of Middle School Headmaster, by counting the service rendered as Secondary Grade Teacher/Primary School Headmaster / Elementary School Headmaster, from the date of their promotion to the post of Middle School Headmaster, if they were not given the same already, with all monetary benefits and the pensionary benefits with arrears till the date of his death. Though, Mr.C.Munusamy, learned Special Government Pleader (Education) sought four months time to complete the exercise of revising the pay in the Selection Grade / Special Grade to the respondents, and consequently revise the pension / family pension, considering the long period of litigation, which the retired employees / members of the family of the retired employees have to undergo, litigation expenses etc., we, deem it fit, to direct the appellants, to fix the pay in the Selection Grade / Special Grade, within a period of four weeks, from the date of receipt of a copy of this judgement and



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consequently, the appellants are further directed to revise the pension / family pension, and disburse both arrears of salary and differential pension, within a period of eight weeks,thereafter.

The aforesaid extract is self explanatory. As such, the decisions of the learned three Single Judges without reference to the two Hon'ble Division Benches, which squarely covers the issue in hand, are *res integra* and hence may not help the Government.

10. In the result, there shall be a direction to the first respondent herein to pass appropriate orders in favour of the petitioners, by extending the benefits of G.O. (Ms) No.210, School Education (G1) Department, dated 14.08.2009 and accordingly award Selection / Special Grade scale of pay in the post of B.T. Graduate Middle School Headmaster, by counting their lower grade secondary grade Assistant service and Elementary School Head Master Services rendered by them in accordance with G.O. (Ms) No.210, dated 14.08.2009 and consequently revise their pensionary benefits. Such orders shall be passed atleast within a period of six weeks, from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no order as to costs.



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Internet:Yes
Order :Speaking
Neutral Citation:Yes

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20.01.2023



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To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Director of Elementary Education,
College Road,
Nungambakkam, Chennai-600 006.
- 3.The District Elementary Education Officer,
Kanchipuram,
Kanchipuram District.



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M.S.RAMESH,J.

DP

ORDER MADE IN

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