



WA(MD).No.949 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.949 of 2014
and MP(MD).No.1 of 2014

1.The Secretary to Government
Government of Tamil Nadu
School Education Department
Fort St.George
Chennai 600 009

2.The Secretary to Government
Government of Tamil Nadu
Finance (Pay Cell) Department
Fort St.George, Chennai 600 009

3.The Director of School Education
Chennai

4.The Chief Educational Officer
Theni District

5.Headmaster
V.M.Government Higher Secondary School
Periyakulam Taluk, Theni District

... Appellants



WA(MD).No.949 of 2014

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Vs.

N.Elizabeth Gandhimathi (died)

Thangaraj

..... Respondents

(Respondent is substituted in the place of the deceased sole respondent vide Order dated 09.08.2023)

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.08.2013 in WP(MD).No.5630 of 2013 and allow the writ appeal.

For Appellants :Mr.V. Omprakash
Government Advocate

For Respondent :Mr.K.Appadurai

JUDGMENT

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

The respondents in the writ petition are the appellants herein.

The respondent in the appeal had filed a writ of mandamus directing the official respondents to refund a sum of Rs.10,72,267/-, which according to her, was recovered from her under threat on 06.10.2010.



WA(MD).No.949 of 2014

WEB COPY

2.The writ petitioner was originally appointed as a Secondary Grade Teacher on 16.01.1978 in Government High School and she was conferred selection grade on 16.01.1988 and special grade on 16.01.1998 and she attained superannuation on 30.10.2012. According to the writ petitioner. G.O.Ms.No.304 Finance (PC) Department dated 28.03.1990 was issued, wherein the conferment of selection and special grade were reintroduced with improved scale of pay with effect from 01.06.1988. The order was followed by another Government Order issued by the Secretary to Government, School Education Department in G.O.Ms.No. 216 Finance (Pay Cell) Department, dated 22.03.1993.

3.According to writ petitioner, being a Secondary Grade Teacher working in a High School, she does not have promotional avenue and therefore, she is entitled to the benefit under G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993. She made a request to the Headmaster of the School for revision of pay as per Government Order and after scrutiny, the same was sanctioned and a sum of Rs. 10,72,267/- was disbursed to her as arrears based on revised pay from



WA(MD).No.949 of 2014

WEB COPY

01.06.1988. Under the guise of an audit objection, the Chief Educational Officer and the Headmaster threatened her to remit the entire amount of Rs.10,72,267/- in September 2010. According to her, she was placed under suspension and thereafter, she had deposited the amount into the treasury. Based on the said deposit, the order of suspension was revoked, but a punishment of reduction of pay by two stages was imposed upon her on 28.12.2011. She was permitted to retire on 30.10.2012.

4. According to the writ petitioner, since she is eligible to all the benefits under G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993 and the payments were made to her as per her eligibility, the authorities were not right in directing her to remit the same under the threat of suspension. Hence, she had filed the present writ petition for a mandamus to refund the said amount.

5. The writ Court allowed the writ petition on the ground that the writ petition filed by similarly placed persons were allowed and the said orders were also confirmed by the Hon'ble Supreme Court. This order is under challenge in the present writ appeal by the State.



WA(MD).No.949 of 2014

WEB COPY

6. According to the learned Government Advocate appearing for the appellants, the scale of pay for the post of Secondary Grade Teacher and Primary School Headmaster were identical till 31.05.1988 and the said posts were also inter-changeable. However, when the Fifth Pay Commission recommendations were implemented, the post of Primary School Headmaster was placed in the higher grade and it was treated as a promotional post with higher scale of pay than the Secondary Grade Teacher with effect from 01.06.1988. The Secondary Grade Teachers who were working in the High School and Higher Secondary School would not be eligible to be promoted as Headmaster in the said School. Therefore, the selection and special grade were reintroduced under G.O.Ms.No.304 Finance (PC) Department, dated 28.03.1990 for the said teachers who got stagnated as Secondary Grade Teacher in the High School and Higher Secondary School.

7. According to the Government Advocate appearing for the appellants, the writ petitioner was conferred with selection grade on 16.01.1988 and special grade on 16.02.1998. Since the petitioner had already been conferred with the said grades, she will not be entitled to



WA(MD).No.949 of 2014

invoke the benefits under G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993.

8.The learned counsel appearing for the appellants had relied upon the Hon'ble Full Bench Judgement of our High Court in a judgement reported in (2017) 2 MLJ 257 (FB) (Government of Tamil Nadu Vs. G.Eswaran) to contend that neither the selection grade nor the special grade that were already conferred on the writ petitioner would fall within the period prescribed by the Full Bench for the applicability of G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993.

9.The learned Government Advocate had further contended that the disciplinary proceedings were initiated as against the writ petitioner for receiving the said amount of Rs.10,72,267/- in violation of the Government Order. The writ petitioner was placed under suspension and after enquiry, a punishment for reduction of pay by two stages was ordered by the Disciplinary Authority on 28.12.2011. However, the said order of punishment has not been challenged so far. Hence, he prayed for allowing the writ appeal.



WA(MD).No.949 of 2014

WEB COPY

10.Per contra, the learned counsel for the respondent had contended that as per G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993, a Secondary Grade Teacher working in a High School is eligible for the benefits under the said G.O. on the ground that they do not have any promotional opportunity in the High School. In the present case, the writ petitioner being a teacher working in a High School, without promotional opportunity, is entitled to receive the benefits.

11.The learned counsel for the respondent had further contended that when the petitioner is legally entitled to receive benefits under G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993, the Educational Authority under threat of disciplinary proceedings had directed the writ petitioner to remit the amount. Therefore, the writ Court was right in directing the authorities to refund the amount to the writ petitioner on the ground that she is eligible for the benefits under G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993. Hence, he prayed for sustaining the order passed by the writ Court.

12.We have carefully considered the submissions made on either side and perused the material records.



WA(MD).No.949 of 2014

WEB COPY

13.The writ petitioner was appointed as a Secondary Grade Teacher in a High School on 16.01.1978 and she was conferred with Selection Grade on 16.01.1988 and Special Grade on 16.02.1998. The writ petitioner had attained superannuation on 30.10.2012. These facts are not in dispute.

14.The writ petitioner had received a sum of Rs.10,72,267/- as arrears of revised pay scale based on G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993. According to her, she is eligible to receive the said amount, but the department contends that she had misled the department and received the said amount. Therefore, the question that arises is whether the writ petitioner is eligible to receive the benefit under the above said G.O. or not.

15.Based upon the recommendation of the Fifth Tamil Nadu Pay Commission, the conferment of Selection Grade and Special Grade were dispensed with by the Government. A Higher pay scale was introduced for all the Headmasters of Primary School than that of the Secondary Grade Teachers. This caused disparity between the Secondary Grade Teachers working in a Primary School and the Secondary Grade



WA(MD).No.949 of 2014

Teachers working in a High School/Higher Secondary School. While the Secondary Grade Teachers working in a Primary School would have a promotional opportunity of being promoted as Headmaster of the said School, a Secondary Grade Teacher working in High/Higher Secondary School did not have the said benefit. In order to rectify the said anomaly, the Selection Grade and Special Grade were reintroduced on the revised pay scale by G.O.Ms.No.304 Finance (PC) Department dated 28.03.1990. As per Paragraph No.9 of the G.O., the employees who have already in the Selection Grade/Special Grade prior to 27.06.1989, were permitted to exercise revised option on or before 30.06.1990.

16.Subsequent to the above said Government Order, G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993 was passed wherein it was extended to School Education Department and in particular to the Secondary Grade Teachers working in a High School who do not have an opportunity of promotion. There is no material on record to indicate whether the writ petitioner had exercised her option to receive Selection Grade and Special Grade on the basis of revised pay scale under the Fifth Pay Commission.



WA(MD).No.949 of 2014

WEB COPY

17. In view of conflicting decisions of various Division Benches with regard to the implementation of G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993, the matter was referred to Full Bench which decided the issue on 09.12.2016 and the same is reported in (2017) 2 MLJ 257 (FB) (Government of Tamil Nadu V. G.Eswaran). The operative portion of the judgment of the Hon'ble Full Bench which is relevant for the disposal of the present writ appeal is extracted as follows:

“38.Today, when the matters are taken up for consideration, keeping in mind the financial strain that would fall on the State exchequer in the event of implementation of the G.O, and in order to give a quietus to the issue, we feel it appropriate to fix the date as 01.03.2017 from which date onwards, the Government shall calculate and revise the pension and family pension(without arrears) based on the revised scales of pay by implementing the G.O, for which, the learned Advocate General and the learned counsels appearing for the Teachers have fairly acceded to the same. Accordingly, we pass the following:

(i)The Government is directed to implement the G.O.Ms.No.216 dated 22.03.1993 for the period between



WA(MD).No.949 of 2014

WEB COPY

01.06.1988 and 31.12.1995, on and from 01.03.2017 onwards in respect of all the Secondary Grade Teachers of High/Higher Secondary Schools including the Special Teachers who attained Selection Grade/Special Grade during the above said period, on par with the pay scale of Primary School Headmasters.”

18.A perusal of the judgement of the Hon'ble Full Bench would clearly reveal that the Government was directed to implement G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993, only if the concerned Secondary Grade Teacher had obtained either Selection Grade or Special Grade within the period between 01.06.1988 and 31.12.1995 and the said implementation will be with effect from 01.03.2017. In the present case, the writ petitioner was conferred with the Selection Grade on 16.01.1988 and the Special Grade on 16.02.1998. Therefore, it is clear that neither the Selection Grade nor the Special Grade conferred upon the writ petitioner fell within the period specified by the Hon'ble Full Bench which is a precondition for deriving the benefit under G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.03.1993.



WA(MD).No.949 of 2014

WEB COPY

19.It is an admitted fact that the entire amount that was recovered from the writ petitioner reflects only the monetary benefits that were derived by the writ petitioner under G.O.Ms.No.216 Finance (Pay Cell) Department, dated 22.03.1993. When the writ petitioner is not eligible for the benefit under the above said G.O., the recovery of the same by the official respondents cannot be found fault with. That apart, disciplinary proceedings were initiated as against the writ petitioner for deriving the benefits by misleading the authorities. The writ petitioner by her communication dated 30.11.2011 had admitted that due to mistake, she had received the said amount which she had remitted. Ultimately, the writ petitioner was imposed with a punishment of reduction of pay by two stages by an order dated 28.12.2011 that has attained finality duly supported by the fact that there is no reference about filing of the appeal in the writ affidavit filed on 12.03.2013.

20.Unless the writ petitioner establishes her legal rights for receiving Rs.10,72,267/-, a mandamus would not lie as against the authorities. In the preceding paragraph, we have arrived at a finding that the writ petitioner is not entitled to the benefits under G.O.Ms.No.216



WA(MD).No.949 of 2014

Finance (Pay Cell) Department, dated 22.03.1993, in view of Hon'ble

Full Bench order.

21. When the writ Court allowed the writ petition on 01.08.2013, it did not have the benefit of the above said Full Bench order. Therefore, the legal basis on which the writ petition was allowed is no longer available. In view of the above said deliberations, the order of the writ Court is set aside and the Writ Appeal Stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
01.09.2023

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



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