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W.P.No.29131 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.29131 of 2014

&

M.P.No.1 of 2014

V.Sampath

...Petitioner

Vs.

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

2.The Director of Elementary Education,
College Road, Chennai – 600 006.

3.The District Elementary Educational Officer,
Kancheepuram District,
Kancheepuram.

4.The Assistant Elementary Education Officer,
Kancheepuram Panchayat Union,
Kancheepuram District.

...Respondents



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Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent issued in Na.Ka.No.2200/C2/2010 dated 23.07.2010 and quash the same in so far as it denies arrears of pay and issue a consequential direction to the respondents to grant arrears of pay in respect of pay fixation done under the G.O.Ms.No.207 School Education (G2) Department dated 30.09.2008.

For Petitioner : Mr. R.Saseetharan

For Respondents : M/s. Rajarajeswari
Government Advocate.

ORDER

The petitioner has challenged the dismissal of his request for arrears of pay and for a consequential direction to the respondents to grant the arrears of pay in respect of pay fixation done in G.O.Ms.No.207, School Education (G2) Department dated 30.09.2008.



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2. It is the case of the petitioner that he was appointed as a Secondary Grade Teacher, Panchayat Union School, Menallur, Vempakkam Panchayat Union, Kancheepuram on 01.06.1974. Thereafter, he was upgraded to the post of Primary School Headmaster on 12.11.1999. On 27.06.2006, he was promoted as B.Ed. Middle School Headmaster.

3. Thereafter, on 09.11.2007 he was transferred as Assistant Elementary Educational Officer. The petitioner was superannuated on 31.08.2009. Meanwhile, on 26.06.1998, the Government had issued G.O.Ms.No.238 in and by which it was directed that BT Assistants in High Schools could count the selection Grade Secondary Grade Teachers service for fixation of pay in the post of BT Assistant in Selection Grade and Special Grade scale of pay. This was in tune with G.O.Ms.No.210 dated 13.03.1987.



4. The Government Order further stipulated that in the event the Selection Grade scale of pay be equal to the ordinary grade scale of pay applicable to the promoted post, the service rendered in the selection grade scale of pay of the lower post could be counted and thereafter pay can be fixed in the selection Grade scale of pay of the higher post.

5. The petitioner's grievance was that the post of BT assistant and primary school Headmaster carries same scale of pay and the benefit of G.O.Ms.No.238 dated 26.06.1998 had not been extended to primary school Headmaster working in the elementary section under the same department. This anomaly resulted in several representations being made and ultimately on 07.08.2000, the Government had issued G.O.Ms.No.212 extending the benefit of G.O.Ms.No.210 dated 13.03.1987 and G.O.Ms.No.238 dated 26.06.1988 to the primary School Headmasters in elementary schools. In the said Government Order, it was stated that this order would be subject to the result of Writ Petitions filed before this Court challenging G.O.Ms.No.300 dated 07.04.1994.



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6. In G.O.Ms.No.300, it was directed that the service in the post of primary school Headmaster alone should be taken in to account for fixing the selection grade and special grade pay as primary school Headmaster. This was contrary to the guidelines framed in G.O.No.1381 dated 05.10.1990, in which it is directed that the service as secondary grade teacher and primary school Headmaster should be taken together for the selection and special grade pay in respect of secondary grade teachers holding the position as primary school Headmaster as on 01.06.1988.

7. On 18.04.2001, this Court by orders in W.P.No.8896 of 1994 had remitted the matter back to the Government to re-consider the fixation of pay of primary school Headmaster. Pursuant to the above direction the Government of Tamil Nadu had issued G.O.Ms.No.185 dated 16.12.2002. Paragraph No.5 therein laid down the following 3 criteria for availing the benefit of this order:

(a) In respect of Primary School Headmaster holding



the post as on 01.06.1988, the service rendered in the same post prior to 01.06.1988 was to be taken for fixation of Selection Grade and Special Grade scale of pay in the post of primary school Headmaster.

(b)Primary School Headmaster who are promoted after 01.06.1988 the selection Grade and Special Grade scale of pay was to be granted as per G.O.Ms.No.212 dated 07.08.2000.

(c)As regards those primary School Headmaster were holding the position as primary School Headmaster as on 01.06.1988 and who were also granted selection grade and special grade of pay by G.O.Ms.No.1381 dated 05.10.1970 their pay should be fixed without any monetary loss as set out in the said Government Order.

8. This Government Order came to be challenged by primary School Headmaster holding the post as on 01.06.1988 on the grounds that they were denied the benefits conferred on them by G.O.No.1381



dated 05.10.1990. Once again during the pendency of this Writ Petition the Government had issued yet another Government Order in G.O.Ms.No.160 dated 23.08.2005 in and by which they had restored the benefits given in G.O.Ms.No.1381 by conferring the same on primary school Headmaster holding the said post on 01.06.1988. Ultimately, the Writ Petitions were dismissed as infructuous.

9. In the light of the above, the petitioner would submit that the Government had to apply the provisions of G.O.Ms.No.212 dated 07.08.2000 to those primary School Headmaster promoted after 01.06.1988 and thereafter fix their selection and special grade scale of pay as per clause 2 of para 5 of G.O.Ms.No.185 dated 16.12.2002 stated supra since G.O.Ms.No.185 had been issued in suppression of earlier orders. However, the District level officers continued to apply G.O.Ms.No.38 dated 05.03.2001 and refused to apply provisions of G.O.Ms.No.212.



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10. In the light of the above, the Tamil Nadu Aasiriyar Kootani (Tamil Nadu Teachers' Union) had filed W.P.No.8079 of 2016 before this Court and by order dated 28.04.2006 it was ordered that primary school Headmaster promoted after 01.06.1988 were entitled to have their pay fixed as per G.O.Ms.No.212 dated 07.08.2000 without reference to G.O.Ms.No.38 but in accordance with G.O.Ms.No.185 dated 16.12.2002 and G.O.Ms.No.160 dated 23.08.2005.

11. G.O.Ms.No.207 dated 30.09.2008 stipulated that the service rendered in interchangeable post of primary school Headmaster and secondary grade teacher till 31.05.1988 and the service rendered in selection grade secondary grade teacher or special grade which is equal to the ordinary scale of pay as that of primary school Headmaster can be taken together for calculating the scale of pay. The post of primary school Headmaster became a promotional post on 01.06.1988. Therefore, the service rendered in the same scale till 31.05.1988 and service rendered in selection grade and special grade of secondary grade teacher after 01.06.1988 can be taken together. In order words



the service rendered in the post of primary school Headmaster and secondary grade teacher has to be taken along with the service rendered in selection grade and special grade teacher.

12. The petitioner's case is that he had been promoted to the post of primary school Headmaster after 01.06.1988 in Kancheepuram Panchayat Union. The petitioner would submit that he is entitled to pay fixation under G.O.Ms.No.207 dated 30.09.2008. The petitioner would submit that he was only granted arrears of pension and not arrears of pay which is contrary to the provisions set out in G.O.Ms.No.207.

13. On 04.03.2010, the Director of Elementary Education had issued general instructions under G.O.No.207 that only arrears of pension can be paid and not the arrears of pay. The Director of Elementary Education by proceedings dated 23.07.2010 had issued general instructions as per the provisions of G.O.No.207 that only Headmasters who had retired from service on 01.06.1988 were entitled to take count their previous service for the award of selection grade and



special grade pay in the post of primary school Headmaster and Middle School Headmaster. The proceedings further states that the Headmaster would only entitled to arrears of pension and not pay.

14. It is this order that is the subject matter of challenge. According to the petitioner the provisions of G.O.No.207 makes it clear that they are entitled to both the pay fixation as well as arrears of pay. In W.P.No.20706 of 2010 and W.P.No.11739 of 2011, the Court had held that primary School Headmaster were entitled to arrears of pay also and in the light of the above they are entitled to arrears of pay and since representations were not yielded to the petitioner is constrained to approach this Court.

15. The 2nd respondent has filed a counter for himself and on behalf of the other respondents as well. It is not clear that if this counter has been filed for the instant writ petition or whether it is a counter filed for a review since in paragraph no.4 of the counter, the 2nd respondent has stated as follows:



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“Therefore, the said order has not become final and the review petitioners can re-agitate the matter before this Hon'ble High Court in the present Review Applications in the light of the decision rendered by the Hon'ble supreme Court of India reported in 1995 (Supp) 4 SCC P 706.”

16. Be that as it may, the respondents would submit that as per the provisions of G.O.No.1381, Education Department dated 15.10.1990 awarding selection grade and special grade to a primary school Headmaster who is holding the said post as on 01.06.1988 has to be arrived by counting the total service rendered by them in the post of secondary grade teacher and Headmaster of Primary School as on 01.06.1998 as this is in keeping with the 5th pay commission recommendation. They would further submit that W.P.No.8079 of 2006 was allowed with a direction to the department to implement G.O.Ms.No.207 by extending benefits to primary School Headmaster who have retired after 01.06.1998 and were also granted special grade by re-fixing notionally and no arrears to be paid.



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17. They would submit that similar batch of W.P.No.26997 to 27006 of 2009 had been dismissed on the ground of laches. Therefore, the present Writ Petition seeking benefit to the teachers covered by the Government Order which seeks to revive a cause of action after three decades cannot be countenanced and the Writ Petition has to be dismissed.

18. However, the Writ Appeals preferred by the Government against the order in W.P.No.26997 to 27006 of 2009 in W.A.No.815 of 2010 batch were allowed by holding that the Government ought to have issued orders confirming the benefits to similarly suited employees and not driving them to the Court particularly in the prime of their life. The Bench had taken note of the earlier Writ Petition which had culminated in the passing of G.O.Ms.No.210 and 234 dated 14.08.2000 and 10.09.2000 respectively.

19. Pursuant to the order passed by the Division Bench the



Government had issued G.O.Ms.No.216 dated 30.12.2011 directing the Director of Elementary Education to grant benefit of selection grade / special grade to primary school Headmaster by counting their service prior to 01.06.1988 and sanction pay fixation. The order of the Division Bench had been passed without affording an opportunity to the respondents to file their counter affidavit. Therefore, an error has occurred in the order as the factual position has not been rightly placed before the bench. Therefore, the respondents submit that the order would not have a bearing to the facts of the present case. They therefore sought to have the Writ Petition dismissed.

20. Arguments have been advanced by learned counsels on the either side.

21. The very same issue has been considered by the Division Bench of this Court reported in **2023 - 2 – Writ L.R. 217 – The Government of Tamil Nadu Vs. V.N.Kalisamy and others.** In the said Writ Petition the proceedings of the Director dated 23.07.2010 was the



subject matter of challenge, wherein the respective petitioners had sought direction from this Court to the respondent to extend the benefit as provided under G.O.Ms.No.207 to the petitioner which includes arrears of salary as well as pension. The bench had observed as follows:

“21. Therefore the issue has been settled and concluded where those teachers who were initially working as Secondary Grade Teachers and subsequently earned promotion as Primary School Headmaster after 01.06.1988 are entitled to get the benefit of Selection Grade and Special Grade and accordingly the pay has to be necessarily revised, therefore based on the revised pay what are all the arrears of pay shall be paid to them and correspondingly their pension also to be revised and after revision of pension, the arrears of pension also shall be paid to them and they are entitled to continuously receive the same till their lifetime.”



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22. Ultimately, the appeal filed by the state had been dismissed.

23. In the light of the above Judgement of the Division Bench where the facts are identical to the facts of the present case, the petitioner is also entitled to the same benefit. The learned Judges while allowing the Writ Appeals have also relied upon the earlier Judgement in W.P.No.20706 of 2010 batch against which no appeal had been filed by the department as a result of which the Judgement in W.P.No.20706 of 2010 had become final. Therefore the issue is no longer res integra and benefits as set out in G.O.Ms.No.207 has to necessarily be conferred on the petitioner. The Bench ultimately had granted the following reliefs:

“(ii) As a sequel, the respective retired Teachers who earned the promotion as Primary School Headmasters after 01.06.1988 are entitled to get the benefit of salary dues as well as pension dues by way of arrears and that shall be calculated and be paid to the respective retired Teachers/Primary School Headmasters



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by the appellant Department within a period of three months from the date of receipt of a copy of this judgment.”

24. In the light of the above, the Writ Petition is allowed and the respondents are directed to pay arrears of pay as per the pay fixation contemplated in G.O.Ms.No.207, School Education (G2) Department dated 30.09.2008. Consequently, the connected miscellaneous petition is closed. No costs.

24.07.2024

Index : Yes/No
Internet : Yes/No
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To

1.The Government of Tamil Nadu

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rep. by Secretary to the Government,
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