



W.P.(MD).No.21034 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.21034 of 2018

and

W.M.P.(MD).Nos.18838, 18839 and 18840 of 2018

K.S.Renganathan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
School Education Department,
Secretariat,
Chennai.

2.The Accountant General,
O/o. the Accountant General (Accounts & Entitlements),
361, Anna Salai,
Teynampet,
Chennai – 600 018.

3.The Director of School Education,
O/o. the Director of School Education,
D.P.I.Complex,
College Road,
Chennai – 6.

4.The Chief Educational Officer,
O/o. the Chief Educational Office,
Collectorate Campus,
Ramanathapuram,
Ramanathapuram District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent vide his proceedings P11/1/11121990/PPO dated 28.03.2018 and quash the same as illegal and consequently to direct the respondents to disburse the pension and other retirement benefits of the petitioner in the pay of 3% + 3% along with the arrears of pay.

For Petitioner : Mr.H.Mohammed Imran,
For M/s.Ajmal Associates.

For R-1, R-3
and R-4 : Mr.V.Omprakash,
Government Advocate.

For R-2 : Mr.P.Gunasekaran,
Standing Counsel.

ORDER

This Writ Petition is filed challenging the impugned order dated 28.03.2018 and consequently direct the respondents to disburse the pension and other benefits to the petitioner in the pay of 3% + 3% along with the arrears.

2. The petitioner was appointed as P.G. Assistant Physics on 29.10.1981 and his service was regularized with effect from 22.04.1982. He was conferred



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with Selection Grade on 24.04.1992 and Special Grade on 24.04.2002 in the post of P.G. Assistant (Physics). He was promoted as Headmaster of Government Higher Secondary School on 30.06.2008 and attained superannuation on 29.02.2016. The contention of the petitioner is that while he was in service in pursuance of 6th pay commission, the petitioner was granted grade pay of Rs.6600/- in the cadre of P.G. Assistant with effect from 01.01.2006. Based on such fixation, the petitioner's terminal benefits were disbursed. In the 7th Pay Commission, a revised proposal was submitted in terms of G.O.Ms.No.303 Finance Department dated 11.10.2017. On receipt of the same, the second respondent vide impugned proceedings dated 28.03.2018 stated in his remarks that as per Government (Finance Department) Letter No. 21508/PCII/17 dated 09.06.2017, clarified the employees drawing the Grade Pay of Rs.6600/- and above are entitled to only one increment on movement to the Selection Grade and Special Grade on the higher post. The Government Order in G.O.Ms.No.237 dated 22.07.2013 is not applicable to them. Hence, the additional increment of 3% was deducted from 30.06.2008 and consequently the revised pensionary benefits were reduced with respect to pay last drawn salary of pre-revised pay. The excess paid pension was calculated and recovered from the arrear pension from March 2016 to June 2018. The



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petitioner subsequently received reduced revised pension and other pensionary benefits. The revision was effected solely in terms of the proceedings dated 09.06.2017 whereas, the petitioner was granted benefits much earlier that is with effect from 30.06.2008 with pay of 3% + 3% with monetary benefits from 01.04.2013 and as such the letter have been issued only in the year 2017 will not take away the right of the petitioner. Moreover, the revision of terminal benefits was effected through impugned order dated 28.03.2018. Neither the second respondent nor the fourth respondent issued any prior notice to the petitioner. Upto the date of his retirement that is on 29.02.2016, he was receiving the grade pay of Rs.6600/- and the retirement benefits were calculated based on the same. The only contention of the second respondent is that the petitioner was granted grade pay of Rs.6600/-, the petitioner is entitled to only 3% of Selection Grade increment and the petitioner is not entitled to 3% of additional increment. But as per G.O.Ms.No.237 dated 22.07.2013, the petitioner is entitled to get 3% +3%. But there is no bar to get additional increment of 3% because the petitioner is receiving the grade pay of Rs.6600/-. The only restriction is that the employees drawing ordinary grade pay of Rs. 6600 are not entitled to get 2nd additional increment ordered in G.O.Ms.No.237, whereas, the petitioner is drawing the Grade Pay of Rs.6600/- in the Special



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Grade in the cadre of P.G. Assistant and the same is not an ordinary grade pay to which alone the restriction is there. Therefore, there is no infirmity in granting 3% + 3% of pay. Since the respondents declined the same, the petitioner is before this Court.

3. The learned Standing Counsel appearing for the Accountant General submitted that under G.O.Ms.No.234 dated 01.06.2009, the Selection Grade and Special Grade of pay was disbursed to two different categories of persons. The relevant portion is extracted hereunder:

4. SELECTION GRADE AND SPECIAL GRADE SCALES OF PAY:

The existing scheme of Selection Grade / Special Grade shall be continued in the revised pay scales to employees drawing the Grade Pay from Rs.1,300 to Rs. 6,600/- and such employees shall be allowed to move to Selection Grade on completion of 10 years of service in the Ordinary Grade post and to Special Grade on completion of 10 years in the Selection Grade post or 20 years of total service in a post. The pay of such employees who have moved to Selection Grade / Special Grade on or after 1-1-2006 shall be fixed on the date of award of Selection Grade / Special Grade by granting the benefit of one increment equal to three percent of the basic pay including grade pay in the same Pay Band and Grade Pay.



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G.O.Ms.No.234 also states about the stagnation increment and the same

is extracted hereunder:

5. STAGNATION INCRMENT:

(i) The employees drawing Grade pay of Rs.6,600/- and above on completion of every 10 years of service shall be granted one increment at the rate of three percent of basic pay including Grade Pay.

(ii) In the case of employees who have completed 30 years of continuous service in the same post, they shall be granted one bonus increment at the rate of three percent of basic pay including Grade Pay.

(iii) In respect of employees who reached the maximum of the revised pay scale shall be allowed biennial increment at the rate of three percent of basic pay including Grade Pay as stagnation increment.

This G.O.Ms.No.234 is the sixth pay commission revision applicable to all categories of persons. Moreover, G.O.Ms.No.234 is fixing a different mode of pay band to all the employees. In other words, there is a shift from the original fixing of scale of pay and there is a different scale of pay fixed in G.O.Ms.No.234, the sixth pay commission. Hence, there were so many discrepancies in fixing the scale of pay. The Government repeatedly issued separate Government Orders for different Department and has also issued clarification letters. In the present case, the Government has issued G.O.Ms.No. 237 Finance Pay Cell Department dated 22.07.2013. The basis of issuing such



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Government Order is spelt out in the earlier paragraph and for better appreciation, the entire Government Order in G.O.Ms.No.237 is extracted as such:


ABSTRACT

Tamil Nadu Revised Scales of Pay Rules, 2009 – Grant of one additional increment of 3% of basic pay to employees on award of Selection Grade / Special Grade in the revised scales of pay – Orders – Issued.

FINANCE (Pay Cell) DEPARTMENT

G.O.Ms.No.237

Dated: 22-7-2018.
Aad. 06
Thiruvalluvar Aada, 2044.

READ:

1. G.O.Ms.No.234, Finance (Pay Cell) Department, dated: 1-6-2018.
2. G.O.Ms.No.123, Finance (Pay Cell) Department, dated: 10-4-2012.

ORDER:

In the Government Order first read above, among others, orders have been issued to the effect that employees shall be allowed to move on to Selection Grade / Special Grade on completion of 10 years of service in the Ordinary Grade post and to Special Grade on completion of 10 years in the Selection Grade post or 20 years of total service in a post. The pay of such employees who have moved to Selection Grade / Special Grade on or after 01-01-2006 shall be fixed on the date of award of Selection Grade / Special Grade by granting the benefit of one increment equal to three per cent of the basic pay including grade pay in the same Pay Band and Grade Pay in the revised scale of pay.

2) Several Associations have represented before the Pay Grievance Redressal Cell to revive the scheme of separate scales of pay to Selection Grade / Special Grade holders as in the previous Pay Commission periods as there are no promotional chances for several posts and that as the employees awarded Selection Grade / Special Grade between 01-01-2006 and 31-05-2009 alone have been given the concession to opt to come over to revised scale of pay on the date of award of Selection Grade / Special Grade by foregoing the arrears to accrue the benefit of higher scales of pay consequent on the revision of the scale of pay of the respective Ordinary Grade post and thereby requested to rectify the anomaly in the total emoluments between those awarded Selection Grade / Special Grade prior to and after 31-05-2009. The Pay Grievance Redressal Cell constituted in the Government Order second read above did not favour granting the Pay Band and Grade Pay of the promotion post for Selection Grade / Special Grade since this would give uneven benefit to employees existing in the same pay scale in different departments with different hierarchical patterns. However, the Pay Grievance Redressal Committee, considering the longstanding service rendered by the

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employees and with the intention to recognise their service properly has recommended to grant an additional increment benefit (over and above the one increment already allowed) equivalent to 3% + 3% of basic pay (Pay + Grade pay) for award of Selection Grade / Special Grade in the revised scale of pay.

3) After careful examination, the Government has decided to implement the above recommendation of the Pay Grievance Redressal Cell. Accordingly, Government direct that an additional increment benefit (over and above the existing one increment benefit) equivalent to 3% + 3% of basic pay (Pay + Grade pay) shall be granted to the employees on award of Selection Grade / Special Grade in the revised scales of pay implemented w.e.f. 01-01-2006.

4) The above orders shall take notional effect from 01-01-2006 with monetary benefit from 01-04-2013.

(BY ORDER OF THE GOVERNOR)

K.SHANMUGAM,
PRINCIPAL SECRETARY TO GOVERNMENT.

To
All Principal Secretaries / Secretaries to Government, Chennai-9.
The Secretary, Legislative Assembly, Registrar, Chennai-5.
The Secretary to the Governor, Chennai-32.
The Comptroller, Governors House, Raj Bhavan, Chennai-52.
The Secretary to the Governor, Cuddalore, Chennai-32.
The Governor's Secretariat, Raj Bhavan, Guindy, Chennai-32.
All Departments of Secretariat, DP / RLS, Chennai - 9.
All Heads of Department.
All Collectors / All District Judges / All Chief Judicial Magistrates.
The Principal Accountant General (Accounts & -Implementation), Chennai-18.
The Principal Accountant General (Audit), Chennai-18.
The Accountant General (Audit), Chennai-18.
The Accountant General (CAS), Chennai-9 / Madurai.
The Registrar General, High Court, Chennai-104.
The Chairman, Tamil Nadu Public Service Commission, Chennai-3.
The Registrar of all Universities in Tamil Nadu.
The Commissioner of Treasuries and Accounts, Chennai-5.
The Director of Pension, DMS Complex, Chennai-6.
The Director of Local Fund Audit, Chennai-109.
The Pension Pay Officer, Chennai- 888 006.
The Pay and Accounts Officer, Secretariat, Chennai-9.
The Pay and Accounts Officer, (North / South / East) Chennai-1 / 35 / 8.
The Pay and Accounts Officer, Madurai - 888 031.
All Treasury Officers / Sub-Treasury Officers.
The Commissioner of Tribunal for Disciplinary Proceedings,
No.6, Marickeewari Road, Chennai-10.
The Commissioner, Corporation of Chennai / Madurai / Coimbatore
/ Tiruchirappalli / Salem / Tirunelveli, Tuticorin, Vellore, Tirupur, Erode.
All State Owned Corporations and Statutory Boards.

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4. The reason for issuance of the Government Order is that the employees awarded selection grade / special grade between 01.01.2006 and 31.05.2009 alone have been given concession to opt to come over to revised scale of pay on the date of award of selection / special grade, which has created pay anomalies. The Pay Grievance Redressal Cell did not favour granting the Pay Band. But considering the longstanding service has recommended to grant additional increment. Therefore, the Government accepted the recommendation and has come forward to grant benefits. The said G.O. specifically states the persons who were granted selection grade and special grade from 01.01.2006 to 31.05.2009 were granted concession to come over to revised scale of pay but others were not granted, hence a concession was granted in G.O.Ms.No.237. In the present case, the petitioner has received the Selection Grade in the year 2008 itself and were granted concession to come over to revised scale of pay. Therefore, the petitioner is benefited by concession granted in the said G.O.Ms.No.234, since the petitioner is coming within the period from 01.01.2006 to 31.05.2009. Hence the G.O.Ms.No.237, it has been specifically stated that the persons who have been granted prior and after 31.05.2009 the Selection Grade or Special Grade, they will be getting an additional increment



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of 3%. Since the petitioner is not coming within the purview of such condition, the petitioner is not entitled to 3% + 3%. Since the respondents have wrongly conferred additional 3% and hence, the respondents are entitled to recover the same and the petitioner is not entitled to any relief. The impugned order is sustained.

5. With the above observations, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.06.2023

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



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Secretariat,
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S.SRIMATHY, J.

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