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W.P.No.19342 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2024

Coram:

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.19342 of 2018

S.B.Zakirunnisa

.. Petitioner

/versus/

1.The Government of Tamil Nadu rep.
by its Secretary to 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,
Erode, Erode District.

4.The Assistant Elementary Educational Officer,
Modakurichi Panchayat Union,
Modakurichi, Erode District.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India praying 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.



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For Petitioners :Mr.R.Saseetharan

For Respondents :Mr.L.S.M.Hasan Fizal
AGP

ORDER

In this writ petition, the issue involved is whether the petitioner is entitled to seek the relief of fixation of arrears of pay as well as arrears of pension under G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008.

2. The petitioner has filed this writ petition seeking the relief of quashing the proceedings of the respondents rejecting his claim for which he is entitled to seek the relief of fixation of arrears of pay as well as arrears of pension, as per G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008, with a direction to the respondents to confer the monetary benefits arising out of conferment of selection grade and special grade with them in the cadre of Headmaster of Elementary School and confer all consequential monetary benefits from the respective dates till the date of the petitioner's retirement.



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3. Learned counsel appearing for the petitioner would submit that the petitioner is entitled to get the relief of arrears of pay as well as arrears of pension after fixing the pay, as per G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008. He further contends that inspite of the said Government Order, wherein, it is made it clear that the petitioner is entitled to seek the relief of payment of arrears of pay as well as arrears of pension. The Director of Elementary Education has rejected the claim of the petitioner through the impugned orders stating that the petitioner is entitled to seek the relief of pension alone and not monetary benefits i.e., arrears of pay as per the G.O.Ms.No.207. It is contended by the learned counsel for the petitioner that the orders impugned in this writ petition is contrary to the benefits conferred to the petitioner under G.O.Ms.No.207, dated 30.09.2008 and sought to set aside the impugned orders.

4. Learned counsel would further submits that the issue raised in the writ petition is already decided by this Court on several occasions and a Division Bench also confirmed the orders passed by the learned Single Judge and placed reliance of the said orders.



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5. On the other hand, the learned Additional Government Pleader appearing for the respondents would contend that there is no infirmity or illegality in the impugned orders passed by the respondents. Learned Additional Government Pleader further submits that though this issue is dealt by learned Single Judges and Division Bench in several occasions, now, the respondents filed review petitions against the latest Division Bench order and it is pending for consideration before this Court.

6. This Court gave anxious consideration to the arguments advanced by the learned counsel appearing on either side and perused the entire materials available on record including the G.O.Ms.No.207, School Education (G2) Department, dated 30.09.2008. This Court also carefully perused the orders of this Court relied by the learned counsel for the petitioner which are placed before this Court.

7. While dealing with an identical issue in W.P.No.20706 of 2010 and batch, this Court by order dated 05.08.2011, held as extracted



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herein under: -

“6. In all these matters, the petitioners had served as Primary School Headmasters and retired from service. It is seen from the perusal of the G.O.Ms.No.207, School Education Department, dated 30.09.2008 that for the persons, who have been appointed as Primary School Headmasters after 01.06.1988, their pay scales have to be fixed pursuant to the fixation of pay in the selection and special grade. The said Headmasters are entitled to claim retiral monetary benefits and benefits of fixation of pay.

7. Therefore, this Court is of the considered view that the impugned orders of the Director of Elementary Education, Chennai, rejecting the claim of the petitioners that they are entitled only to receive the monetary benefits in respect of arrears of pension alone are unsustainable. Accordingly, the impugned orders are set aside. Consequently, the Director of Elementary Education, Chennai / the second respondent herein (first respondent in W.P.Nos.23639 to 23648 of 2010) is directed to consider the claim of the petitioners in the light of the G.O.Ms.No.207, School Education Department, dated 30.09.2008 as per para 7 and also in the light of the G.O.Ms.No.185, dated 16.12.2002, G.O.Ms.No.212 dated 07.08.2000 and G.O.Ms.No.238, dated 26.06.1998. It is made clear that the above said exercise shall be completed



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within a period of eight weeks from the date of receipt of a copy of this order.”

8. Following the said order, a learned Single Judge of this Court by order dated 23.09.2014 in W.P.No.24214 of 2014, while dealing with the similar matter, held as extracted herein under: -

“2. The learned counsel for the petitioners further submitted that in writ petition No.20706 of 2010 batch cases dated 5.8.2011, this Court considered this issue and set aside the proceedings in Na.Ka.No.2200/C2/2010 dated 23.07.2010 issued by the Director of Elementary Education, Chennai, to consider the claim of the petitioners in the light of G.O.Ms.No.207, School Education Department, dated 30.09.2008 as per para 7 and also in the light of G.O.Ms.No.185, dated 16.12.2002, G.O.Ms.No.212 dated 7.8.2000 and G.O.Ms.No.238, dated 26.06.1998. He therefore submitted that a similar order may be passed.

3. The learned Government Advocate also submitted that the case of the petitioners is covered by the judgment referred to by the learned counsel for the petitioner.

4. Considering the same, the Writ Petition is allowed and the proceedings of the second respondent in Na.Ka.No.2200/C2/2010 dated 23.07.2010 is set aside and



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the second respondent is directed to consider the claim of the petitioners in the light of G.O.Ms.No.207, School Education Department, dated 30.09.2008 as per para 7 and also in the light of G.O.Ms.No.185, dated 16.12.2002, G.O.Ms.No.212 dated 7.8.2000 and G.O.Ms.No.238, dated 26.06.1998. It is made clear that the above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. The connected Miscellaneous Petition is closed.”

9. In a case where an identical issue was raised in ***S.Chandrasekaran and others Vs. The Government of Tamil Nadu represented by Secretary to Government, School Education Department and others*** reported in ***2015 (5) Law Weekly 140***, at paragraph Nos.24, 62 & 65 held as extracted herein under: -

“24. Based on the order dated 28.04.2006 passed by this Court in W.P.No.8079 of 2006, the Government issued orders in G.O.Ms.No.207, School Education Department, dated 30.09.2008. As per G.O.Ms.No.207, the Government Order in G.O.Ms.No.185, School Education Department, dated 16.12.2002 and G.O.Ms.No.160, School Education Department, dated 23.08.2005 has to be followed for grant of selection grade and special grade to the post of Primary School Headmaster and pay has to be fixed accordingly



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and retirement benefits has to be granted to the Primary School Headmasters, who were promoted after 01.06.1988.

62. It is well settled in a catena of decisions that the State shall not discriminate its employees in granting monetary benefits, if they are similarly situated only on the ground that some did not come to the Court, as such discrimination amount to violation of Articles 14 and 16 of the Constitution.

65. For all the aforesaid reasons, the writ petition is allowed and the proceeding dated 23.07.2010 in Na.Ka.No.2200/C2/2010 of the second respondent is quashed and a direction is issued to the respondents to extend the benefit of counting the service of Secondary Grade Teacher for grant of Selection Grade and Special Grade in the post of Primary School Headmaster with monetary benefits to the persons who were promoted after 01.06.1988, if those teachers joined prior to 01.06.1988 without reference to the date of promotion as Primary School Headmaster and without driving them to this Court to obtain an order in their favour and also a direction is issued to the respondents to pay the monetary benefits, i.e., arrears of pay to the petitioners, pursuant to the grant of Special Grade in the post of Primary School Headmaster with effect from 01.07.1994, 14.01.1999 and 07.11.1992 by the fourth respondent in the proceeding dated 07.01.2012, 27.01.2012 and 10.02.2012 respectively, within a period of



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eight weeks from the date of receipt of a copy of this order.”

10. In a Writ Appeal filed by the State Government in W.A.No.2857 of 2019 and batch, a Division Bench of this Court by a common judgment dated 13.07.2023 confirmed the orders of the learned Single Judge by dismissing the writ appeal preferred by the State Government. The relevant paragraphs in the judgment of the Division Bench are extracted herein under: -

“18. As has been narrated herein above, the issue raised in this batch of cases is no more res integra. The benefits which are to be conferred for those who earned the promotion as Primary School Headmaster after the cut-off date i.e. 01.06.1988 also have been extended to them by virtue of G.O.Ms.No.207 and the import of G.O. has already been quoted herein above.

19. However, diagonally opposite to the said import of the G.O., an interpretative proceeding was issued by the Director of School Education Department dated 23.07.2010, when it was questioned, it was rightly held by this Court right from 2012 that, the said proceedings is not in consonance with the said G.O.(Ms).No.207, therefore those who were promoted as Primary School Headmasters



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after 01.06.1988 are entitled to get such benefit by virtue of G.O.(Ms).No.207 and such benefits seems to have been conferred to some of them.

20. Atleast against one judgment passed by the Writ Court when intra-Court appeal was preferred before this Court by the appellant Department that was dismissed, of course, on the default ground against which no steps have been taken and this factor has been recorded by the Co-ordinate Bench in the decision dated 05.07.2023 in W.A.No.37 of 2018.

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.”

11. In view of the facts and circumstances of the case and in the light of the orders passed by this Court in an identical matters, this Court



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is of the opinion that the petitioner is also entitled for the same relief granted by this Court in the above mentioned orders passed by this Court.

12. Accordingly, the Writ Petition is disposed of with the following directions: -

i) The order impugned in this writ petition is hereby set aside.

ii) The Director of Elementary Education, Government of Tamil Nadu, Chennai, is directed to consider the claim of the petitioner in the light of the G.O.Ms.No.207, School Education (G2) Department dated 30.09.2008.

iii) The respondents are directed to calculate the benefit of salary dues as well as pension dues by way of arrears for which the petitioner is entitled and pay the same to the petitioner within three months from the date of receipt of copy of this order.



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13. There shall be no order as to costs.

22.03.2024

Index:yes/no

Internet:yes/no

Speaking order/non speaking order

Neutral Citation:yes/no

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To:

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by its Secretary to 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,
Erode, Erode District.

4.The Assistant Elementary Educational Officer,
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BATTU DEVANAND,J.
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