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W.P.No.20112 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20112 of 2020

and

W.M.P.Nos.24815 and 24816 of 2020

P.Chinnaraj

... Petitioner

Vs.

1. The District Educational Officer,
Perur Office @Kuniyamuttur,
Coimbatore District.

2. The Block Development Officer,
Thondamuthur Block,
Coimbatore District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in O.Mu.No.9901/A-2/2019 dated 21.10.2019 and the consequential order of the 2nd respondent in A.T.Mu.No.1496/A2/2019 dated 04.11.2019 and quash the same and consequently direct the respondents herein to award selection grade pay in the cadre of B.T Assistant (Maths) w.e.f 02.06.2018 with all other attended benefits.



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For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The petitioner herein was initially appointed as a Secondary Grade Teacher on 06.08.1997 in Panchayat Union Primary School, Thammampathi, Anaimalai Block, Coimbatore District and thereafter he was promoted to the post of B.T Assistant (Maths) on 02.06.2008 and he has been continuing as such. Thereafter, the Government issued G.O (Ms) No.270, Finance (Pay Cell) Department dated 26.08.2010, directing for payment of special allowance of Rs.500/- per month to the Secondary Grade Teachers and other teaching posts in the grade of Secondary Grade Teachers and Head-Masters of High Schools. Accordingly, the scales of pay were revised. The said Governmental order is given notional effect from 01.01.2006 along with monetary benefits with effect from 01.08.2010. Thereafter, the Government issued yet another Government order in G.O (Ms) No.23, Finance (Pay Cell) Department dated 12.01.2011, enhancing the special allowance of Rs.500/- per month



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granted under G.O (Ms) No.270, Finance (Pay Cell) Department dated 26.08.2010 to Rs.750/- and accordingly ordered for revision of pay scales.

On coming to know about the said Government Orders, the petitioner made a claim for award of Special Allowance, as granted under the said Government Orders and accordingly, the pay of the petitioner was revised through proceedings bearing **நா.கா.எண்.1034/அ1/2015** dated 16.11.2015. Thereafter, when the petitioner made a claim for award of Selection Grade on completion of 10 years of service in the post of B.T Assistant (Maths), the respondents on verification of the pay of the petitioner, realised that the petitioner who was promoted to the post of B.T. Assistant as early as on 02.06.2008 is not entitled for the benefit of the above referred two Government Orders and accordingly, required the petitioner to pay back the amounts that were paid in terms of the above referred Government Orders by issuing proceedings bearing **நா.கா.எண்.9901/அ2/2019** dated 21.10.2019 and returned the proposal submitted for sanction of Selection Grade by an endorsement dated 04.11.2019. It is aggrieved by the said proceedings, the petitioner approached this Court by filing the present Writ Petition.



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2. It is the case of the respondents that the petitioner ceased to be a Secondary Grade Assistant as on the date of issuance of the above referred two Government Orders dated 26.08.2010 and 12.01.2011 and therefore, he is not entitled for the allowance that was awarded under the said Government Orders. The issue as to whether the Secondary Grade Teachers, who are working as on 01.01.2006 and ceased to be a Secondary Grade Teacher due to their promotion to the higher posts by the date of issuance of the above referred two Government Orders are entitled for extending the benefit granted under the above two Government Orders has come for consideration before the learned Division Bench of this Court in Review Application (MD) Nos.89 and 117 of 2021 and the learned learned Division Bench of this Court by an order dated 04.02.2022 declared that the persons who ceased to be Secondary Grade Teachers as on the date of issuance of the above two referred Government Orders are not entitled for the said benefits.

3. In the light of the decision of the learned Division Bench of this



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Court, the petitioner who was initially appointed as a Secondary Grade Teacher and was promoted to the post of B.T Assistant on 02.06.2008 cannot be said to be entitled for award of allowance in terms of the above referred two Government Orders.

4. As the petitioner is making a claim for award of Selection Grade in the promotional post of B.T Assistant on completion of ten years of service, the pay of the petitioner is to be fixed by duly rectifying the mistakes, if any in fixation of the pay and award of any allowance to the petitioner. It is only on noticing the said mistake in awarding the allowance of Rs.750/- and revising the pay of the petitioner in terms of the benefits under the above referred Government Orders, the respondents have required the petitioner to pay back the amounts that were paid to the petitioner for which the petitioner is otherwise not entitled to in order to consider the case of the petitioner for award of Selection Grade in the post of B.T Assistant (Maths).

5. The learned counsel for the petitioner though has not disputed about the law laid down by a learned Division Bench of this Court and



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declaring that the Secondary Grade Teachers, who are promoted to the higher posts prior to issuance of the Government Orders are not entitled for the benefit of the above two Government Orders, seriously contested that the action of the respondents in requiring the petitioner to pay the amounts that were paid due to grant of allowance in terms of the Government Orders on various grounds including by placing reliance on a decision of the Hon'ble Apex Court in the case of “*State of Punjab and others -vs- Rafiq Masih (White Washer)*” reported in (2015) 4 SCC 334.

6. This Court has carefully considered the submissions made by learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents.

7. The entitlement of the Secondary Grade Teachers, who were promoted to the higher posts prior to issuance of the above referred two Government Orders for award of special allowance provided under the said Government Orders is now decided by a learned Division Bench of this Court, which is binding on this Court. Once it is concluded that the Secondary Grade Teachers like the petitioner, who were promoted to the



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post of B.T Assistant or other posts prior to issuance of the above referred Government Orders are held to be not entitled for such benefit. The only consequence is to re-fix the pay of the petitioner and also to recover the amounts that were paid for which the petitioner is otherwise not entitled, as what is now proposed by the respondents by passing the impugned order dated 21.10.2019.

8. Though learned counsel for the petitioner strenuously contended that the respondents have not put the petitioner on notice before issuing the impugned order requiring the petitioner to pay the said payments that were made pursuant to extending the benefit under the above two Government Orders, this Court is unable to accept the said contention for the simple reason that the law in this regard is well settled and there is no dispute on the factual aspects and therefore, no useful purpose would be served if any opportunity is given to the petitioner on this aspect.

9. As already noted above, the impugned order dated 21.10.2019 came to be issued when the petitioner made a claim for award of Selection Grade and the claim of the petitioner for awarding Selection Grade is kept



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pending since the year 2019 for want of proper fixation of pay and recovery of amounts that were paid to the petitioner in excess of his entitlement.

10. In the light of the above said fact situation, this Court does not deem it necessary to remand the matter back to the respondents for putting the petitioner on notice before re-fixing the pay and ordering for recovery of excess amounts that were paid to the petitioner. Instead this Court is of the considered view that it would be in the best interest of the petitioner to permit the respondents to withdraw the benefit of special allowance awarded in favour of the petitioner through proceedings bearing நா.கா.எண்.1034/அ1/2015 dated 16.11.2015 and thereafter proceed to consider the claim of the petitioner for award of Selection Grade in the cadre of B.T. Assistant on completion of ten years and award the same as expeditiously as possible at any rate within a period of six weeks from the date of re-fixation of the pay of the petitioner and to take steps for recovery of the excess amounts paid to the petitioner, either from the amounts payable to the petitioner towards arrears on award of selection



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grade in the post of B.T.Assistant or otherwise.

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11. Accordingly, the Writ Petition is disposed of. No costs.

Connected Miscellaneous Petitions, if any shall stand closed.

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skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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