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W.P.No.1207 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 1207 of 2018

K.Elangovan

... Petitioner

Vs.

1.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.

2.The Headmaster,
Government Higher Secondary School,
Thevur-611 109
Nagapattinam District.

... 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 proceedings issued by the first respondent in Na.Ka.No.456/Aa2/2015 dated 18.08.2017 and to quash the same and consequently direct the respondents to grant revision of scale of pay to the petitioner in the post of selection grade Secondary Grade Teacher with consequential revision of scale of pay and payment of arrears of salary alongwith interest as per G.O.Ms.No.62, Finance(CMPC) Department dated 09.03.2015.

For Petitioner : Mr.G.Murugan for Mr.G.Shankaran
For Respondents : Ms.P.Rajarajeswari, GA

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of

Certiorarified Mandamus, to call for the records relating to the impugned

<https://www.mhc.tn.gov.in/judis>



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proceedings issued by the first respondent in Na.Ka.No.456/Aa2/2015 dated 18.08.2017 and to quash the same and consequently direct the respondents to grant revision of scale of pay to the petitioner in the post of selection grade Secondary Grade Teacher with consequential revision of scale of pay and payment of arrears of salary along with interest as per G.O.Ms.No.62, Finance (CMPC) Department dated 09.03.2015.

2. The case of the petitioner is that he was initially appointed as Secondary Grade Teacher on 09.02.1981 in Elementary Education and granted with selection Grade on 21.02.1991 and Special Grade on 21.02.2001 and promoted as B.T.Assistant on 21.06.2002 and further promoted as P.G.Assistant on 01.07.2014 and retired from service on 31.05.2016.

3. According to the petitioner, the Government issued G.O.Ms.No.304, Finance (Pay Commissioner) Department dated 28.03.1990 re-introducing Selection Grade and Special Grade by restricting the same to the level of 1st level and 2nd level of promotional posts. As per the Government Order, the services rendered on identical scale of pay as well as the higher scale of pay in the lower post can be taken into account to award Selection Grade and Special Grade in the promotional posts. Consequently, the Government issued G.O.Ms.No.216, Finance Department dated 22.03.1993 to protect certain special categories in the matter of awarding Selection



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Grade/Special Grade scale of pay like Office Assistants, in all departments and Secondary Grade Teachers in School Education Department. Subsequently, the Government issued G.O.Ms.No.62, Finance Department, dated 9.3.2015 with an amendment to para 3(ii) of G.O.Ms.No.216, dated 22.03.1993 and para 7(2) of G.O.Ms.No.62, dated 09.03.2015 directs that the benefit of Selection Grade and Special Grade shall be made applicable only to the cases of Secondary Grade Teachers and other employees, who were awarded Selection Grade/Special Grade between 01.06.1988 and 31.12.1995. Therefore, the benefit of counting period of services rendered prior to 01.06.1988 granted for the teachers and the employees awarded Selection Grade and Special Grade between 01.06.1988 and 31.12.1995.

4. According to the petitioner, he reached the Selection Grade as on 21.02.1991 and hence, he is entitled for grant of fixation of pay in Selection Grade in the scale of pay of Rs.1640-2900 as per G.O.Ms.No.62, dated 09.03.2015. Accordingly, the petitioner made a representation seeking the benefits of fixation of Selection Grade scale of pay as per G.O.Ms.No.62, dated 09.03.2015. However, as the said representation was not considered, he was constrained to move a writ petition in W.P.No.14171 of 2017, wherein, this Court, while disposing of the same, vide order dated 07/06.2017, directed the respondents to consider the representation of the petitioner. Pursuant to the said orders, the 1st respondent passed impugned order dated 18.08.2017, rejecting the claim of the petitioner by referring to G.O.Ms.No.96,



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Finance (Pay Commission) Department dated 17.03.2016 on the premise that the Secondary Grade Teachers in Higher Secondary Schools classified under the Tamil Nadu Educational Subordinate Services shall not have right for promotion as Primary School Headmaster in Primary/Middle School classified under the Tamil Nadu Elementary Education Service.

5.Challenging the impugned order dated 18.08.2017 passed by the 1st respondent, the petitioner has constrained to file the present Writ Petition.

6.The learned counsel appearing for the petitioner would submit that the impugned order dated 18.08.2017 passed by the 1st respondent is ex-facie illegal, arbitrary and contrary to the orders passed by the Full Bench of this Court in Rev.Appl.No.227 of 2015 dated 09.12.2016, wherein, the Full Bench having elaborately discussed with the issue and passed orders for implementation of G.O.Ms.No.216, dated 22.03.1993 even in respect of Secondary Grade Teachers of Higher Secondary Schools by making it clear that they are entitled for revision of pension based on the revised scale of pay in terms of G.O.Ms.No.216, dated 22.03.1993 payable on and from 01.03.2017.

7.A counter affidavit has been filed on behalf of the 1st respondent, wherein, it is stated that the claim of the petitioner was examined in terms of G.O.(Ms)No.62,



Finance Department, dated 9.3.2015. It is submitted that as already stated above, by the above Government order, the restriction proviso in para 4 of G.O.Ms.No.304, Finance(PC) Department, dated 28.3.1990 was relaxed. In fact, the pay of the petitioner was already fixed in the Selection Grade in Secondary Grade post as on 21.2.1991, the date on which he moved to Selection Grade in the post of Secondary Grade at the first instance, in the appropriate time scale of pay as communicated in Annexure I. of G.O.Ms.No.304, Finance Department, dated 28.3.1990 without any restriction as follows:-

Ordinary Grade	Selection Grade(Sec. Grade)	Special Grade
Secondary Grade		1640-60-2600-75-2900
1200-30-1560-40-2020	1400-40-1600-50-2300	
	50-2600	

Hence, the petitioner is not entitled for any more higher scale of pay beyond the upper time scale fixed in respect of Selection Grade in Secondary Grade in the above Government order.

8.It is further stated that in as much as the pay of the petitioner was already fixed in the time scale of pay of 1400-40-1600-50-2300-50-2600 applicable to the post of Primary School Head Master as on 21.2.1991 even though the petitioner was holding the post of Selection Grade in Secondary Grade Teacher as on 21.2.1991 (lower post), there is no violation of the orders of the Full Bench of this Court in Rev.Appln No.227 of 2015 in W.A.No.352 of 2014 etc., batch dated 09.12.2016 as alleged by the petitioner.



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9. It is stated also that the Government have issued orders in G.O.Ms.No.62, Finance Department dated 09.03.2015 relaxing the restrictions in proviso in para-4 of G.O.Ms.No.304, Finance Department dated 28.3.1990. As per the entries in the Service Register of the petitioner at page No.29 (vol.3), the pay of the petitioner was fixed as on 21.2.1991 in the time scale of pay of 1400-40-1600-50-2300-50-2600 which is applicable to the post of Primary School Headmaster, even though the petitioner was holding the post of Selection Grade in Secondary Grade as on 21.2.1991. As there was no restriction imposed in the fixation of the pay of the petitioner, there is no question of revision of pay with reference to G.O.62, Finance Department, dated 9.3.2015.

10.Regarding the averments in ground 'c and 'd' of the affidavit of the petitioner, it is submitted that this Court observed in W.P.Nos.12092, 12126 of 2014 Dated 18.1.2018 as follows:

"13. There cannot be any two selection grade or two special grade in the same post. It is clarified that there can be one selection grade and one special grade in the same post and there cannot be any recounting of the services rendered in the same post for the second time for the purpose of granting selection grade or special grade in the higher post. Thus, it is for the respondents to make a reassessment in respect of such grant of selection grade and



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special grade to the teachers in respect of the cadre in which they have worked".

In as much as the petitioner has availed the benefit of Selection Grade and special Grade in the post of Secondary Grade Teacher counting the period of service from the date of initial appointment, there is no question of recounting the same period once again for the purpose of granting Selection Grade or special Grade in the higher post. It is further submitted that the petitioner has never worked as Primary School Head Master and the question of fixation of pay in the time scale of pay of Primary School Head Master does not arise. It is further submitted that the pay of the petitioner has already been fixed in the Selection Grade Scale of pay as per GO.Ms.N0.304, Finance Department, dated 28.3.1990. Hence, the petitioner is not entitled for any more revision of time scale of pay.

11.With these averments, the 1st respondent sought for dismissal of the Writ Petition.

12.The learned counsel for the petitioner submits that the issue involved in this Writ Petition is already settled as per the orders of the Full Bench of this Court in Rev.Appln No.227 of 2015 dated 09.12.2016, wherein, it is directed to implement G.O.Ms.No.216, dated 22.03.1993 for the period between 01.06.1988 to 31.12.1995 and from 01.03.2007 onwards in respect of Secondary Grade Teachers of High/ Higher Secondary Schools on par with the pay scale of Primary School Headmasters.

He further submits that the order of Full Bench in Review Application came to be



passed only after referring to G.O.Ms.62, Finance Department dated 09.03.2015 and G.O.Ms.96 dated 17.03.2016. As the order impugned in this Writ Petition passed by the first respondent is in contradiction to the said orders, it is liable to be set aside and sought to allow the Writ Petition.

13. On the other hand, learned Government Advocate appearing for the respondents would submit that the Full Bench of this Court while disposing of Rev.Appln No.227 of 2015 in W.A.No.352 of 2014 etc., batch, vide judgment dated 09.12.2016, has made clear that the benefits as directed in the Government Order shall be extended to the parties, who are before this Court alone and no fresh Writ Petition would be entertained on or after 09.12.2016. She further contends that in pursuance of the orders passed in Writ Appeal dated 09.12.2016, the State Government issued G.O.Ms.No.90, School Education Department dated 09.05.2018, implementing the directions of this Court and as the petitioner was not the party in the said batch of Writ Petitions, he is not entitled for the relief sought in this Writ Petition.

14. In the reply arguments, learned counsel for the petitioner contends that a Division Bench of this Court by its judgment dated 23.09.2019 in W.A.No.3290 of 2019, in an identical matter has set aside the order of the learned Single Judge passed



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in the Writ Petition and allowed the Writ Appeal, directing to pay the amount to the appellant therein within a period of two weeks.

15.This Court is unable to accept the contention of the learned Government Advocate that the directions issued by the Full Bench of this Court by the judgment dated 09.12.2016 in Rev.Appln No.277 of 2015 in Writ Appeal no.352 of 2014 etc., batch, the benefits shall be extended to the parties before the Court alone and no fresh Writ Petitions would be entertained on or after 09.12.2016. In this context, it is very apt to refer the judgment of the Hon'ble Apex Court in ***State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others*** reported in 2015 (1) SCC 347, wherein, the Hon'ble Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. In the said judgment the Hon'ble Apex Court held that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India. The same proposition of law laid down by the Hon'ble Apex Court in the cases of ***Prem Chand Somchand Shah Vs. Union of India*** reported in (1991) 2 SCC 48, ***Govind Ram Purohit Vs. Jagjiwan Chandra*** reported in 1999 SCC (L&S) 788, State of ***Karnataka Vs. N.Parameshwarappa***



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reported in 2003(12) SCC 192 and also in *State of Uttar Pradesh Vs. Dayanand Chakrawarthy* reported in 2013(8) Scale 74: (2013) 7 SCC 595.

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16. This Court has gone through the order of the Full Bench of this Court in *Government of Tamilnadu Vs. G.Eswaran*, reported in 2017 (1) CWC 561 and we are of the view that basing on the facts of the case, insofar as the petitioner is concerned, he is the similarly placed person and he is entitled to the relief as sought for. The opinion of this Court is fortified by the decision of the Division Bench of this Court dated 23.09.2019 in W.A.No.3290 of 2019. The relevant paragraph in the said judgment is extracted herein under:

"12. In the light of the above discussion and decisions considered, appellant is entitled to the relief granted at Paragraph no.38 of the order of the Hon'ble Full Bench in *Government of Tamil Nadu Vs. G.Eswaran*, reported in 2017 (1) CWC 561 and the benefit of G.O.Ms.No.90, School Education 3(1) Department, dated 09.05.2018. Such fixation as ordered by the Hon'ble Full Bench, shall be done in the instant case also, and amount due and payable to the appellant, be sanctioned within two weeks from the date of receipt of a copy of this order."

17. For the afore said reasons, this Writ Petition is allowed with the following directions:



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(i) The order impugned in this Writ Petition vide proceedings dated 18.08.2017 in Na.Ka.No.456/Aa2/2015 issued by the first respondent is hereby set aside.

(ii) The respondents are directed to revise the scale of pay of the petitioner in the post of selection grade and secondary grade teacher with consequential revision of scale of pay and pay arrears to the petitioner alongwith interest in terms of G.O.Ms.No.62, Finance(CMPC) Department dated 09.03.2015, within a period of eight (8) weeks from the date of receipt of a copy of this order.

No costs.

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Index :Yes/No

Neutral Citation :Yes/No

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BATTU DEVANAND, J.
dn

To

1.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.

2.The Headmaster,
Government Higher Secondary School,
Thevur-611 109
Nagapattinam District.

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