



W.P.(MD)No.8505 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 8505 of 2016

and

W.M.P(MD)No. 6806 of 2016

V.Ayyappa Sundara Raman

... Petitioner

Vs.

1. The District Elementary Educational Officer,
Tirunelveli District.

2. The Additional Assistant Elementary Educational Officer,
Cheranmadevi, Tirunelveli District.

3. The Secretary,
Muthamizh Primary School,
Karukurichi,
Cheranmadevi Union,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No.357/A1/2016, dated 18.04.2016 and quash the same.



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For Petitioner : Mr.V.Paneer Selvam
For R-1 & 2 : Mr.D.Sadiq Raja,
Additional Government Pleader
For R-3 : No appearance

ORDER

This writ petition is filed for *Writ of Certiorari*, to quash the impugned order, 18.04.2016, passed by the 2nd respondent in his proceedings in Na.Ka.No.357/A1/2016.

2. Heard Mr.V.Paneer Selvam, learned counsel appearing for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader, appearing for the respondents 1 & 2. Perused the material documents available on record.

3. The contention of the petitioner is he was appointed as Secondary Grade Teacher on 12.06.1990 in the 3rd respondent school and was awarded Selection Grade on 12.06.2000. Thereafter, he was promoted as Elementary School Headmaster on 11.02.2006. Since the Secondary Grade Teacher pay and the Headmaster pay are one and the same, the service rendered



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in the cadre of Secondary Grade Teacher and Elementary School HM ought to be taken and grant Selection Grade in the cadre of Elementary School Headmaster. Based on this, the petitioner was granted Selection Grade on 12.06.2010 in the cadre of Headmaster of Elementary School. In the 6th Pay Commission separate scale of pay was fixed for Selection Grade post. The respondents have awarded one increment for Selection Grade and Special Grade. Since the petitioner was awarded Selection Grade in the post of Elementary School Headmaster, the petitioner was granted one increment in the Selection Grade on 12.06.2010 to the said post.

4. Thereafter, the Teachers' Association started agitating to pay equal salary, as that of Central Government schools. After considering the demand, One Man Commission was appointed and report was submitted. On the basis of "One Man Commission Report", the Government has issued G.O.Ms.No.23 Finance (Pay Cell), dated 12.01.2011, fixing pay to the Elementary School Headmaster as Rs.9300-34800 + 4500 Grade Pay, instead of Rs.9300-34800 + 4300 Grade Pay. In short, the grade pay was increased from Rs.4300-4500/-. As per the Government Order, the petitioner's scale of



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pay was fixed. Thereafter, the Government has issued G.O.Ms.No.237 Finance (Pay Cell) Department, dated 22.07.2013, restoring the original position that fixing two increments of Selection Grade and Special Grade. Hence, the petitioner was given one more increment from 12.06.2010. The above fixation was accepted by the committee. While that being so, the respondents have issued notice on 05.04.2016, as if the petitioner's Selection Grade is against the rules. The petitioner has submitted an explanation on 11.04.2016, wherein a specific plea was raised by the petitioner stating no particulars are stated in the notice about the violation in sanctioning the benefits. The 2nd respondent without furnishing any details, immediately has passed the impugned order of recovery on 18.04.2016. Aggrieved over the same, the present writ petition is filed.

5. The respondents have filed counter stating that the Government in Letter No.23373/S/2011-2, dated 09.08.2011 have clarified that the revised pay scales implemented from 01.01.2006 no separate scales of pay have been provided for Selection Grade / Special Grade posts that only one increment equal to 3% of the basic pay including grade pay in the same pay band is



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allowed to the employees on award of Selection Grade / Special Grade. Therefore, the question of counting the service rendered in Selection Grade / Special grade in the lower post for awarding Selection Grade / Special Grade in the promotion post does not arise. The government in the subsequent letter No. 7296/S2012-1, dated 14.05.2012 have further clarified that the benefit of awarding Selection Grade / Special Grade in the promotion post be extended to the employees who were awarded Selection Grade/Special Grade between 01.01.2006 and 31.05.2009 by counting service rendered on identical/higher scale of pay in the pre-revised scales of pay and the Government letter, dated 09.08.2011 will be given effect from 01.06.2009 instead of 01.01.2006. The petitioner's case did not fall before 31.05.2009. Moreover, pay band of the post of Headmaster, Primary School was revised as Rs.9300-34800 + 4500 Grade pay, as per One Man Commission report in G.O.No.23, dated 12.01.2011 while the pay band of Selection Grade Secondary Grade teacher is Rs.9300-34800+ 4300 Grade Pay. Hence, pay band and grade pay is not identical in respect of the above said two categories. As such, the grant of Selection grade to the petitioner by taking into account the service rendered in the lower post i.e. Selection Grade Secondary Grade Teacher with the service rendered in the post



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of Primary School Headmaster for counting 10 years, with effect from 12.06.2010 and consequent fixation of his pay are all wrong and the same is required to be revised. On finding the irregularity grant of Selection Grade and consequent irregular fixation of pay, the Additional Assistant Educational Officer, Cheranmadevi, vide order, dated 05.04.2016. However, the petitioner has not sent any reply as alleged in the affidavit and has rushed to the Court through the present writ petition. Since the petitioner has failed to send any reply the impugned order was passed directing the school to revise the pay. Hence, the respondents have prayed to dismiss the writ petition.

6. Heard Mr.V.Paneer Selvam, the Learned Counsel appearing for the petitioner and Mr.D.Sadiq Raja, the Learned Additional Government Pleader appearing for the respondents 1 and 2 and perused the records.

7. The contention of the respondents is that the petitioner was appointed in the post of Secondary Grade Teacher on 12.06.1990 and on completion of 10 years the petitioner was granted selection grade on 12.06.2000, thereafter, the petitioner was promoted to the Primary School



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Headmaster on 01.02.2006. In the Primary School Headmaster, after completion of 10 years, the petitioner is entitled to Selection Grade in the said post of Primary School HM on 01.02.2016. But in the present case, the 3rd respondent has taken the service of the Secondary Grade Teacher post (lower post) and the Primary School Headmaster post (Higher post) and again granted selection grade to the petitioner, which is illegal. Moreover, when the petitioner had already received Selection Grade in the Secondary Grade post, taking the same period to calculating another Special Grade is double benefits for the same period and it is unjust enrichment. The claim of the petitioner the salary for the Secondary Grade Teacher and the Primary School HM are one and the same and hence the same ought to be taken into account for granting the Special Grade. But such a claim cannot be entertained at all. The same salary was prevailing prior to 1988, but the petitioner was appointed in the year 1990. During this period the salary was different and the HM post was also a promoted post. The said issue was elaborately dealt with by this Court in the order dated 25.01.2022 in W.P(MD) Nos. 3186 and 3187 of 2016. The Selection Grade and Special Grade is granted, if the person is stagnating in the same post. In the present case, the petitioner was granted promotion and again



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was awarded with selection grade to the Primary School Headmaster post, which is absolutely illegal.

8. The petitioner is not entitled for Selection Grade in the post of Primary School Headmaster. Because of this mistake, subsequent fixation based on the 6th Pay Commission was carried out. In the 6th Pay Commission, if any person has received Selection Grade in the higher post will be kept in different pay band. The petitioner ought to have been fixed in ordinary pay band in the post of Primary School Headmaster. Because of the revision granting of Selection Grade/Special Grade in the Primary School Headmaster post, the petitioner was fixed in the Selection Grade pay band in the Primary School Headmaster post. Moreover, as per G.O.Ms.No.234, the petitioner is entitled to only one increment to the tune of 3%. Because of the wrong fixation of Selection Grade as stated supra, the petitioner was fixed in the wrong pay band.

9. The petitioner has relied on G.O.Ms.No.23, dated 12.01.2011. But in the subsequent Government Orders, it has been clarified. Moreover, the



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Government has issued two Government letters and it was also clarified that those who had received Selection Grade / Special Grade between 01.01.2006 to 31.05.2009 by counting the services rendered on identical / higher scale of pay in the revised scales of pay and the government letter dated 09.08.2011 will be given effect from 01.06.2009 instead of 01.01.2006. Since the petitioner is not entitled to Selection Grade in the post of Primary School HM, the petitioner will not come under the said clarification stated in the government letters. In other words the petitioner would be entitled to Selection Grade in the Primary School HM post only on 01.02.2016 and hence the clarification letter is not applicable to the petitioner.

10. Since, the writ petition is devoid of merits, this Court is confirming the impugned order. Accordingly, this Writ Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

1. The District Elementary Educational Officer,
Tirunelveli District.
2. The Additional Assistant Elementary Educational Officer,
Cheranmadevi,
Tirunelveli District.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.8505 of 2016**

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