IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.09.2024**

CORAM:
THE HONOURABLE MRS.**JUSTICE N.MALA**

**W.P.No.7418 of 2017**
**and WMP.No.8073 of 2017**

R.C.Ramachandran ... Petitioner

vs.

1.The Director of School Education,
Chennai – 600 008.

2.The Chief Educational Officer,
Salem, Salem District.

3.The Principal Accountant General,
(Accounts & Entitlements),
No.361, Anna Salai,
Teynampet,
Chennai – 600 018.

4.The Deputy Accountant General,
Office of the Accountant General,
(Accounts & Entitlements),
Teynampet,
Chennai – 600 018. ... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records which culminated in issuing the order in Lr.No.AG (A&E)/Legal Cell/WP 34338/2015/1925/109060 dated 10.02.2017 on the file of the third respondent, quash the same and consequently direct the third respondent to revise the pension of the petitioner based on the order issued by the second respondent in his proceedings Mu.Mu.No.6031/A1/2015 dated 17.07.2015 and confer all the consequential monetary benefits.

For Petitioner : Mr.P.Ganesan

For R1 and R2 : Mr.S.Prabhakaran
Government Advocate

For R3 and R4 : Mrs.Hema Muralikrishnan

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**ORDER**

This Writ Petition is filed to call for the entire records which culminated in issuing the order in Lr.No.AG (A&E)/Legal Cell/WP 34338/2015/1925/109060 dated 10.02.2017 on the file of the third respondent, quash the same and consequently direct the third respondent to revise the pension of the petitioner based on the order issued by the second respondent in his proceedings Mu.Mu.No.6031/A1/2015 dated 17.07.2015 and confer all the consequential monetary benefits.

2.The petitioner was appointed as P.G. Assistant on 25.09.1980 and thereafter promoted as Head Master of Higher Secondary School on 20.01.2005. The petitioner superannuated on 31.07.2013. The petitioner's pay was periodically revised based on the Pay Commission recommendations. The VI Pay Commission recommendations were accepted by the Government and orders were issued in G.O.Ms.No.234, Finance Department dated 01.06.2009 with effect from 01.01.2006. The Government in exercise of its powers under Article 309 of the Constitution of India framed the new Rules called as Tamil Nadu Revised Scale of Pay Rules, 2009. The petitioner states that certain difficulties arose for persons whose increment was due on 01.01.2006 and so options were called for on the fixation of pay. As the petitioner's increment was due on 01.01.2006 he opted for fixing his pay under the Revised Scale of pay Rules 2009 and thereafter sanction annual increment. The petitioner's option was accepted by the respondents 1 and 2 and his pay was fixed as per the Tamil Nadu Revised Scale of Pay Rules, 2009. According to the petitioner, as per the Tamil Nadu Revised Scale of Pay Rules which came into effect from 01.01.2006, the personal pay of Rs.600/- was dispensed. But the personal pay was directed to be added in the basic pay and thereafter revised scale was to be fixed. As the respondents did not fix the petitioner's pay as per the Rules, the petitioner gave a representation to include the personal pay of Rs.600/- in the basic pay in the pre-revised scale of pay and revise the pay correspondingly. The second respondent did not consider the petitioner's representation and fixed 1.86 multiplier factor in the basic pay separately and personal pay separately and fixed the scale of pay and the first respondent thereafter fixed the scale of pay of the petitioner. The second respondent fixed the basic pay at Rs.28,770/- with effect from 01.01.2006 and at Rs.41,870/- with effect from 01.01.2013 in and by way of proceedings dated Nil.01.2015. The petitioner preferred an appeal before the first respondent and the first respondent forwarded the same to the second respondent recommending for fixation by adding the personal pay of Rs.600/- in the Basic pay and thereafter revise the pay scale w.e.f. 01.01.2006. Accordingly the second respondent revised the scale of pay by his proceedings dated 17.07.2015 by including the personal pay of Rs.600/- in the basic pay and fixed the petitioner's pay in the pay band of Rs.15600-39100 with Grade pay of Rs.5700/- at Rs.29880/- as on 01.01.2006 and Rs.42620/- as on 01.01.2013. After the fixation, the proposal was sent to the third respondent and the third respondent rejected the proposal by a communication dated 21.09.2015, on the ground that the personal pay of Rs.600 could not be included in the basic pay and it had to be included only after fixation of pay. The petitioner challenged the said communication dated 21.09.2015 in W.P.No.34338 of 2015. Interim stay was granted on 28.10.2015 in M.P.No.1 of 2015 in W.P.No.34338 of 2015 and the third respondent passed an order dated 02.02.2016, re-fixing the pensionary benefits. As the third respondent restored the pensionary benefits which was hitherto rejected, the petitioner withdrew the writ petition in W.P.No.34338 of 2015 on 25.02.2016. After the withdrawal of the writ petition, the third respondent once again passed the impugned order dated 10.02.2017 stating that the pensionary benefits were refixed in the order dated 02.02.2016 only in obedience to the interim order granted by this Court on 28.10.2015 and as the writ petition was withdrawn, the pensionary benefits of the petitioner were to be refixed. Challenging the said order the petitioner has filed the above writ petition. The contention of the petitioner is that the personal pay sanctioned in the pre-revised scale, as per the reference letter dated 21.06.2016 of the office of the Accountant General, Tamil Nadu, should be treated as pay while, fixing the pay in the revised scale of pay.

3.The respondent filed a counter stating that the petitioner was promoted on 21.01.2005 as Higher Secondary School Headmaster and he opted for his pay fixation on his promotion from 01.01.2006. Since the petitioner was promoted on 21.01.2005, he was entitled for Rs.600/- as personal pay as per G.O.720 dated 17.12.1998. However, the petitioner opted for his Higher Secondary School Headmaster pay on the date of his next increment (i.e.) on 01.01.2006. The petitioner's pay had to be fixed with respect to his admissible pay in the lower post of Special Grade PG

Assistant post i.e. Rs.12400/-. To arrive at his new pay as per G.O.No.234 his pay of Rs.12,400/- could only be taken. The new pay was arrived at 12,400 x 1.86 and the calculation for the same was also given in the counter. According to the respondents, as the petitioner had opted for pay fixation for Headmaster promotion from the date of next increment, the revised pay was fixed as per the Pay Commission report with respect to the pay of the lower post in the Special Grade of PG Assistant i.e. Rs.12400/- and multiplied by 1.86 to arrive at new pay as per G.O.234. Therefore the contention of the petitioner that the personal pay of Rs.600/- w.e.f. 01.01.2006 as per G.O.Ms.No.234 was to be multiplied by the multiplication factor 1.86 was untenable.

4.The learned counsel for the petitioner after elaborate arguments submitted that though in the impugned order it was stated that the pensionary benefits would be revised with reference to Last Pay Drawn of Rs.41,870/- and necessary authorisation for the downward revision would be issued separately, the same was not done. The learned counsel therefore submitted that the matter should be remanded by giving an opportunity to the petitioner to place the necessary materials before the third respondent with regard to the personal pay of Rs.600/-. The counsel for the respondents have no objection to remand the matter to the third respondent.

5.Considering the limited submission of the learned counsel for the petitioner and in view of the fact that final orders have not been passed, the impugned order is set aside with a direction to the third respondent to issue a show cause notice to the petitioner on the proposed downward revision of the pay. The third respondent shall also give an opportunity of personal hearing to the petitioner by specifying a specific date of personal hearing. If the petitioner does not appear on the specified date, the third respondent shall pass orders in the absence of the petitioner on merits and in accordance with law. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

6.With the above direction, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**02.09.2024**

Index : Yes/No
Internet : Yes/No
Speaking order / Non-speaking order
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To

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**N.MALA,J.**

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