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W.P. No.24935 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.24935 of 2015 and
M.P.Nos.1 and 2 of 2015

A.Subramanian

... Petitioner

Vs

1.The Government of Tamil nadu,
rep. by Principal Secretary,
School Education Department,
Fort St. George, Chennai 9.

2.The Director,
State Council of Education Research and Training,
College Road, Chennai 6.

3.The Principal,
District Institute of Education and Training,
Perundurai,
Erode District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd and 3rd respondents issued in ATM No.000381/A2/2014 dated 11.08.2014 and in Na.Ka.No.75/2014/A dated 11.05.2015 respectively and quash the same and issue a consequential direction to the



W.P. No.24935 of 2015

2nd and 3rd respondents to restore the Selection Grade scale of pay of Senior Lecturer to the petitioner from 01.07.2009 onwards and to grant consequential benefits.

For Petitioner : M/S.R.Saseetharan

For Respondents : Mr.M.Rajendran,
Additional Government Pleader.

ORDER

The writ petition is filed challenging the impugned orders dated 11.08.2014 in ATM No.000381/A2/2014 and 11.05.2015 in Na.Ka.No.75/2014/A insofar as it refixes the salary of the petitioner to the ordinary scale of pay of Senior Lecturer.

2.Brief Facts:

The petitioner was appointed as P.G.Assistant in a private aided school on 05.12.1985. The petitioner was thereafter appointed as P.G.Assistant (Physics) at Government Higher Secondary School, R.S.Mangalam at Ramnad District on 11.09.1991 by the Teachers Recruitment Board. On 25.08.1993, the petitioner was transferred to District Institute of Education and Training, Perundurai, Erode District as



W.P. No.24935 of 2015

Lecturer. It is not in dispute that the post of P.G.Assistant and Lecturer in the District Institute for Education and Training are on par/equal.

2.1. On 05.12.1995, the petitioner was granted Selection Grade scale of pay in the post of P.G.Assistant / Lecturer. Importantly, the Government of Tamil Nadu vide G.O.Ms.No.122 dated 06.08.2002 has recognized that the following post to be equivalent and fixed scale of pay accordingly. The following Table is relevant in this regard:

S.No.	Post	Equivalent Post
1.	Senior Lecturer	District Educational Officer / Higher Secondary School Headmaster
2.	Lecturer	P.G. Assistant
3.	Principal	Chief Educational Officer

2.2. The petitioner was granted a Special Grade scale of pay in the post of Lecturer from 05.12.2005. The petitioner was promoted as Senior Lecturer on 16.05.2009. On 12.01.2001 vide G.O.Ms.23, the Government of Tamil Nadu revised the scale of pay of Higher Secondary School Headmaster / District Educational officer from Rs.15600-39100+5400 to Rs.15600-39100+5700. The relevant portions of the G.O.Ms.No.23 is extracted hereunder:



W.P. No.24935 of 2015

வ. எண்	பதவியின் பெயர்	தற்போதைய ஊதியம் வீகிதம் + தர ஊதியம்	திருத்திய ஊதியம் வீகிதம் + தர ஊதியம்
		ரூ.	ரூ.
1.	பட்டதாரி ஆசிரியர்	9300-34800 + 4400	9300-34800 + 4600
2.	முதகலை பட்டதாரி ஆசிரியர்	9300-34800 + 4600	9300-34800 + 4800
3.	தொடக்கப்பள்ளி தலைமையாசிரியர்	9300-34800 + 4300	9300-34800 + 4500
4.	நடுநிலைப்பள்ளி தலைமையாசிரியர்	9300-34800 + 4500	9300-34800 + 4700
5.	மேல் நடுநிலைப்பள்ளி தலைமையாசிரியர் / மாவட்ட கல்வி அலுவலர்கள்	15600-39100 + 5400	15600-39100 + 5700

6. மேற்கூறிய ஊதிய திருத்தங்கள் 01.01.2006 முதல் கருத்தியலாகவும் பணப்பயன் 01.01.2011 முதல் பெறும் வகையிலும் தனி ஊதியம் 01.01.2011 முதல் பெறும் வகையிலும் நடைமுறைப் படுத்தப்படும்.”

2.3. However, the benefit of revised pay was not extended to the post of Senior Lecturer though it is on par/equivalent to that of Higher Secondary School Headmaster / District Educational Officer in terms G.O.Ms.No.122.

2.4. On 03.06.2011, the petitioner's scale of pay was fixed under the Selection Grade scale of pay in the post of Senior Lecturer, taking



W.P. No.24935 of 2015

into account his 10 years service in the Selection Grade of lower post in terms of G.O.Ms.No.210 dated 11.03.1987, while also granting annual increment. It was submitted by the learned counsel for the petitioner that in the said communication dated 03.06.2011, it was erroneously stated as Special Grade service instead of Selection Grade service.

2.5. In the meanwhile, the Government of Tamil Nadu issued G.O.Ms.No.263 dated 22.07.2013 whereby the Senior Lecturers were given an increase in scale of pay on par with the High Secondary School Master / District Educational Officer and the ordinary grade scale of pay of the Senior Lecturer was increased to Rs.15600-39100+5700 for which the corresponding Selection Grade scale of pay was Rs.15600-39100+6600 as per the Government letter dated 08.11.2010. However, the monetary benefit in terms of the above Government order was extended only with effect from 01.04.2013 and not from 01.01.2011 as in the case of the Higher Secondary School Headmaster.

2.6. In view of G.O.Ms.No.263, the Principal of the Institute has revised the scale of pay and ordered for recovery of payments drawn by the petitioner during 01.01.2011 and 31.03.2014.



W.P. No.24935 of 2015

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2.7. The petitioner along with 12 others filed a writ petition in W.P.No.5407 of 2014 challenging G.O.Ms.No.263 insofar as it gives monetary benefit only from 01.04.2013. This Court was pleased to hold that the impugned order does not supply any reason not to extend the benefit of enhanced revised pay to Senior Lecturer as in the case of Higher Secondary School Headmaster/District Educational Officer, which, as stated supra, is treated on par with Senior Lecturer. The relevant portion of the said order in W.P.No.5407 of 2014 is extracted hereunder:

“4. After hearing the learned counsel for the parties and perusing the materials placed on record, it is not in dispute that the petitioners were drawing same scale of pay in the pre-revised scale of pay as mentioned above and hence the petitioners are automatically entitled for the revised scales of pay pursuant to G.O.Ms.No.23, Finance (Pay Cell) Department, dated 12.01.2011. It may be true that the posts held by the petitioners were not specifically mentioned in the said G.O.Ms.No.23. Nevertheless, in G.O.Ms.No.122, School Education Department, dated 06.08.2002, the Government has clearly quoted the posts and this has continuously being implemented and the posts of Senior Lecturers/Lecturers were treated on par with that of the posts of Headmasters of Higher Secondary Schools/ P.G. Assistants respectively. Therefore, for no fault committed by the petitioners, the posts held by them were left out from being



specifically mentioned in G.O.Ms.23 dated 12.01.2011. That by itself will not be a ground to deny the monetary benefit to the petitioners with effect from 01.01.2011 as extended to the incumbents holding the posts with identical scale of pay. That apart, the impugned order dated 22.07.2013, does not assign any reason as to why the monetary benefits are restricted and it was given only from 01.04.2013. This is also one more reason to hold that the Government Order dated 22.07.2013 to that extent is unsustainable. In fact, the Principal of the Petitioners Institution initially rightly understood the scope of G.O.Ms.No.23 and extended the monetary benefits. In the light of the above conclusion arrived at by this Court, there is absolutely no justification for any recovery.”

2.8. The Principal of the Institute issued an order of refixation and recovery vide order dated 11.05.2015, by stating that the petitioner was granted special grade scale of pay in the Lecturer post only on 05.12.2005 and it was only 3 years, 5 months and 11 days since the petitioner was promoted as Senior Lecturer thus the petitioner cannot be granted selection grade in the Senior Lecturer post and ordered for recovery of payments from 01.07.2009 to 30.04.2015 by reducing the petitioner's pay from Rs.33610/- to Rs.32630/- as on 01.07.2009. The said order is issued on the basis of the order of the Director of State Council for Teacher Education, Research & Training dated 11.08.2014.



W.P. No.24935 of 2015

3. It is against those orders, the present writ petition has been filed primarily on the following premise, viz.,

(a) That the same is contrary to the decision of this Court in W.P.No.5407 of 2014 dated 16.04.2015,

(b) It is contrary to the plain language of G.O.Ms.No.23 dated 12.01.2011,

(c) It would produce the anomalous consequence of promotion resulting in reduction of pay,

(d) It is contrary to G.O.Ms.No.210 dated 11.03.1987, which provides that services in the Selection Grade of the lower post may be counted for the Selection Grade in the promotion post provided that the Selection Grade in the lower post is identified to the ordinary grade of the higher post.

4. To the contrary, Mr.M.Rajendran, learned Additional Government Pleader for the respondents would contend by placing reliance on the counter wherein, it is set out as under:

“11) It is submitted that the petitioner was awarded Selection Grade in view of the service rendered from 05.12.1985 to 05.12.1995, after the completion of 10 years of service as Selection Grade Lecturer and he was granted Special Grade. Accordingly, his service rendered after 05.12.2005 is to be



calculated and taken into consideration only after completion of 10 years in the cadre of Lecturer (Special Grade) and Senior Lecturer. The petitioner was promoted as Senior Lecturer on 16.05.2009. The petitioner was awarded Special Grade in the cadre of Lecturer after completion of 20 years on 05.12.2005. But the petitioner was awarded Selection Grade in the promotion post of Senior Lecturer from 16.05.2009 within a period of 3 years 5 months and 11 days i.e., 05.12.2006 from 16.05.2009. Hence, within a period of 23 years 5 months and 11 days, a Seletion Grade and Special Grade in the lower Post (i.e., Lecturer) and Selection Grade in the Higher Post (i.e., Senior Lecturer), provided after the completion of 30 years of service in the post of Lecturer and Senior Lecturer, the petitioner is eligible for Selection Grade in the post of Senior Lecturer. The petitioner was not eligible for Selection Grade in the promotional posts of Senior Lecturer on 16.05.2009. Hence, the Selection Grade awarded to the petitioner from 01.07.2009 was cancelled vide ATM. 000381/A2/2014 dated 11.08.2014 and ordered to recovered the excess amount paid to the petitioner. ”

5. Having considered the submissions made on both sides, this Court is of the view that the impugned order is liable to be set aside for the following reasons:

(a) It was already found by this Court in W.P.No.5407 of 2014 dated 16.04.2015 that the petitioner would be entitled to the benefit of the pay of Higher Secondary School Headmaster with effect from



W.P. No.24935 of 2015

01.01.2011, however, the respondent has revised the scale of pay in view of G.O.Ms.No.263 and ordered recovery of payment which was drawn by the petitioner from 01.01.2011 to 31.03.2013.

(b) If the impugned orders were to be sustained and the petitioner was only granted ordinary grade scale of pay from 01.01.2011 despite the promotion from the post of Lecturer to Senior Lecturer, it would result in reduction in the scale of pay on promotion inasmuch as the petitioner while serving as Lecturer was paid Special Grade scale of pay, which was higher than the ordinary grade of pay of Senior Lecturer. It may be relevant to refer to the following Table, showing the different scale of pay paid to Lecturer and Senior Lecturer.

Pay Scale of P.G.Assistant / Lecturer:

<i>Ordinary Grade from 01.06.1998</i>	<i>Selection Grade</i>	<i>Special Grade</i>	<i>Ordinary Grade from 01.01.1996</i>	<i>Selection Grade</i>	<i>Special Grade</i>
1820-3200	2200-4000	2500-4200	6500-10500	8000-13500	9100-14050

Pay of Senior Lecturer / Higher Secondary School Headmaster / District Educational Officer:

<i>Ordinary Grade from 01.06.1998</i>	<i>Selection Grade</i>	<i>Special Grade</i>	<i>Ordinary Grade from 01.01.1996</i>	<i>Selection Grade</i>	<i>Special Grade</i>
2200-4000	2500-4200	3000-4500	8000-13500	9100-14050	10000-15200



W.P. No.24935 of 2015

5.1. From a perusal of the above table, it would be clear that the Special Grade scale of pay of the Lecturer which the petitioner was paid prior to his promotion as Senior Lecturer is higher than the Ordinary Grade Scale of Pay and on par with the Selection Grade scale of pay of Senior Lecturer. Thus, if the petitioner was paid ordinary scale of pay in the promoted post of Senior Lecturer, it would result in an anomalous situation whereby promotion would result in reduction in the Scale of Pay. This would frustrate the very object of promotion if we bear in mind that promotion are meant to be an advancement also in pay apart from rank, if not both. It is trite law that promotion would normally mean advancement or preferment in honour, dignity, rank or grade. Promotion has been held to include advancement in both pay as well as post.¹

(c) In any view, the impugned orders appear to be contrary to G.O.Ms.No.210 dated 11.03.1987 which provides that services in the Selection Grade of the lower post may be counted for the Selection Grade in the promotion post provided that the Selection Grade in the lower post is identified to the ordinary grade of the higher post. The relevant portion of G.O.Ms.No.210 is extracted hereunder:

¹ (i) State of Rajasthan Vs. Fateh Chand Soni, (1996) 1 SCC 562
(ii) Union of India Vs. S.S.Ranade, (1995) 4 SCC 462
(iii) BSNL Vs. R.Santhakumari Velusamy, (2011) 9 SCC 510



W.P. No.24935 of 2015

“Services in the Selection Grade of the lower post may also be counted for the Selection Grade in the promoted post provided that the Selection Grade scale of the lower post is identified to the ordinary grade of the higher post and that this concession may be allowed only at the first, promotion level. This will mainly result in some pensionery benefits to these categories.”

5.2. Applying the above G.O.Ms.No.210, it appears that since the selection Grade of the lower post viz., Lecturer is on par with that of ordinary grade of Senior Lecturer i.e., higher post, the Selection Grade of the lower post ought to have been counted for the Selection Grade in the promotion post. The petitioner would thus to be entitled to the Selection Grade scale of pay of the promoted post of Senior Lecturer.

6. In view of the above, the impugned order, insofar as it re-fixes the salary of the petitioner to the ordinary scale of pay of Senior Lecturer, is set aside and the petitioner is held to be entitled during the period 01.01.2011 to 31.03.2014 to the selection grade of pay in the post of Senior Lecturer. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.



W.P. No.24935 of 2015

25.07.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To

- 1.The Principal Secretary,
School Education Department,
Fort St. George, Chennai 9.
- 2.The Director,
State Council of Education Research and Training,
College Road, Chennai 6.
- 3.The Principal,
District Institute of Education and Training,
Perundurai,
Erode District.

MOHAMMED SHAFFIQ, J.

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WEB COPY



W.P. No.24935 of 2015

W.P. No.24935 of 2015 and
M.P.Nos.1 and 2 of 2015

25.07.2024