IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 28871 of 2023
and
W.M.P.No.28457 of 2023

K.Loganathan .... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Finance Department,
Fort St.George, Chennai – 9.

2. The Government of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St.George, Chennai – 9.

3. The Director of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai.

4. The Joint Director (Vocational),
Directorate of School Education,
DPI Complex, College Road,
Chennai.

5. The Chief Educational Officer,
Namakkal District – 637 001.

6. The Accountant General,
Office of the Accountant General (A & E),
361, Anna Salai, Teynampet, Chennai – 18.

7. The Headmaster,
Government Boys Higher Secondary School,
Mohanur, Namakkal – 637 015.

8. C.Arunachalam ..... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records on the file of the sixth respondent relating to the issue of Lr.No.P11/3/11129651/ADK/302 dated 02.01.2023 and on the file of the seventh respondent relating to his proceedings in Na.Ka.No.93(1)/2023 dated 24.04.2023 and quash the same and all further orders/proceedings issued pursuant to the same and consequently to direct the seventh respondent to restore the pay the petitioner had drawn earlier to the impugned orders and consequently to work out all the retiral benefits such as pension, DCRG, GPF, Spl.P.F. Leave encashment etc., including the pay paid during the re-employed period from 0103.2023 to 31.05.2023, based on the said restored basic pay and pay the arrears of pay and retiral benefits therefor along with not lesser than 12% interest for the same.

For Petitioner : Mr.N.Subramanian
For R1 to R5 & R7 : Mrs.P.Rajeswari
Government Advocate
For R6 : Mrs.Hema Muralikrishnan

ORDER

This Writ Petition has been filed challenging the order passed by the sixth respondent dated 02.01.2023 and the order passed by the seventh respondent dated 24.04.2023, thereby refused the scale of pay and ordered for recovery of Rs.8,93,977 from DCRG.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner had joined as a part time Vocational Teacher in Government Higher Secondary School, Mohanur from 05.06.1985. He became a full time Vocational Teacher from 01.04.1990. After attaining the age of superannuation, he retired from service on 28.02.2023. However, he was allowed to continue by way of re-employment till 31.05.2023, i.e., the end of the academic year. In the meanwhile, the Government of Tamil Nadu implemented the 6th Central Pay Scales for Tamil Nadu Government employees with effect from 01.01.2006 by G.O.Ms.No.234, dated 01.06.2009 and accordingly,

revised the pay scales corresponding to the different existing pay scales. Further, it was ordered to arrive at the revised pay to get the appropriate level in revised pay scale with notional effect from 01.01.2006 and with monetary benefits from 01.01.2007. Accordingly, the pay scale of Vocational Instructor was revised as Rs.9,300-34,800+4,400 grade pay, corresponding to the pre-existing pay scale of Rs.5,500-175-9,000. The scale of pay of the petitioner was revised and as he was drawing a basic pay of Rs.7,700-50PP in the pre-existing pay scale of Rs.6,500-200-10,500, corresponding pay was fixed as Rs.14,420+4,600 in the revised pay scale of Rs.9,300-34,800+4,600.

4. Thereafter, on the basis of One Man Commission report, the pay scales for various other posts were enhanced. Therefore, the Government vide letter dated 15.09.2010 provided additional fitment tables to meet the requirements of additional pay scales. For the basic pay of Rs.7,700+50PP, corresponding pay of Rs.17,060+5,400 is provided in the pay table. Not being satisfied with the revision, once again the teachers association submitted a representation and as such, the Government constituted the Pay Grievance Redressal Committee by

G.O.Ms.No.123, dated 10.04.2012, which recommended to enhance the pay scale for the Vocational Teacher from Rs.9,300-34,800+4,400 to Rs.9,300-34,800+4,600. Accordingly, the Government passed an order in G.O.Ms.No.263, dated 22.07.2013 to the ordinary grade Vocational Teacher. Accordingly, the petitioner's selection grade pay scale was revised as Rs.15,600-39,100+5,400. The petitioner was drawing the said scale of pay till his retirement. His last drawn pay was Rs.1,07,500/- in the pay band of Rs.15,600-39,100+5,400. After his retirement, when the pension proposal was sent to the sixth respondent, it was returned making objections that the additional fitment table, which was annexed to the Government letter dated 15.09.2010, is applicable to the ordinary grade and not to the petitioner who was drawing selection grade. Hence the present writ petition.

5. A perusal of the counter filed by the sixth respondent reveals that as per the Government letter dated 08.11.2010, revised pay bands in respect of the employees who moved to Selection Grade/Special Grade prior to 01.01.2006 and in whose cases their ordinary grade scales of pay have been revised further based on the recommendations of the

One Man Commission was introduced. Therefore, the Vocational Instructors are covered by the letter dated 08.11.2010 and their scale of pay were revised as per G.O.No.263, dated 22.07.2013. However, as per the restrictive clause enunciated in Para 4(i) of the letter dated 08.11.2010, the pay band application to the selection grade of the post as per the Annexure I of the letter should not be higher than the pay band applicable to the next level promotional posts, i.e., it should be restricted to the next level promotional post.

6. Therefore, though the pay band applicable to the selection grade Vocational Instructors, it should not be higher than the pay band applicable to the next level promotional post. Subsequently, the Government passed G.O.Ms.No. 306, Finance (CMPC) Department, dated 12.09.2018 and allowed the higher grade pay of Rs.5,400/- in the pay band of Rs.15,600-39,100 to the selection grade Vocational Instructors without restricting to the next level promotional post. Accordingly, Vocational Instructors who moved to selection grade prior to 01.01.2006 are entitled to the higher pay band as on 01.01.2006.

7. She further submitted that the claim made by the petitioner was considered pursuant to the order passed by this Court. It was clarified that the additional fitment benefits is not applicable to the Vocational Instructors, whose ordinary scale of pay of the said post has not been revised from one pay band to another pay band. Therefore, apart from their selection grade pay, they are not eligible for additional fitment benefits. This Court had already dealt with a similar issue in a batch of writ petitions in W.P.Nos.15570 of 2021 and etc, by an order dated 29.02.2024, in which, this Court held as follows :

> *"3. The petitioners' main thrust is only for pay fixation as per the 6^th^ Pay Commission recommendation. Consequent to the issuance of Tamil Nadu Revised Scale of Pay Rules 2009, by adopting the recommendations of the 6th pay commission vide G.O.No.234 dated 01.06.2009, further instruction has also been given through Government Letter No.51082/Pay Cell/2010-1 dated 15.09.2010. The said Government Letter contains the Additional Fitment Tables corresponding to the fixation of pay that should be done according to Rule 4 of the Tamil Nadu Revised Scale of Pay Rules, 2009. For the sake of clarity, Rule 4 of the Tamil Nadu Revised Scale of Pay Rules, 2009 is extracted hereunder:*

"4. Fixation of Pay in the revised pay structure:-- The initial pay of a Government employee who elects to be governed by the revised pay structure from 1 January 2006 shall be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have had a lien if it had not been suspended and in respect of his pay in the officiating post held by him, in the following manner, namely:--

(1) In the case of all employees :--
(i) The pay in the pay band / pay scale shall be determined by multiplying the existing basic pay as on 1-1-2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

(ii) If the minimum of the revised pay band / pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the revised pay band / pay scale;

(iii) Where, in the fixation of pay, the pay of Government employees drawing pay at two or more consecutive stages in the existing scale gets bunched, that is to say gets fixed, in the revised pay structure at the same stage in the pay band, then for every two stages so bunched, benefit of one increment shall be given so as to avoid bunching of more than two stages in the revised running pay bands. For this purpose, the increment will be calculated on the pay in the pay band only and grade pay should not be taken into account for the purpose of granting increments to alleviate bunching.

(iv) In the case of pay scales in Higher Administrative Grade (HAG) in the Pay Band 4, benefits of increments due to bunching shall be given taking into account all the stages in different pay scales in this grade.

(v) If by stepping up of the pay as above, the pay of a Government employee gets fixed at a stage in the revised pay band / pay scale (where applicable) which is higher than the stage in the revised pay an employee who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short of that of the former.

(vi) the pay in the pay band will be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing scale will be payable.

NOTE:- See Illustration-1 to 9 in Schedule Ill to these rules.

(2) If a Government employee is on leave on 1st January 2006, he shall be entitled to the revised pay structure from that date, but the pay so fixed in the revised scale shall be admissible to him only from the date of his return to duty in the post after the expiry of leave and the period commencing on the 1st January 2006 and ending with the date of such return will count for future increment in the revised pay structure depending on whether it will count for future increments in the existing scale.

(3) Similarly where a Government employee is on study leave on the first day of January, 2006 he will be entitled to the benefits under these Rules from 1-1-2006 or the date of option.

(4) A Government employee who on the 1 January 2006 is on leave preparatory to retirement, shall be entitled to choose his pay either in his substantive post or in the officiating post in the revised scale with effect from date for the purpose of computing his gratuity and pension.

(5) If a Government employee was under reduction of pay or stoppage of increment as a penalty on the 1st January 2006 his pay shall be fixed in the revised pay structure on the basis of present emoluments he drew on the 1st January 2006 and he shall continue to draw the pay so fixed in the revised scale till the expiry of the period of penalty. His pay in the revised scale shall be refixed immediately following the date of expiry of the period of penalty with reference to the present emoluments which he would have drawn on the 1st January, 2006 taking the fact into consideration whether the penalty awarded is with or without cumulative effect. If, for instance, a Government employee's increment falling due on the 1 January, 2006 had been postponed for a year without cumulative effect, his actual present emoluments as on the 1st January 2006 would be the basis for determination of his revised pay with effect from the 1st January, 2006 and the pay so fixed shall be in force upto the 31st December 2006. However, for purpose of determination of his

pay with effect from 1st January 2007 his pay on the 1st January 2006 shall be refixed notionally based on the present emoluments which he would have received on the 1 January 2006 but for his penalty and he will get the next increment on the 15th January 2007 from that stage.

(6) If, however, the penalty of stoppage of increment due on the 1 January 2006 had been awarded with cumulative effect, the revised pay shall be fixed based on the actual present emoluments as on the 1st January 2006. There shall be no refixation of pay in this case.

(7) If a Government employee is under suspension on the 1st January 2006, or if he was discharged or reverted from a post before that date and is reappointed to that post after that date, he shall be entitled to the revised scales of pay only from the date on which he returns to duty in the post or from the date of his reappointment to that post.".

4. The claim of the petitioners rests on Rule 4(1)(iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009. As per the Additional Fitment Table No.15, the benefit of one increment is given in the revised pay structure for every two stages bunched at the same stage in the pay band. For instance, in Additional Fitment Table No.15, if the stage in the existing scale is 6900 over a span of three years and 7900 over a span of four years, *both consecutive stages will be bunched together and the revised basic pay will be given with 3% increase in the basic pay. The Vocational Teachers, who are in the existing stage of 6900 and 7100 will be given with 470 which is 3% addition with the revised basic pay and thereby their pay will be fixed at 21470. Accordingly when two consecutive stages fall in respect of the stage of 7300 and 7500, the revised basic pay will be fixed at 21960 by giving 3% addition on the basis of the earlier basic pay. So it goes on with such addition in the fitment table in view of Rule 4(1)(iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009. But it is made clear that the revised basic pay by giving 3% addition for the bunching effect would be only on the basis of the pay band. And the grade pay will not be taken into account.*

5. There is no dispute on the point that pay band alone be taken for addition. The above Fitment method of giving one increment addition is in view of considering the fact that the persons who put more number of service should not get equal pay as that of their far below juniors. Taking into account of the service rendered by the seniors in the same cadres, the above increment for one bunching effect is given. If the same benefit is not given and the pay is fixed devoid of such addition of 3%, *naturally the persons who have put many years of service as Vocational Teachers and their juniors would be getting the revised basic pay only at 21000 uniformly.*

6. Earlier, a similarly placed person by name K.Kolanjiyappan filed a writ petition in W.P.No.30253 of 2019 and in which an order has been passed to consider the representation of that petitioner in accordance with Rule 4 (1) (i) and (iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009 in the light of Letter No.51082/Pay Cell/2010-1 dated 15.09.2010. Pursuant to the said direction, the impugned order has been passed by denying the above benefit and in the same order direction has been given to the Director of School Education to pass orders accordingly. Even though the order has been passed in pursuant to the writ petition filed in W.P.No.30253 of 2019, the impact of the order would be on the petitioners as well. Hence the petitioners have chosen to challenge the same.

7. On perusal of the order, it is seen that the respondents have invoked the application of G.O.Ms.No.306, Finance (CMPC) Department, dated 18.09.2018 for the claim of the petitioners. Admittedly, the petitioners' claim is only for pay fixation as per the *pay revision recommendation and as per the Rule 4 of the Tamil Nadu Revised Scale of Pay Rules, 2009. In fact much clarification has been made in the Government Letter No.5108/Pay Cell/2010-1 dated 15.09.2010 by giving the relevant tables as illustrations. But the respondents, without taking cue from the said orders and the tables attached therewith, had chosen to invoke G.O.Ms.No.306, Finance (CMPC) Department, dated 18.09.2018 (which speaks about the grade scale of pay for the Vocational Teachers who have completed qualifying years of service for getting selection grade). Obviously in view of the above confusion, the respondents have chosen to deny the benefit of Rule 4 (1) (iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009 to the petitioner.*

8. Thus, it is clear that initially, fixation of pay was in accordance with law. The Pay Rules, 2009 does not distinguish the pre-existing pay scales whether ordinary or selection grade. The Government letter dated 08.11.2010, is clear that the Pay Rules does not distinguish the ordinary scale of pay or selection grade pay scale in any manner. Therefore, the objections raised the by sixth respondent cannot be sustained and it is contrary to the Pay Rules, 2009.

9. In view of the above, the order passed by the sixth respondent dated 02.01.2023, is hereby quashed. The seventh respondent is directed to restore the pay scale of the petitioner and accordingly, disburse the retirement benefits, such as DCRG, Special Leave, Leave Encashment and other attendant benefits with interest at the rate of 6% per annum with in a period of eight weeks from the date of receipt of a copy of this order.

10. In the result, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

01.08.2024

Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
Lpp

To

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G.K.ILANTHIRAIYAN, J.

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W.P.No.28871 of 2024

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