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W.P.No.20564 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.20564 of 2012

M.Andrew Kurion Gnanaraj

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
School Education Department,
Fort St.George, Chennai -9.

2.The Director of Elementary Education,
College Road, Chennai – 6.

3.The District Elementary Educational Officer,
Tirunelveli.

4.The Assistant Elementary Educational Officer (Rural),
Palayamkottai, Tirunelveli District.

5.The Accountant General of Tamil Nadu,
Teynampet, Chennai – 18.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Mandamus, to direct respondents 1 to 3 & 5 to restore the fixation of pay made in proceeding Na.Ka.No.2439/A2/98 dated 28.09.98 by the 4th respondent and consequently revise the pay in the revised scales and pay the pensionary



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benefits and arrears of pension and other consequential monetary benefits with interest and pass such further orders.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.T.M.Rajangam
Government Advocate

ORDER

This writ petition is filed for issuance of a Writ of Mandamus, to direct respondents 1 to 3 & 5 to restore the fixation of pay made in proceeding Na.Ka.No.2439/A2/98 dated 28.09.98 by the 4th respondent and consequently revise the pay in the revised scales and pay the pensionary benefits and arrears of pension and other consequential monetary benefits with interest.

2. The case of the petitioner is that he was initially appointed as Junior Grade Teacher on 15.06.67 and promoted to Elementary School Head Master on 01.10.86 and later promoted as a Middle School Head Master with effect from 02.06.87. He retired on 30.11.01 and worked in Tirunelveli before permanently settling in Chidambaram. He was previously the Headmaster of T.D.T.A Middle School in Manarkadu, Melapallam, Tirunelveli District.

3. Learned counsel for the petitioner submitted that the 3rd respondent



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on his date of retirement on 30.11.01 issued an order of recovery in proceeding dated 30.11.01 and subsequently filed W.P.No.25797 of 2001 for recovery and a re-fixation of the scale of pay, which was in dispute. This Court by order dated 23.06.10 set aside the order of recovery and confirmed the re-fixation of scale of pay.

4. Learned counsel further submitted that pursuant to the pay commission report, his salary was re-fixed as per the Government order and rules. Accordingly, the Assistant Elementary Educational Officer in proceeding dated 28.09.98 confirmed his fixation of salary as within the rule and there is no irregularity in the fixation of pay. However, the 2nd respondent issued the order on 05.10.2000 stating that the salary fixed for the petitioner in the year 1987 was wrong. Further, the respondents had gone to the extent of stating that the selection grade given to the petitioner in the post of Secondary Grade Teacher on 28.08.86. The alleged excess amount of salary given to the petitioner till 31.03.98 should be recovered from the petitioner in lump sum.

5. Learned counsel further submitted that salary fixation was done by the administration as per Government Orders and after a lapse of so many



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years, the Respondents are estopped from re-fixing the same by wrongly stating that, the fixation was not in accordance with Government Orders. In fact, there was no irregularity in his fixation of pay and therefore the audit objection raised after many years was unsustainable. It is pertinent to note that the fixation of his salary was regularly approved in the annual audit. The petitioner made a representation to the Respondents to confirm the re-fixation originally ordered by the 4th Respondent in proceeding Na.Ka.No: 2439/A2/98 dated 29.09.98, through which the fixation was correctly done in accordance with the government orders. The fixation done after his retirement was erroneous.

6. Learned counsel further submitted that even after the petitioner's representation, the respondents informed him that the original fixation done in the proceeding dated 28.09.98 cannot be restored and they will confirm the erroneous fixation done after his retirement and his pay was protected in the post of Elementary School Headmaster by the orders of the Hon'ble Supreme Court of India. The senior teachers were holding the post of Secondary Grade Teachers and Junior Teachers were holding the post of Middle School Headmasters. The senior teachers who are affected approached this Hon'ble Court and finally the Hon'ble Supreme Court of India decided the issue on



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01.03.89 in Civil Appeal No.994 of 1980. Accordingly, the Hon'ble Supreme Court held that, the Government had provided pay protection to all the teachers and they continue to get the pay admissible to the post of Headmaster, Middle School, even after reversion to the post of teacher.

7. Pursuant to the orders of the Apex Court of India, the Government issued G.O.Ms.No.1178 Education Department dated 22.12.93, categorically enumerating that, "then teachers are eligible for selection grade and special grade, counting the period of earlier service rendered in the post of Secondary Grade teachers". In spite of the orders of the Hon'ble Supreme Court of India, his pay and pension were not revised in the special grade pay. He made several representations to the Authorities concerned, but no action has been taken.

8. Learned counsel further submitted that one Mr.Rajalingam filed W.P.No.47501 of 2006 and this Hon'ble Court allowed the Writ Petition on 08.12.08 and the Accountant General of Tamil Nadu filed W.A.No. 1234 of 2009 and the same was dismissed on 16.11.10 and his fixation was done by the Assistant Elementary Educational Officer in proceeding Na.Ka.No.



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2439/A2/98 dated 28.09.98 and his pension was revised to Rs.4,000/- with effect from 01.04.99 (Pay scale 8,000 - 13,500). Even that pension fixed was reduced to Rs.2,950/- (Pay Scale 5,900- 9,900) and recovery was imposed, violating the pay protection granted by the Hon'ble Supreme Court of India and by the Government in G.O.Ms.No.1178. The petitioner's representation to restore the pension and repay the recovered amount as per G.O.Ms.No.1178 has not been considered. Aggrieved by the same, the petitioner has come forward with the present writ petition.

9. Today, 28.03.2024, when the matter was taken up for hearing, the learned counsel for the petitioner submitted that the petitioner filed an earlier writ petition challenging the recovery order issued by the respondents as well as the fixation of salary and this Court has already passed an order in W.P.No.25797 of 2001 dated 25.06.2010, quashing the order passed by the respondents for recovery from the petitioner and in regard to the fixation of salary, the order passed by the respondents was confirmed.

10. A counter affidavit was filed by the respondent on 10.01.2013.

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



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12. In the case on hand, the present writ petition is filed for restoration of the pay since in the earlier writ petition this Court has already confirmed the pay fixation of the petitioner. Hence, this Court cannot interfere with the aforesaid order and the writ petition is liable to be dismissed.

In the result, **the writ petition stands dismissed.** No costs.

28.03.2024

cda

Index : Yes/No

Speaking/Non Speaking order

J.SATHYA NARAYANA PRASAD, J.

cda

To

1.The Secretary to Government,
The State of Tamil Nadu,
School Education Department,
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