



W.P.(MD).No.14268 of 2019

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 01.02.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No.14268 of 2019**

**and**

**W.M.P(MD)No. 10714 of 2019**

P.Rathinam

... Petitioner

Vs.

1.The Principal Secretary to Government  
of Tamil Nadu,  
Department of School Education,  
Secretariat,  
Chennai.

2.The Principal Secretary to Government  
of Tamil Nadu,  
Department of Municipal Administration,  
Secretariat,  
Chennai.

3.The Principal Accountant General,  
The Office of the Principal Accountant General,  
361, Anna Salai,  
Chennai-600 018.

4.The Director,  
Department of School Education (High School),  
Chennai.

5.The District Collector,  
Pudukkottai.



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6. The Chief Educational Officer,  
Pudukkottai.

7. The District Educational Officer,  
Pudukkottai District.

8. The Head Master,  
Government Higher Secondary School,  
Maangadu,  
Alangudi Taluk,  
Pudukkottai District.

9. The Block Development Officer,  
Thiruvankulam Post & Taluk,  
Pudukkottai District.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 3<sup>rd</sup> respondent dated 18.09.2017 in No.P09/2/10916763/ADK/29 and quash the same as illegal and arbitrary and in consequences thereof direct the 3<sup>rd</sup> respondent to accept the pension proposal submitted by the 8<sup>th</sup> respondent on 21.08.2017 and re-fix the pension of the petitioner in accordance with law and grant arrears with 12% interest per annum.

For Petitioner : Mr.P.Ganapathi Subramanian

For R1,R2,R4-R9 : Mr.S.Kameswaran  
Government Advocate

For R3 : Mr.P.Gunasekaran



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## **ORDER**

The present writ petition has been filed challenging the impugned order, dated 18.09.2017 with a consequential relief to accept the pension proposal submitted by the 8<sup>th</sup> respondent on 21.08.2017 and re-fix the pension of the petitioner in accordance with law and grant arrears with 12% interest.

2. The brief facts of the case are that the petitioner has joined as Panchayat Clerk in Kothakottai Village Panchayat on 01.06.1955 and worked till 14.02.1971. On 15.02.1971, the petitioner was appointed as part time Vocational Instructor in Panchayat Union Middle School and continued as part time vocational instructor till 31.05.1981. On 01.06.1981, the petitioner was appointed as full time Agricultural Instructor, a post equivalent to Secondary Grade Teacher. The petitioner has passed Foundation Course conducted by Madurai Kamaraj University in the year 1985 and has completed Higher Grade of Technical Examination in Agriculture in the year 1985. Due to ban from 1984 to 1989, the petitioner had completed and passed out the examination in the year 1989. The petitioner has completed 10 years service in the post of



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Agricultural Instructor, selection grade was granted in the year 1991 and retired from service on 31.05.1997.

3. The claim of the petitioner is that the petitioner had requested the 8<sup>th</sup> respondent to re-fix the pension in accordance with G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.03.1993. However, the respondent replied vide letter, dated 12.11.2010 stating that the selection grade fixation on 01.06.1991 itself was erroneous and the same has to be recovered. For this letter, the petitioner had submitted an objection and the same was not considered by the respondents. Therefore, the petitioner had filed W.P(MD)No.8164 of 2013. This Court, vide order, dated 03.02.2017 directed the respondents to consider the request of the petitioner for revision of pay and pensionary benefits. Thereafter, the 8<sup>th</sup> respondent submitted a proposal and the 3<sup>rd</sup> respondent vide reply, dated 18.09.2017 informed that the petitioner is not entitled to revision of pension with reference to G.O.Ms.No.216 and returned the proposal. The contention of the petitioner that the 3<sup>rd</sup> respondent failed to appreciate the fact and tenor of the order passed in W.P.(MD)No.8162 of 2013 wherein it was directed to grant the benefits of G.O.Ms.No.216. The 3<sup>rd</sup> respondent ought not to have returned



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the revision. Subsequently, the petitioner had filed a representation as well as filed this writ petition.

4. The respondents have filed a counter stating that earlier the petitioner had filed W.P.(MD)No.8164 of 2013 wherein the claim of the petitioner is to fix pay according to 6<sup>th</sup> pay commission. However, there was no mention regarding G.O.Ms.No.216. The pay of the petitioner has been fixed as per 6<sup>th</sup> pay commission recommendations. On that basis, necessary revised pension was admitted by the Accountant General, Chennai on 25.03.2000 for a net qualifying service of 16 years. The petitioner by letter, dated 05.01.2018 requested to include 50% of his services as part time Clerk in Panchayat as per G.O.Ms.No.39, dated 13.06.2011. The petitioner has also requested to revise his selection grade with reference to G.O.Ms.No.216. The said claim was forwarded to the Accountant General, Chennai on 21.08.2017 and the same was returned stating that G.O.Ms.No.216,180 and 181, dated 06.09.2013 are specific Court orders for grant of Primary School Headmasters selection and special grade of pay. The petitioner's name is not found in the beneficiaries' list. Hence, the petitioner is not entitled to claim benefits under the said



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Government Orders. Therefore, the learned counsel for the respondents prayed to dismiss the writ petition.

5. Heard Mr.P.Ganapathi Subramanian, learned counsel for the petitioner, Mr.S.Kameswaran, learned Government Advocate appearing for respondents 1,2 and 4 to 9 and Mr.P.Gunasekaran, learned counsel appearing for R3 and perused the records.

6. The claim of the petitioner is to grant 6<sup>th</sup> pay commission. However, the respondents have stated in the counter that the 6<sup>th</sup> pay commission recommendations were considered by the respondents and granted the same on 25.03.2000. However, the petitioner denied that the same was not paid. Since the petitioner is denying that he had not received the said payment, this Court is directing the 6<sup>th</sup> respondent to consider the petitioner's claim and pass orders within a period of six weeks from the date of receipt of the copy of the order.



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7. The next claim of the petitioner is that to consider the 50% of his service rendered in the post of Panchayat Clerk service and relied on G.O.Ms.No.39 Rural Development and Panchayat Raj Department, dated 13.06.2011. However, the contention of the 3<sup>rd</sup> respondent is that the said G.O.Ms.No.39 is against Tamil Nadu Pension Rules. When the same was brought to the knowledge of the government, after taking note of the fact that the same is against the pension rules, the government issued G.O.Ms.No.77, Rural Development and Panchayat Raj Department, dated 12.07.2013 and nullified the effect of the G.O.Ms.No.39 and also held that the “full-time service” alone can be considered for calculation of pensionary benefits. But the G.O.Ms.No.77 was put to challenge before this Court and this Court has passed an order holding that para 4(b) in G.O.Ms.No.77, dated 12.07.2013 is struck down. The said paragraph 4(b) states if it is part time, the same shall not be taken into account for calculating the pensionable service. This Court is of the considered view that even though the paragraph 4(b) is struck down, the Rule 11 is still in force and the same is still holding the field. Moreover, the Rule will prevail over the G.O. Therefore, this Court is of the considered opinion that the service rendered as part time Panchayat Clerk cannot be taken into account, since is totally against the Tamil Nadu Pension Rules.



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8. As far as the benefits under G.O.Ms.No.216 is concerned, the petitioner has worked as Vocational Instructor and he was not promoted as Primary School Headmaster at any point of time. G.O.Ms.No.216 is granted only to Primary School Headmaster who had served as Headmaster prior to 1988. In fact the petitioner was appointed on 01.06.1981 as full time Agricultural Instructor, a post equivalent to Secondary Grade Teacher. The issue of granting selection grade and special grade was elaborately dealt with by an order, dated 25.01.2022 of this Court in W.P.(MD)No.3186 and 3187 of 2016 and this Court has held that the claim of the teachers is against the concept of selection grade and special grade. When the petitioner had never ever served as Primary School Headmaster, then the petitioner is not entitled to the said benefits and the petitioner is seeking to unjustly enrich himself. Since the petitioner has not served as Primary School Headmaster, the petitioner is not entitled to claim such benefits under G.O.Ms.No.216 and the claim of the petitioner to grant benefits under G.O.Ms.No.216 is declined.

9. With the above said directions, this Writ Petition stands disposed of.



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No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No  
Index : Yes / No  
Internet : Yes/ No

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To

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Secretariat,  
Chennai.
- 2.The Principal Secretary to Government  
of Tamil Nadu,  
Department of Municipal Administration,  
Secretariat,  
Chennai.
- 3.The Principal Accountant General,  
The Office of the Principal Accountant General,  
361, Anna Salai,  
Chennai-600 018.
- 4.The Director,  
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**S.SRIMATHY, J.**

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