



WEB COPY



W.P.No. 3144 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2024

PRONOUNCED ON : 29.04.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 3144 of 2018

A.Pownammal

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai – 600 009.

2.The Senior Accounts Officer/Pen 23
Accountant General (Accounts and Entitlements), Tamil Nadu,
No.361, Anna Salai,
Chennai-600 006.

3.The Director of Elementary Education,
College Road, Chennai-600 006

4.The District Elementary Educational Officer,
Ariyalur District,
Ariyalur.

5.The Additional Assistant Elementary Educational Officer,
Ariyalur District,
Ariyalur

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent in Pen23/3/12316927/Rev/16 17, dated 21.12.2016,



quash the same and to direct the 2nd respondent to revise the pension of the petitioner as per the proposal of the 5th respondent dated 24.06.2016 made in his proceedings in Na Ka No.1256/A1/2016 and to grant all monetary benefits with arrears.

For Petitioner : Mr. A.S.Kaizer

For Respondents : Mr. E. Vijay Anand, AGP for R1, R3 to R5
Ms. Hema Muralikrishnan, for R2
Senior Standing Counsel

ORDER

This Writ Petition has been filed to call for the records relating to the the impugned order of the 2nd respondent in Pen23/3/12316927/Rev/16 17, dated 21.12.2016, quash the same and to direct the 2nd respondent to revise the pension of the petitioner as per the proposal of the 5th respondent dated 24.06.2016 made in his proceedings in Na Ka No.1256/A1/2016 and to grant all monetary benefits with arrears.

2. The case of the petitioner is that he was initially appointed as Secondary Grade Assistant Teacher on 01.01.1971. He was awarded Selection Grade in the said post on 01.01.1981. Thereafter, he was transferred to CSI Higher Secondary School (aided) on 20.06.1983. He was awarded Special Grade in the post of Secondary Grade Teacher on 01.01.1991. Again, he was transferred to SPG Elementary School on 17.01.1997 and thereafter, he retired from service on 31.08.2007 on attaining the age of superannuation in the same post to which he was



appointed, i.e. Secondary Grade Assistant Teacher. This is because of the reason that there is no promotional avenue in the Special Rules for School Education Subordinate Service for the Secondary Grade Assistant Teacher and the equivalent categories like Music Teacher, Craft Instructor, Drawing Master, Physical Education Teacher etc., are compelled to work in the same category till their retirement on superannuation by rendering service in the High Schools and Higher Secondary Schools. But in the Elementary Education, the same category of Secondary Grade Teachers are having the chances of getting promotion as “Elementary School Head Master” and “Middle School Head Master (Secondary Grade)” and thereby drawing higher start of pay and allowances in their service carrier.

3. Ultimately, in order to have measure of uniformity, the Government passed an order in G.O.Ms.No.216, Finance (Pay Cell) Department dated 22.03.1993, thereby Secondary Grade Teachers employed in the High/Higher Secondary Schools were also eligible for the scale of pay on par to the scale of pay of the promotional post in the Elementary School i.e. Elementary School Headmaster. This G.O. is still in force and also affirmed by the Apex Court. Para 3 (ii) of the G.O. reads as follows:-

In respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28.03.1990 (i.e., the date of issue of the G.O. Second read above), although there is promotion post in



Primary Schools. As a measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the Teachers be made eligible for Selection / Special Grade as in Annexure – I to the G.O., second read above.

4.Since the above benefit was not extended to the similarly placed Secondary Grade Assistant Teachers, they approached the Tamil Nadu Administrative Tribunal by filing O.A.Nos.1113 to 1133 of 1995, which were allowed. Likewise, two other similarly placed persons also filed O.A.Nos.7908 & 8276 of 1997 before the Tribunal, which were also allowed by order dated 07.08.1998, against which, the respondents filed W.P.No.8747 of 2009, which came to be dismissed by this Court and again the respondents therein preferred SLP before the Apex Court, which was also dismissed on 23.04.2010. In compliance of the above orders, the Government issued G.O.Ms.258, dated 06.09.2010 extending the benefits only in respect of the applicant in the above O.A.

5.Thereafter, the petitioner made several requests before the authorities, seeking for grant of similar relief. The 5th respondent passed an order dated 24.06.1993 extending the benefit of G.O.Ms.No.216, dated 22.3.1993 in his favour and fixed his pay accordingly. The 5th respondent forwarded the order and proposals to the 2nd respondent for fixing the revised pension in accordance with the above said



G.O. However, 2nd respondent by his impugned proceedings dated 21.12.2016 returned the proposals on the ground that his name is not found in the list of beneficiaries mentioned in Annexure 1 and 2 to G.O.Ms.Nos.180 and 181 dated 18.04.2014. Hence, the petitioner is constrained to approach this Court, seeking for appropriate direction.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1, 3 and 5 and the learned Senior Standing counsel appearing for the second respondent and perused the material available on record.

7.The learned counsel for the petitioner submits that the petitioner was initially appointed as Secondary Grade Assistant Teacher on 01.01.1971 and he rendered 36 years of service in the same post and retired on 31.08.2007 on attaining the age of superannuation. He was granted selection grade on 01.01.1981 and special grade of pay on 01.01.1991. At the time of retirement, he was serving as Secondary Grade Assistant in the fifth respondent school. At the time of superannuation, he was awarded only secondary grade scale of pay.

8. It is submitted that there is no promotional avenues for Secondary Grade



WEB COPY

Teachers and Vocational Instructors working in High Schools/ Higher Secondary Schools. Whereas, in Elementary Education, the same category of teachers have chances of getting promotion as Primary School Headmaster/Middle School Headmaster. Hence, the salary and allowances drawn by the Secondary Grade Teachers in Elementary Education are higher than the teachers in the similar category of teachers in High Schools/Higher Secondary Schools. In order to remove certain ambiguity in awarding selection grade/ special grade pay in respect of the posts for which, there is no promotional opportunity, the Government issued G.O.Ms.No.216, dated 22.03.1993 introducing uniform scale of pay for all the secondary grade teachers. The Government decided to extend the benefits awarded to the Elementary School Headmasters scale of pay with effect from 01.06.1988 to the Secondary Grade Teachers and equivalent categories serving in the High School and the Higher Secondary Schools.

9. Similarly placed Secondary Grade Assistant Teachers moved the Tamil Nadu Administrative Tribunal vide O.A.NOs.1113 to 1133 of 1995, which were allowed. And also two other similarly placed persons moved O.A.Nos.7908 & 8276 of 1997 before the Tribunal, which were also allowed by order dated 07.08.1998, against which, the matter went upto the Supreme Court and ended in confirming the benefits of G.O.Ms.No.216 dated 22.03.1993.



WEB COPY

10. Thereafter, it appears that the 5th respondent passed an order dated 24.06.1993 extending the benefit of G.O.Ms.No.216, dated 22.3.1993 in favour of the petitioner and fixed his pay accordingly. The 5th respondent forwarded the order and proposals to the 2nd respondent for fixing revised pension in accordance with the above said G.O. However, 2nd respondent by his impugned proceedings dated 21.12.2016 returned the proposals on the ground that petitioner's name was not found in the list of beneficiaries mentioned in Annexure 1 and 2 to G.O.Ms.Nos.180 and 181 dated 18.04.2014. Aggrieved by the order passed by the sixth respondent dated 19.08.2016, the present Writ Petition has been filed.

11. Having heard the submissions of the learned counsel appearing on either side and on careful perusal of the material available on record, it appears that there is no promotional avenues for Secondary Grade Teachers and Vocational Instructors working in High Schools/ Higher Secondary Schools. Whereas, in Elementary Education, the same category of teachers have chances of getting promotion as Primary School Headmaster/Middle School Headmaster. Hence, the salary and allowances drawn by the Secondary Grade Teachers in Elementary Education are higher than the teachers in the similar category of teachers in High Schools/Higher Secondary Schools. In order to remove certain ambiguity in awarding selection



grade/ special grade pay in respect of the posts for which, there is no promotional opportunity, the Government issued G.O.Ms.No.216, dated 22.03.1993 introducing uniform scale of pay for all the secondary grade teachers. The Government decided to extend the benefits awarded to the Elementary School Headmasters scale of pay with effect from 01.06.1988 to the Secondary Grade Teachers and equivalent categories serving in the High School and the Higher Secondary Schools.

12.In the present case, the 5th respondent passed an order dated 24.06.2016 extending the benefit of G.O.No.216, Finance (Pay Cell) Department dated 22.03.1993 in favour of the petitioner and fixed his pay. The 5th respondent forwarded the said order and the proposals to the second respondent for fixing revised pension in accordance with G.O.No.216 dated 22.03.1993. But the second respondent has rejected the same vide letter dated 21.12.2016 stating that as per G.O.No.216 dated 22.03.1993 the petitioner's name was not found in G.O.181 and G.O.No.61 Annexure list. The said order is impugned in the present Writ Petition.

13.The respondent No.4 has filed a counter affidavit, wherein, it is stated that the petitioner is not entitled for the relief sought in this Writ Petition. But the respondents in the counter affidavit filed in Writ Petition in W.P.No.29114 of 2017 by another writ petitioner in similar set of facts stated as under:



WEB COPY

"9. As per the order of the Hon'ble Court in Rev.Appl. No.227 of 2015, the petitioner is eligible for the benefit under G.O 216 irrespective of the official name in the G.O.181 and G.O.69 Annexure list. The rejection order was passed by the 6th respondent on 19.08.2016, whereas the order passed by the Hon'ble Court in Rev Appl.No.227 of 2015 is on 09.12.2016. The Government has passed G.O (Ms) No.90, School Education 3(1) Department, dated 09.05.2018, by which the petitioner becomes fully eligible for the benefit under granted under G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.3.1993. There is a delay in implementing the order of the Hon'ble Court as clarifications was sought regarding the applicability of the said G.O to the teachers who attained promotion after attaining Selection Grade / Special Grade in between the period from 01.06.1988 to 31.12.1995.

10. It is humbly submitted that as per Government Letter (Ms).No. 113/SE3(1)/ 2022 dated 27.06.2022, the Principal Secretary has ordered the Commissioner of School Education to take necessary action to send the revised pension proposal as per G.O.(Ms) No.90, School Education 3(1) Department, dated 09.05.2018. Based on the same, the 4th respondent, District Educational Officer, Cuddalore has sent revised pension proposal to the 6th respondent through his proceedings vide Na.Ka.No. 268/A3/2024 dated 12.01.2024."

14. On perusal of the said averments, it appears that the petitioner is eligible



for the benefit under G.O.Ms.No.216, dated 22.3.1993 irrespective of the official name in the G.O.No.189 and G.O.No.60 Annexure list. The officials of the Education Department of the State Government, cannot take different stand, while filing the counter affidavit in different cases before the Court as it is not permissible under law. As such, the 5th respondent shall send revised pension proposal of the petitioner to the 2nd respondent for fixing the revised pension in accordance with G.O.Ms.No.216, dated 22.4.1993 and the 2nd respondent has to sanction the revised pension on the proposal sent by the 5th respondent irrespective of the official name in the G.O.No.189 and G.O.No.60 Annexure list.

15.In the considered opinion of this Court, the reasons stated by the 2nd respondent in the impugned letter dated 21.12.2016 is unsustainable and accordingly, it is liable to be set aside.

16.Accordingly, this Writ Petition is allowed with the following directions:

- (i) The impugned order passed by the 2nd respondent in Pen23/3/12316927/Rev/16 17, dated 21.12.2016 is hereby quashed.
- (ii) The 5th respondent shall re-submit the revised pension proposal of the petitioner to the 2nd respondent within a period of four (4) weeks from the date of



W.P.No. 3144 of 2018

receipt of the copy of this order.

WEB COPY

(iii) On receipt of the revised pension proposal of the petitioner from the 5th respondent, the 2nd respondent shall sanction revised pension proposal within a period of four (4) weeks thereafter.

No costs.

29.04.2024

Index :Yes/No

Neutral Citation :Yes/No

dn

To

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai – 600 009.
- 2.The Senior Accounts Officer/Pen 23
Accountant General (Accounts and Entitlements), Tamil Nadu,
No.361, Anna Salai,
Chennai-600 006.
- 3.The Director of Elementary Education,
College Road, Chennai-600 006
- 4.The District Elementary Educational Officer,
Ariyalur District,
Ariyalur.
- 5.The Additional Assistant Elementary Educational Officer,
Ariyalur District,
Ariyalur



WEB COPY



W.P.No. 3144 of 2018

BATTU DEVANAND, J.

dn

Pre-delivery Order made in
W.P.No.3144 of 2018 and

29.04.2024