



W.P.No.14352 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2024

PRONOUNCED ON : 18. 04.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.14352 of 2015

and

W.M.P.No.4144 of 2016

S.Natrajan

...Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. By its Principal Secretary to Government,
Finance Department,
Fort. St.George,
Chennai – 600 009.
2. The Principal Secretary to Government,
Backward and Most Backward Classes
Welfare Department,
Fort St.George,
Chennai – 600 009.
3. The Director of Backward Classes Welfare,
Chepauk, Chennai – 600 005.
4. The District Backward Classes
and Minorities Welfare Officer,
Erode District,
Erode.
5. The Accountant General,
Anna Salai, Teynampet,
Chennai – 600 018.

...Respondents



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Prayer : Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to fix the petitioner's selection grade scale of pay in the post of B.T.Grade Tutor-cum-Warden in the scale of pay of Rs.15,600*39,100 + 5400 grade pay with notional effect from 07.12.2007 and fix the petitioner's last drawn pay and grant consequential terminal benefits and arrears of pension.

For petitioner : Mr.R.Saseetharan
For R1 to R4 : Mr.A.M.Ayyadurai
Government Advocate
For R5 : Ms.J.Sree Vidya
Standing Counsel

ORDER

This writ petition has been filed for issuance of mandamus directing the respondents to fix the petitioner's selection grade scale of pay of in the post of B.T.Grade Tutor-cum-Warden in the scale of pay of Rs.15,600*39,100 + 5400 grade pay with notional effect from 07.12.2007 and fix the petitioner's last drawn pay and grant consequential terminal benefits and arrears of pension.



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2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner was appointed as Secondary Grand Teacher in Elementary School (DNT), Aluvathichinnampalayam, Coimbatore District on 07.12.1977. On 07.06.1980 the petitioner was posted as Tutor-cum-Warden in the cadre of Secondary Grade Teacher . He was granted selection grade in the cadre of Secondary Grade Teacher on 07.12.1987 and special grade on 07.12.1977, on completion of 10 and 20 years of service respectively.

2.2. The petitioner was promoted as Tutor-Cum-Warden in the cadre of B.T. Assistant and worked there until 31.12.2009 and retired from service after attaining the age of superannuation. The post of Tutor-cum-Warden in the cadre of Secondary Grade Teacher he was granted same scale of pay as in the case of Secondary Grade Teacher, like wise for the post of Tutor-cum-Warden in the cadre of B.T. Grade was granted same scale of pay as that of B.T. Assistant was granted. The B.T. Assistant and the post of



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Tutor-cum-Warden in B.T. Assistant cadre have been considered as equivalent scale of pay.

2.3. On promotion as B.T.Grade Tutor-cum-Warden from the post of Tutor-cum-Warden in the cadre of Secondary Grade Teacher, the petitioners pay was fixed on 08.02.2006 and as per G.O.Ms.No.590 dated 01.09.1992, the petitioner's special grade in the cadre of Secondary Grade Teacher-cum-Warden post was protected.

2.4. The Government of Tamil Nadu in letter No.168 dated 28.09.1999 had directed that the selection and special grade services in the lower post having identical with or higher scale of pay than the post of promotional post are entitled to count the service in the identical scale of pay for the fixation of pay in selection grade in promotional post. The District Backward Classes and Minority Welfare Officer, Erode as per the proceedings dated 26.05.2008 granted selection grade of pay in the promoted post w.e.f. 07.12.2007 in the scale of pay of Rs.6,500-200-10,500 which is the scale of pay of selection grade in the cadre of B.T. Grade Tutor-cum-Warden as per revised scale of pay w.e.f. 01.01.2006.



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2.5. The Government has revised the scale of pay w.e.f. 01.01.2006 as per G.O.Ms.No.234 dated 30.06.2009 and introduced the system of pay band with grade pay. However, the Government has not prescribed separate selection and special grade scales of pay for the said post, instead of selection and special grade scale of pay, the Government of Tamil Nadu has introduced system of granting 3% increase in basic pay on completion of 10 years and 20 years of service. However, on account of protest of the employees, the Government has once again introduced the system of awarding selection and special grade scale of pay as per the letter dated 08.11.2010.

2.6. The pay band prescribed for Tutor-cum-Warden with revised scales of pay is Rs.9300-34800 + 4400 grade pay and the same pay band and grade pay is also prescribed for B.T. Assistant on the ground that both the posts were in the same scale of pay of Rs.1400-2600 w.e.f 01.06.1988 and Rs.5500-9600 w.e.f. 01.01.1996. However, the Government has increased the scale of pay of B.T. Assistant along with some other posts with the recommendation of one man commission by G.O.Ms.No.23 dated 23.01.2011.



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Name of the Post	Existing scale of pay + Grade pay	Revised scale of pay + Grade pay
B.T.Assistant	Rs.9300-34800+4400 Grade Pay	Rs.9300-34800+4600 Grade Pay

The above said scale of pay came into force from 01.01.2006 with monetary benefit from 01.01.2007. The petitioner was granted selection grade scale of pay which is the selection grade scale of pay of Tutor-cum-Warden in B.T. Grade as per the pre existing scale of pay introduced w.e.f 01.01.2006, from 07.12.200. Therefore, the petitioner exercised the option to fix his pay in selection grade pay as per the pre revised scale of pay from 07.12.2007 even after the introduction of new scale of pay from 01.01.2006. He has exercised his option on 29.04.2011 since the pay of B.T. Assistant is equal to the pay of Tutor-cum-Warden in the cadre of B.T. Assistant, the petitioner is entitled for selection grade scale of pay of Rs.15600-39100+Rs.5400 grade pay which is corresponding to the ordinary grade scale of pay of Rs.9300-34800 + Rs.4600 grade pay as the post of B.T. Grade Tutor-cum-Warden has no promotional avenues.



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2.7. As per the Government letter dated 08.11.2010 it is stated that the selection grade scale of pay of the post is restricted to the first level promotional post. In the case of B.T. Grade Tutor-cum-Warden there is no promotional avenues and therefore, the petitioner is entitled for selection grade scale of pay of Rs.15600-39100+5400 grade pay. The Government in its letter dated 07.02.2011 has stated that the selection grade scale of pay of the post is restricted to the first level promotion and that the employees who were in selection grade scale of pay prior to 01.06.2006 and employees who exercised to come to new scale of pay from the date the selection grade are entitled for selection grade scale of pay prescribed in the Government letter dated 08.11.2010. Accordingly, the petitioner has exercised his re option on 29.04.2011 and submitted his application to the District Backward classes and Minority Welfare Officer, Erode District, stating that he wished to exercise his re option in fixing the scale of pay from the as per the re-option exercise and stated that the excess pay drawn by the petitioner for a period from 01.01.2007 to 06.12.2007 will be recovered from the amount of Death cum Retirement Gratuity and certified that the petitioner is entitled for selection grade scale of pay at Rs.15600-39100 + 5400 Grade Pay and also certified that the petitioner is entitled for fixation of pay from 07.12.2007



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and entitled for monetary benefit from 01.01.2011 and accordingly, proposal was sent to the Accountant General for sanction. However, the Accountant General *vide* proceedings dated 28.09.2011 has returned the revised pension proposal to the District Backward Classes and Minorities Welfare Officer, Erode and sought for clarification of the Government regarding line of promotion for restricting Grade pay scales as per G.O.Ms.No.23 dated 12.01.2011 and Government letter dated 08.11.2010 and another letter dated 07.02.2011.

2.8. The petitioner submitted his representation on 27.01.2012 to the Government to issue clarification and fix his pay scale in post of selection grade scale of pay at Rs.15600-39100 + 5400 Grade Pay. The Director of Backward Classes Welfare, Chennai by his proceedings dated 16.03.2012 has returned the petitioner's representation stating that the proposal regarding fixation of selection grade and special grade scales of pay with grade pay for secondary grade and B.T. Grade Tutor-cum-Warden was sent to the Government and the same is under consideration and the petitioner's claim will be considered only after receiving the orders of the Government.



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2.9. The petitioner has sought for further information from the respondents under Right to Information Act (RTI), which clarified that as per the Service Rules, the post of B.T. Grade Tutor-cum-Warden post has no promotional avenues and by way of Government letter dated 15.01.2012, the Government has prescribed selection grade scale of pay restricting to the level of promotion for various posts on teaching side. The name of B.T. Grade Tutor-cum-Warden does not find place in the Government letter and thereby, the said post has no promotional avenues as per the letter dated 08.11.2010. The Tutor-cum-Warden in the cadre of B.T. Assistant like the petitioners are entitled for selection grade scale of pay at Rs.15600-39100 + 5400 Grade Pay and on account of fixation of pay of the petitioner at Rs.9300-34800 + 4600 Grade Pay, the petitioner is put to huge monetary loss and thereby sought for monetary benefits.

3. Counter affidavit has been filed by the respondents one to four stating that petitioner was appointed as Secondary Grade Teacher in Elementary School (DNT), Aluvathi Chinnampalayam, Coimbatore District on 07.12.2007 and was posted as Tutor cum Warden in the cadre of



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Secondary Grade Teacher on 07.06.1980. On completion of 10 years of service in the cadre of Secondary Grade Teacher, he was awarded Selection Grade on 07.12.1987 and on completion of 20 years of service awarded Special Grade on 07.12.1997. On 28.10.2005, he was promoted as Tutor cum Warden in the cadre of B.T. Assistant and was posted at District Backward Classes and Minorities Welfare Office at Erode District by the order dated 28.10.2005. He served in the said post till 31.12.2009 and retired from service on attaining the age of superannuation.

4. It is mentioned in the counter affidavit that the post of Tutor cum Warden in the cadre of Secondary Grade Teacher and the cadre of Secondary Grade Teacher carries the same scale of pay. The post of Tutor cum Warden in the cadre of B.T. Assistant carries the same scale of pay as in the case of B.T. Assistant and they were treated as equivalent in the scale of pay. The service of the petitioner in the post of Secondary Grade Teacher was regularized with effect from 07.12.1977 as per the proceedings of the District Backward Classes Welfare Officer, Erode in Ref.No.145948/80/U2, dated 27.11.1980. He has completed 10 years of service on 06.12.1987. Therefore, the District Backward Classes Welfare Officer in his proceedings



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D.Dis. 183694/87/U2, dated 26.02.88 awarded Selection Grade in the cadre of Secondary Grade Teacher and fixed his pay at Rs.880+25 per month in the scale of pay of Rs.705-20-745-25-845-35-1230 and he was eligible to get the Selection Grade Pay with effect from 07.12.1987. He was awarded Special Grade by the District Backward Class & Minority Welfare Officer in his proceedings Na. Ka. No.24732/98/U2 dated 27.04.1998 and fixed his pay in the scale of pay of Rs. 1640-60-2600- 75-2900.

5. It is further mentioned in the counter affidavit that the petitioner has passed B.Ed. Degree in Annamalai University on 09.06.1990. Therefore, he was appointed as B.T. Grade Tutor cum Warden in his proceedings Na.Ka.No.62381/05/U2, dated 28.10.2005. The scale of pay of Tutor cum Warden in the B.T. Grade is lesser than the scale of pay in the Selection Grade in the Secondary Grade Tutor Cum Warden Post and hence, option was called for whether his pay can be fixed in the old scale or in the scale of pay of BT Grade Tutor cum warden as per G.O.Ms.590. Finance Department dated 01.09.1992. As the petitioner has given option to come under the old scale of pay, his pay was fixed at Rs.8100/- and awarded Rs. 200/- increment and fixed pay at Rs.8300/- as on 28.10,2005 in the scale of



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Rs.5900-200-9900, The next increment was due on 01.10.2006 the petitioner has given a representation on 28.03.2008 requesting to award selection grade in the promoted post on completion of 10 years of service. The Backward Class and Minorities Welfare Officer in his proceedings Na.kKa.No.19965/08/U2, dated 26.05.2008 awarded selection grade and fixed his pay in the old scale as per his option in the Scale of pay of Rs.6500-200-10500 and fixed the pay at Rs.8700 granting one increment of Rs.200/- raising his pay to Rs.8900/- with effect from 07.12.2007. The petitioner retired from service on 31.12.2009 on attaining the age of superannuation. After his retirement he was paid pension and other benefits on the basis of last pay drawn of Rs.23140/- in the pay scale of Rs.9300-34800+GP Rs.4500/-.

6. It is submitted by the learned counsel for the respondent that the petitioner has submitted an application, dated 03.05.2011 after retirement wherein he opted to re-fix the pay in selection grade B.T. Warden on the basis of pay range Rs.15000 39100+GP Rs.5400/- (PB3) as per the letter No.63305/Pay Cel 2010- 1, dated 08.11.2010. Based on the application and revised option of the petitioner, the pay of the petitioner was



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revised with effect from 07.12.2001 as per the proceedings No.20023/U2/2011. Dated 16.08.2011 by the District Backward Class and Minority Welfare Officer, Erode.

7. It is further submitted that the petitioner claims to fix his pay for B.T. Grade Tutor cum Warden as per GO. Ms.No.240 dated 22.07.13 in the Scale of pay at Rs.9300-34800-+4600 GP. The Government in its letter No.41530/PC/09-1, dt 28.07.2009, has clarified that the employees have been permitted to exercise the re-option within a period of 3 months from the date of issue of clarification dated 28.07.2009. The petitioner has not given any letter with regard to the re-option within the prescribed period. He has given re-option only on 27.01.2012. As he has not given re-option within the prescribed time, he is not entitled to get revised scale of pay as per GO.Ms.No.240, dated 22.07.2013. Therefore, the GO.Ms.No.240 dated 22.07.2013 is not applicable to him. Hence the proposal for re-fixation of pay of the petitioner was returned by the Account General's Office. The Government have taken a policy decision and issued orders in its Letter No.41530/PC/09-1 dated 28-07-2009 that the employees have been permitted to exercise the re-option within a period of three months from the



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date of issue of that letter namely 28-07-2009. The petitioner has failed to utilize the opportunity and made his re-option after a period of two years and hence, the request of the petitioner cannot be granted.

8. Heard both sides and perused the materials available on record.

9. The Objection of the Government for fixation of the petitioner's pay as sought for is that as per G.O.Ms.No.240 Finance (Pay Cell) Department dated 22.07.2013, the Government directed that in exercise of the powers conferred under Rule 12 of the Tamil Nadu revised scale of Pay Rules between 01.01.2006 and 31.05.2009 as one time measure in cases where option could not be exercised within the time limit to the advantage of the individual employees, such re-option should not be in any case lead to the fixation of lower pay than that what has been fixed earlier. The petitioner claims to fix his pay for BT Grade Tutor-cum-Warden as per G.O.Ms.No.240, *ibid*, in the scale of pay of Rs.9300-34800 + 4600 Grade pay. The Government in letter dated 28.07.2009 has clarified that the employees were permitted to exercise the re-option within a period of three months from the date of issue of clarification,i.e., on28.07.2009. The



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petitioner however, has not exercised re-option within the stipulated time.

The Government has taken a policy decision and issued clarification by way of letter dated 28.07.2009, permitted the employees to exercise their re-option within a period of three months from 28.07.2009, the petitioner has failed to utilise the opportunity and exercised his option after a period of two years. In case if the Government has not fixed any cut of date or if it is open ended, it causes hard ship on the State exchequer.

10. The petitioner has not filed any re-joinder after filing of the counter affidavit by the respondents. The petitioner has relied upon the decisions of Hon'ble Supreme Court judgement in ***Union Of India & Anr vs Tarsem Singh on 13 August, 2008***, reported in ***2005 6 SCC 754***, the relevant portion of which is extracted hereunder:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a



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continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

11. However, according to the learned Additional Government Pleader, as the petitioner could not exercise his re-option within a period of three months from 28.07.2009 and having belatedly exercised his option only on 27.01.2012. If the petitioner exercising re-option is permitted it will lead to many number of similar claims causing hard ship to the State exchequer. Fixing of cut off date for exercising the option or re-option for revision of scale of pay is exclusively the domain of the Government and this Court cannot intervene into the same. As rightly submitted by the learned Additional Government Pleader, if the petitioner case is considered other



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persons in the similar circumstances will approach this Court for the same relief.

12. Once the representation was received from the petitioner, the respondents are expected to give a suitable reply as to why the request of the petitioner could not be considered and as to why he is not entitled for exercising the re-option. However, it appears that there is no reply from the respondents in favour of the petitioner. However, as already observed, there is no i case for the petitioner to exercise his re-option as sought for on account of the fact that the petitioner failed to exercise his re-option within the stipulated period of three months.

13. In view of the above, this writ petition is dismissed. Connected W.M.P is closed. No costs.

18.04.2024

vca

Index : Yes/No
Internet : Yes/No
Citation : Yes/No



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Dr.D.NAGARJUN, J.

vca

To,

1. The Government of Tamil Nadu
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Pre. Delivery order
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