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W.A.No.137 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 10.05.2024

CORAM :

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN**  
and  
**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

Writ Appeal No. 137 of 2024

&

C.M.P. No. 770 of 2024

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

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

3. The District Elementary Educational Officer  
Kancheepuram  
Kancheepuram District

4. The Assistant Elementary Educational Officer  
Kattankolathur  
Kancheepuram District

.. Appellants

Versus

V. Balasubramanian

.. Respondent

Appeal filed under Clause 15 of the Letters Patent, against the order  
dated 19.06.2023 passed in W.P. No. 20836 of 2017.

<https://www.mhc.tn.gov.in/judis>

: Mr. Abishek Murthy



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Government Advocate

For Respondent : Mr. K. Thennan

## **J U D G M E N T**

**R. MAHADEVAN, J**

This writ appeal is directed against the order dated 19.06.2023 passed by the learned Judge in W.P. No. 20836 of 2017, allowing the writ petition filed by the respondent herein.

2. In the affidavit filed in support of the Writ Petition, it was stated by the respondent that he joined as a Secondary Grade Teacher in the School Education Department on 28.10.1971 and his service was regularized as Secondary Grade Teacher from the date of his initial appointment on 28.10.1971. Subsequently, he was promoted as Tamil Pandit on 06.01.1988 and further promoted as BT Headmaster on 28.07.1993. On 31.01.2007, he attained the age of superannuation and retired from service. According to the respondent, the total service put in by him in the cadre of Secondary Grade Teacher as well as Tamil Pandit Grade-I is 16 years, 7 months and 4 days and therefore, as per G.O. Ms. No.210, School Education Department dated 14.08.2009, he is entitled to get selection grade in the cadre of B.T. Grade Middle School Headmaster pay from 28.07.1993 to 22.12.1996 and Special



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Grade B.T. Grade Middle School Headmaster pay from 23.12.1996 to 31.01.2007, the date of his retirement. As per the said Government Order, the

benefit of counting the past service in lower category posts for selection grade/special grade to certain persons, who were working as Middle School Headmaster as on 01.06.1988, was conferred. When the respondent made a representation dated 11.11.2011 seeking to extend to him the benefits conferred under G.O. Ms. No.210 dated 14.08.2009, it was not considered. Therefore, he filed WP No. 11664 of 2012 before this Court praying to issue a Writ of Mandamus directing the respondents to extend the benefit of G.O. Ms. No.210, School Education Department dated 14.08.2009 insofar as the respondent is concerned and accordingly to award Special Grade scale of pay in the post of B.T.Grade Middle School Headmaster with effect from 28.7.1993 by counting his lower grade Secondary Grade Assistant service, Elementary School Head Master service and Tamil Pandit service as has been granted to 65 similarly placed persons. The said writ petition was disposed of by this Court on 24.04.2012 with a direction to the respondents therein to consider the representation of the respondent herein and to pass orders thereon within a period of three months. Pursuant to such direction, the first appellant passed an order dated 14.03.2017 rejecting the claim of the respondent by stating that G.O. Ms. No.210 dated 14.08.2009 was passed in favour of 65 persons mentioned therein. It is further stated that G.O. Ms. No.210 was issued in



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favour of those persons who have obtained specific orders from the Court. In other words, it was stated that the said Government Order is intended to extend the benefit in favour of 65 persons alone and it cannot be extended to others. Therefore, challenging the order dated 14.03.2017, the respondent filed WP No. 20836 of 2017 before this Court.

3.(i) A counter affidavit was filed by the fourth respondent in the writ petition by stating that the respondent/writ petitioner was awarded with selection grade scale of pay on 28.10.1981 on completion of 10 years of service in the post of Secondary Grade Assistant. On his promotion to the post of Tamil Pandit on 07.01.1988 and upon further promotion to the post of B.T. Middle School Headmaster on 28.07.1993, his pay was re-fixed proportionately to the post to which he was promoted. Further, upon the retirement of the respondent, pension was paid to him based on his last drawn pay on 31.01.2007. It was further submitted that prior to 01.10.1972, the scales of pay of Middle School Headmaster, Headmasters of Primary School and Secondary Grade Teachers were equal and only special pay was additionally given to Headmasters of the Schools concerned based on the strength of the students. Further, several Secondary Grade qualified teachers, who were willing to be appointed as Middle School Headmasters and who were living nearer to the Middle Schools, were appointed as Middle School Headmasters.



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Since the post of Middle School Headmasters carried additional work, the Government introduced a separate scale of pay to them as per G.O. Ms. No.211, Education Department dated 01.02.1971 and all Middle School Headmasters were awarded with Middle School Headmaster scale of pay. When a separate scale of pay with higher pay was introduced to Middle School Headmasters, Secondary Grade Teachers made a representation to appoint them as Middle School Headmasters since their juniors were working as Headmasters. On considering their representation, the Government issued G.O. Ms. No.784, Rural Development and Administration Department dated 14.05.1979, reverting the junior-most teachers working as Middle School Headmasters as on 02.10.1970 as Secondary Grade Teachers and Primary School Headmasters. Such teachers, who were reverted, were given pay protection in the Middle School Headmaster scale of pay since they worked as Headmaster as on 02.10.1970. The senior-most Secondary Grade Middle School Headmasters, who were promoted after 02.10.1970 were working as secondary grade teachers/primary school headmasters were awarded selection grade and special grade scales of pay by counting the services rendered by them as secondary grade/teachers/primary school headmasters and it is legally impermissible.

(ii) It was also stated in the counter affidavit that many Middle School

Headmasters, who were working as Secondary Grade Teachers/Primary School



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Headmasters filed various Writ Petitions before this Court as well as O.A. No. 2250 of 1991 etc., batch before the Tamil Nadu Administrative Tribunal, Chennai. By order dated 15.09.2006 passed in WP No. 29624 of 2006 and WP No. 29626 of 2006, this Court directed the Director of School Education to sanction special scale scale of pay to the writ petitioners by counting the service rendered by them in the secondary grade/ primary school headmaster posts prior to 01.06.1988. The writ appeal filed thereagainst in WA No. 223 of 2007 was dismissed by a Division Bench of this Court on 21.04.2008. Pursuant to the dismissal of writ appeal No. 223 of 2007, the Government passed G.O. Ms. No.210 dated 14.08.2009 for counting the service rendered as Secondary Grade Teacher and Primary School Headmaster before 01.06.1988 for grant of selection grade/special grade scale of pay in respect of the petitioners in those original applications/writ petitioners.

(iii) As far as the respondent-writ petitioner is concerned, he was appointed as Middle School Headmaster only on 28.07.1993. The selection Grade/Special Grade of pay will be allowed only to those who have been working as Middle School Headmaster as on 01.06.1988. When the respondent-writ petitioner did not work as Middle School Headmaster on 01.06.1988, he is not entitled to get the benefits conferred in G.O. Ms. No.210 dated 14.08.2009 in his favour. It was further stated in the counter affidavit that there is delay and laches on the part of the respondent-writ petitioner herein



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inasmuch as he has belatedly approached the appellants for extension of the benefits conferred under G.O. Ms. No.210 dated 14.08.2009. In similar circumstances, this Court, in the order dated 12.12.2019 passed in WP Nos. 34489 of 2019, 35191 of 2019 and 35196 of 2019 dismissed the writ petitions by observing that the claim for extension of G.O. Ms. No.210 dated 14.08.2009 was made nearly after seven years by taking advantage of similar order passed by this Court. It was also observed that if the writ petitions are allowed on the basis of orders passed several years before, it will open floodgates. This Court also observed that the petitioner was a fence-sitter, who waited and watched as to what was happening in the Court and now wants to take advantage of the order that was passed in the year 2019. In the present case also, the respondent-writ petitioner retired on 31.01.2007. After his retirement, he submitted a representation on 11.11.2011, seeking to extend the benefits conferred under G.O. Ms. No.210, School Education Department dated 14.08.2009 and therefore, the respondents/appellants prayed for dismissal of Writ Petition No. 20836 of 2017 filed by the respondent-writ petitioner.

4. On 19.06.2023, when the writ petition was taken up for hearing, the learned Judge placing reliance on the judgment of the Division Bench of this court dated 20.11.2017 in W.A. (MD) No. 1420 of 2017 - *The Principal Secretary to Government, School Education Department, Chennai and others*



vs. *M. Natarajan*, allowed the writ petition. The Division Bench, in the said case, followed the decision of the Full Bench of this court in the case of *the Government of Tamil Nadu, rep. by its Secretary, School Education Department, Chennai and others vs. G. Eswaran and others* reported in 2017 (2) MLJ 257 and held that a cut-off date cannot be imposed to deny the benefit of G.O. Ms. No. 210 dated 14.08.2009. The relevant portion of the said order is extracted hereunder:

*"5. The issue is no longer res integra. Similar writ petitions have been filed and came to be allowed by this Court and in fact in W.A.(MD).No.1420/2017 in W.P.No.10891 of 2016, appeal filed by the State, the Hon'ble Division Bench of this Court considering the effect of G.O. Ms. No.210 and the ratio laid down by the Hon'ble Full Bench of this Court in judgment reported in 2017 2 MLJ 257 held that there was no substance in the contentions of the State and confirmed the order of the learned Single Judge conferring the benefits on the petitioner therein in line with the mandate of G.O.Ms.No.210 dated 14.08.2009. It is also seen that this Court has consistently followed the orders of the Hon'ble Full Bench and the Hon'ble Division Bench of this Court. This case is no different. The petitioner is squarely falling within the four corners of the ratio laid down by this Court. However, in fact even in the earlier writ petition in W.P.No.11664 of 2012, this Court made it clear that there were several orders which were implemented by the Government and only in such view of the matter, G.O.Ms.No.210 dated 14.08.2009 also came to be passed. This Court only directed the 1st respondent to consider the petitioner's case in the light of the said G.O and pass orders.*

*6. However, the 1st respondent, pending the contempt petition filed by the writ petitioner, has chosen to reject the petitioner's claim by introducing the cut off date. The petitioner had been promoted on 25.07.1993 and therefore, G.O. Ms. No. 210 dated 14.08.2009 would not be applicable referring to a cut of date 01.06.1988. The reason for the 1st respondent was not justified especially in the light of the several orders passed in W.P.s as well as judgments by Hon'ble Division Bench of this Court where similarly placed petitioners like the writ petitioner have been conferred the benefits of G.O.No.210 dated 14.08.2009. Therefore, the stand of the 1st respondent that in view of the promotion given to the petitioner, he is not entitled to the benefits of G.O.No.210 dated 14.08.2009 is not sustainable.*

*7. For the above foregoing reasons, the writ petition is allowed and impugned order passed by the 1st respondent in Government Letter*



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*No.5205/Nee.Va.2(2)/2017 dated 14.03.2017 is set aside. No costs."*

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5. Aggrieved by the aforesaid order dated 19.06.2023 of the learned Judge, allowing WP No. 20836 of 2017, the present appeal has been filed.

6. (i) Mr. Abishek Murthy, learned Government Advocate appearing for the appellants would vehemently contend that the earlier orders passed by this Court in various writ petitions or writ appeals cannot enure to the benefit of the respondent-writ petitioner herein, to get the benefits of G.O. Ms. No.210 dated 14.08.2009 in his favour. The learned Government Advocate further submitted that the respondent-writ petitioner retired from service on 31.01.2007. The G.O. Ms. No.210 dated 14.08.2009 was passed two years after the retirement of the respondent-writ petitioner. However, he has not submitted any representation immediately to extend the benefits of G.O. Ms. No.210 dated 14.08.2009 to him. He waited for the orders to be passed by this Court in the writ petitions filed by others and belatedly filed a representation on 11.11.2011 to revive a stale or dead claim. In any event, G.O. Ms. No.210 dated 14.08.2009 was passed to comply with the order passed in favour of those persons in whose favour orders were passed by this Court. In other words, the benefit under G.O. Ms. No.210 dated 14.08.2009 was restricted to those persons who have obtained orders from this Court and it cannot be *ipso*



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*facto* extended in favour of others, including the respondent herein.

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(ii) The learned Government Advocate placed heavy reliance on the Common Order dated 09.12.2016 of the Full Bench of this Court in Review Application No. 227 of 2015 etc., batch in the case of *The Government of Tamil Nadu, rep. by the Secretary, School Education Department, Fort St. George, Chennai - 600 009 and others vs. G. Eswaran and others*. The subject matter of Review Applications before the Full Bench is the same as the one involved in the present appeal. Before the Full Bench, it was vehemently contended on behalf of the Review Applicants-Government that several writ petitions have been filed one after the other claiming benefits under G.O. Ms. No.210 dated 14.08.2009 and other similar Government Orders, which were issued to implement the orders passed by this Court and it cannot be extended automatically in favour of others. The Full Bench of this Court, keeping in mind the financial strain that would befall the State exchequer in the event of giving effect to the various orders passed by this Court by calculating the revised pension as also family pension in favour of the retired Government teachers, decided to extend the benefits of G.O. Ms. No.210 dated 14.08.2009 and other similar Government Orders in favour of the respondents therein. At the same time, it was specifically directed that no fresh writ petitions would be entertained on and from 09.12.2016. Notwithstanding such specific direction issued by the Full Bench of this Court, the respondent herein has filed the writ



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petition in the year 2017 and therefore, the writ petition of the respondent is not maintainable as it is contrary to the observations of the Full Bench of this Court mentioned supra. The learned Government Advocate invited the attention of this Court to the relevant portion of the order passed by the Full Bench of this Court in Rev. Aplc 227 of 2015 in W.A.No.352 of 2014 etc., batch dated 09.12.2016 which is as follows:

*"32. Consequently, hundreds of Writ Petitions were filed by the similarly placed persons, claiming benefits under G.O.Ms.No.216 both before this Court and also before the Madurai Bench of Madras High Court. Right from the inception, following the Division Bench order in W.P.No.8747 of 2009 and taking note of appeal in SLP (Civil) CC 2746 of 2010 dismissed by the Supreme Court, both the Principal Bench and Madurai Bench, allowed the writ petitions, except a learned single Judge of this Court in W.P.Nos.4505 of 2012 etc. batch, whose order, dated 18.11.2013 was later came to be set aside by the Division Bench of this Court by common Judgment dated 4.2.2015 in W.A.Nos.352 of 2014 etc., batch.*

*33. In order to bring parity between the Selection Grade Teachers of High/Higher Secondary Grade Teachers and the Primary School Headmasters, G.O.Ms.No.304, dated 28.3.1990 was issued, granting Selection Grade and Special Grade to all the categories of posts in the scales of pay Rs.750-945 and above and upto the scale of pay Rs.2500-4200 by indicating the scales of pay of selection grade and special grade in Annexure I to G.O.Ms.No.304. It was made clear in para 4 of the said G.O.304 that if the promotion post happens to be on the lower scale of pay than the selection grade scale of pay, the employees appointed on promotion are eligible for Selection Grade scale to the ordinary post. However, in order to remove certain ambiguity in awarding Selection Grade/Special Grade pay in respect of the posts for which there is no promotional opportunity, the Government issued G.O.Ms.No.216 dated 22.3.1993 introducing uniform scale of pay for all the secondary grade teachers and as per Annexure-I of G.O.Ms.No.304, the ordinary grade, selection grade and special grade scales of pay are fixed at Rs.1200-2040, 1400-2600 and 1640-2900 respectively.*

*34. Having regard to the above and since the Government have rightly issued the G.O.Ms.No.216, dated 22.3.1993 removing the disparity in the pay scales of the Selection Grade Teachers of High/Higher Secondary Schools on par with the Primary Schools Headmasters since there was no promotional avenue for them and in view of the fact that right from the inception all the Division Benches have upheld the G.O.Ms.No.216, dated 22.3.1993, we are unable to take a different view at this distant point of time*



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to frustrate the respective orders of the various Division Benches of this Court. In such view of the matter, the conflict order, dated 10.12.2015 passed by the Division Bench of this Court in W.P.(MD) Nos.7061 of 2011, etc. is set aside.

35. As we confirmed that the benefits of G.O.Ms.No.216 have to be extended to all the Secondary Grade Teachers of High/Higher Secondary Grade Schools on par with the Primary School Headmasters, it is for the Government to implement the order. It appears that having issued the G.O.Ms.No.216 and having faced the contempt proceedings, the Government is more concerned about the implementation of the G.O. rather to agitate the said G.O. According to the statistical data submitted by the Government, there were 30273 Secondary Grade Teachers in Government High/Higher Secondary Schools during the period 1989-90 and 13675 PET/Special Teachers (in total 43948) were in service as on 30.09.1989 and if the implementation of the G.O. is carried out, the expenditure would approximately more than 500 Crores of rupees, which would result in heavy financial constraints and consequently drain the financial position of the State.

36. In fact, considering financial burden that would fall on the State exchequer, by order dated 24.11.2016, we passed the following:

"2. According to the learned Senior Counsel appearing for the teachers, as per G.O.Ms.No.860, Finance (Pay Commission) Department dated 11.8.1989, which is issued based on the proceedings of the Director of School Education dated 22.08.1989, in Para No.III, Sl.No.79, it provides for equal pay scale to that of the Headmaster of Middle School, which is equivalent to the Selection Grade Secondary Grade Teachers and their pay scale was revised from Rs.705-1230 to Rs.1640-2900. It is their further contention that till 31.5.1988, viz., the date of implementation of V Pay Commission, the scale of pay of Secondary Grade Teachers and Primary School Headmasters were identical. It appears for the Primary School Headmasters and the Secondary School Headmasters basic pay is shown to be different than that are mentioned above, i.e. 1640-2900.

3. Therefore, with regard to the implementation of the Pay Scales prescribed by the V Pay Commission and also in giving effect to G.O.Ms.No.216, Finance (PC) Department dated 22.3.1993, it is open to the Government to consider the financial position and the burden that would fall on the exchequer, subsequent to the implementation of the recommendations of the V Pay Commission. Further, the Government may also keep in mind that this Court has left it open to the Government that implementation would be



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*only with reference to the pensionary benefits along from the date of the judgment, i.e. 04.02.2015 and the arrears cannot be claimed by the teachers and it is for the Government to decide about the arrears and also regarding any financial hardship that would be pleaded by the Government."*

*37. While passing the above order, we also directed the learned Advocate General to take assistance of the Secretaries to the Government, Education and Finance Department to take a decision as to the implementation of the G.O.Ms.No.216, dated 22.3.1993 keeping in mind the various orders passed by this Court.*

*38. Today, when the matters are taken up for consideration, keeping in mind the financial strain that would fall on the State exchequer in the event of implementation of the G.O., and in order to give a quietus to the issue, we feel it appropriate to fix the date as 01.03.2017 from which date onwards, the Government shall calculate and revise the pension and family pension (without arrears) based on the revised scales of pay by implementing the G.O., for which, the learned Advocate General and the learned counsels appearing for the Teachers have fairly acceded to the same. Accordingly, we pass the following:*

*i) The Government is directed to implement the G.O.Ms.No.216, dated 22.3.1993 for the period between 1.6.1988 and 31.12.1995, on and from 1.3.2017 onwards in respect of all the Secondary Grade Teachers of High/Higher Secondary Schools including the Special Teachers who attained Selection grade/Special Grade during the above said period, on par with the pay scale of Primary School Headmasters;*

*ii) Consequently, the Government shall calculate and revise the pension of those who retired from service and revise the family pension in respect of those who expired, based on the revised scales of pay in terms of G.O.Ms.No.216, dated 22.3.1993 payable on and from 1.3.2017;*

*iii) It is made clear that the beneficiaries under this order, are not entitled to the arrears of revised pay scales;*

*iv) It is further made clear that the benefits as directed above, shall be extended to the parties who are before this Court alone and no fresh Writ Petitions would be entertained on and from 09.12.2016;*

*v) The Government is directed to expedite the process of calculating and fixing the revised pension and family pension and we do hope that the Government will complete the same as early as possible without making any further delay;*

*vi) All the matters which are at SR stage and listed before this Court are also ordered and disposed of by this common order and consequently, connected MPs thereof, are ordered;*

*39. With the above directions, all the captioned matters, viz., Writ Appeals, Writ Petitions, Review Applications are disposed of and the*



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*Contempt Petitions are closed. There shall be no order as to costs. Consequently, all connected Miscellaneous Petitions are closed.*

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*40. It is brought to the notice of this Court that Writ Appeals in W.A.(MD) Nos.1325 to 1327 of 2016 which were tagged with the present batch of matters inadvertently as they are not pertaining to G.O.Ms.No.216, dated 22.3.1993. Hence, the Registry is directed to de-link these matters and post the same in regular course."*

*(Emphasis supplied)*

(iii) The learned Government Advocate also vehemently contended that the claim of the respondent was rejected by the first appellant after due consideration of his service records and relevant Government Orders. However, the present writ petition has been filed by the respondent-writ petitioner to revive a stale and dead claim, which is legally impermissible. When G.O. Ms. No.210 dated 14.08.2009 was issued, the respondent-writ petitioner was not in service. After three years of issuance of G.O. Ms. No.210 dated 14.08.2009, the respondent has submitted a representation dated 11.11.2011 and alleging that his representation has not been considered, he has filed the earlier Writ Petition No. 11664 of 2012 before this Court and the same was disposed of on 24.04.2012 with a direction to the respondents therein to consider the representation of the respondent-writ petitioner and to pass orders thereon within a period of three months. Pursuant to such direction, the first respondent passed an order dated 14.03.2017 rejecting the claim of the respondent by stating that G.O. Ms. No.210 dated 14.08.2009 was passed in favour of 65 persons mentioned therein. Therefore, it is submitted that notwithstanding the fact that several orders have been passed by this Court in



identical situation, the facts of the present case have to be looked into. In this case, there is delay and laches on the part of the respondent-writ petitioner in approaching the appellants. The respondent remained silent for a long time and when some orders were passed by this Court in the writ petitions filed by similarly placed person, he submitted a representation only on 11.11.2011 seeking to extend the benefits conferred under G.O. Ms. No.210 dated 14.08.2009. In this context, the learned Government Advocate placed reliance on the order dated 12.12.2019 in W.P. No. 34489 of 2019 wherein it was observed as under:

*"2. The petitioner did not chose to challenge the order that was passed in the year 2012. After nearly seven years, the present writ petition is filed by taking advantage of a recent order passed in 2019. Such attitude of the petitioner, cannot be entertained and if the writ petitions are to be admitted based on orders passed after several years, it will open floodgates. The petitioner was more a fence sitter, who waited and watched what was happening in the Court and now wants to take advantage of the order that was passed in the year 2019. Such a writ petition cannot be entertained by this Court and accordingly, this writ petition is dismissed on the ground of laches. No costs. Consequently, the connected miscellaneous petitions are closed."*

*(Emphasis supplied)*

(iv) Similarly, in yet another order dated 25.01.2022 passed in W.P. (MD) Nos. 3186 and 3187 of 2016, this Court, while dismissing the writ petitions, held as follows:

*"20. This Court is of the considered opinion each case ought to be dealt with on its own merits. In the present case, the writ petitioner in W.P.(MD)No.3186/2016 was regularized on 08.07.1977 in School Assistant Teacher post, had received Selection Grade on 08.07.1987 in the School Assistant Teacher post. Then promoted as Middle School HM on 12.10.1988. Then the petitioner received Selection Grade on 12.10.1998 in the post of Middle School HM. Then the petitioner is eligible for Special Grade on*



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12.10.2008, but since the petitioner retired on 30.04.2006, two years before the eligibility for Special Grade. Now the petitioner is seeking to take the two years from School Assistant Teacher post and grant Special Grade in the post of Middle School HM. Incidentally the petitioner has already received Selection Grade in the post of School Assistant Post. If the claim of the petitioner is accepted then the claim would be two selection grade for the same period which is absolutely illegal claim. Moreover as stated supra the selection / special grade cannot be granted once the promotion is granted to the petitioner.

21. The petitioner in W.P.(MD) No. 3187 / 2016 was appointed as B.T. Assistant on 11.01.1982, received Selection Grade in the B.T. Assistant post on 10.01.1992 and the said disbursement of selection grade itself is wrong, since the petitioner was already promoted as Middle School HM on 21.12.1988. If the 1988 is taken as promotion date, then the petitioner is eligible for selection grade in the Middle School HM post on 21.12.1998, since the earlier selection grade fixation is wrong, this selection grade was not granted to the petitioner. The petitioner would be eligible for special grade on 21.12.2008, but the same was not granted, since two years prior to eligibility for special grade the petitioner retired from service on 20.12.2006. Moreover as stated supra the selection / special grade cannot be granted once the promotion is granted to the petitioner. Therefore, this Court is of the definite opinion that the petitioners are not eligible to get selection grade / special grade after promotion by taking both 'pre promotion' post and 'post promotion' post and the claim is illegal and unjust enrichment.

22. In fact the Tribunal has rightly held at the earliest point of time while considering G.O.1381 that when the scale of pay is different for two services, then both services cannot be taken for calculating 10 years / 20 years, more so when one service has less pay and the other service has more pay. The Secondary Grade Teacher has less pay and the primary school Headmaster has higher pay and Middle school Headmaster has still more higher pay. Then, any two services or any three services cannot be taken to calculate 10 years or 20 years to grant selection grade or special grade respectively.

23. The teachers are seeking to grant selection grade and special grade by calculating the service in Secondary Grade Teacher post and the promoted post of Primary School Headmaster. Also claiming to calculate the Secondary Grade post and Primary School Headmaster post along with the Middle School Headmaster post and grant special grade. In short the teachers are claiming both the promotion and as well as selection grade and special grade for their entire service. The concept has entirely changed by this plea to calculate the entire service including the promotion post. The claim to grant Selection Grade / Special Grade after availing promotion is illegal and unjust enrichment. The basic concept of Selection Grade / Special Grade is tampered with to obtain illegal claim. The very concept of granting selection grade and special grade is buried by these kind of writ petitions. This Court is of the considered opinion that the teachers are either eligible for promotion or for Selection / Special Grade and the teachers are not



eligible for both.

*24. The wrong claim of selection grade / special grade by calculating two or three different services were the subject matter from 1991 onwards, the Government passed several orders to put an end to the claim, this Court passed orders to put an end to the claim, but still several claims are arising until 2022. Therefore, this Court is of the considered opinion that illegal claim should end and this Court is putting a big full stop to the illegal claims by this order.*

*25. For the reasons stated above the writ petitioners are not entitled to the benefits and the writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed."*

(v) By placing reliance on the aforesaid decisions, the learned Government Advocate would contend that the respondent is seeking to extend the benefit of G.O. Ms. No.210, School Education Department dated 14.08.2009 and to award him Special Grade scale of pay in the post of B.T. Grade Middle School Headmaster with effect from 28.7.1993 by counting his lower grade Secondary Grade Assistant service, Elementary School Head Master service, and Tamil Pandit service. Such a claim was made by submitting a representation dated 11.11.2011 four years after his retirement (i.e) on 31.01.2007. If such a claim is allowed, then, the pension of the respondent has to be revised with effect from 28.07.1993 till 31.01.2007 and to grant him arrears of pension till this date. The learned Judge, without taking note of the delay and laches on the part of the respondent-writ petitioner and without adjudicating the merits of his claim, has allowed the writ petition filed by him by merely following the earlier orders passed by this Court. Stating so, the learned Government Advocate prayed for setting aside the order of the



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learned Judge and to allow this appeal.

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7. (i) Per contra, Mr. Thennan, learned counsel for the respondent/writ petitioner submits that the issue involved in this writ appeal is no longer *res integra* and it has been examined by this Court in a series of writ petitions as well as writ appeals. According to the learned counsel, the relief sought for in those writ petitions/writ appeals in favour of the persons similarly placed like the respondent herein, is a *remedy in rem* and it is not a *remedy in personam*. While so, the respondent herein is equally entitled to get the benefits of G.O. Ms. No.210 in his favour and refusing such relief would amount to discrimination. It is further submitted that the claim of the respondent for extending the benefits of G.O. Ms. No.210 is fully covered by the decision of the Full Bench of this Court, wherein, it was categorically held that a cut-off date should not be imposed for extending the benefits under G.O. Ms. No.210 as it is arbitrary and discriminatory and it cannot be used to deny the legitimate dues of the similarly placed persons. Therefore, the learned counsel for the respondent submitted that denying the legitimate claim of the respondent, while granting similar benefits to other employees, would amount to discrimination.

(ii) With respect to the submissions made by the learned Government

Advocate relating to delay in filing the claim, the learned counsel for the



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respondent submitted that within two years from the date of issuing G.O. Ms. No.210 dated 14.08.2009, the respondent submitted his representation on 11.11.2011 seeking to extend the benefits conferred under G.O. Ms. No.210 dated 14.08.2009. However, his representation was not considered and therefore, he has filed WP No. 11664 of 2012 before this Court. By order dated 24.04.2012 the said WP No. 11664 of 2012 was disposed of with a direction to the respondents therein to consider the representation of the respondent/writ petitioner and to pass orders thereon within a period of three months. In spite of such direction, the first appellant passed an order of rejection only on 14.03.2017 i.e., nearly five years after the direction was issued by this Court in WP No. 11664 of 2012. Immediately, the respondent challenged the order of rejection dated 14.03.2017 by way of the present writ petition No. 20836 of 2017. Thus, viewed from any angle, there is no delay or laches on the part of the respondent herein in asserting his claim to get the benefits under G.O. Ms. No.210 dated 14.08.2009 in his favour. Even otherwise, when the claim of similarly placed persons were considered and they were conferred with monetary benefits, the respondent is also equally entitled to it and denying him such claim is arbitrary and discriminatory.

(iii) The learned counsel for the respondent further went on to contend that judicial decorum and discipline are of paramount importance in the justice delivery system and that a bench must respect the judgments and orders passed



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by its coordinate bench. For this purpose, reliance was placed on the following decisions, which were filed in the form of a typed set of papers:

(i) State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others [(2015) 1 SCC 347]

(ii) State of Karnataka and others Vs. N.Parameshwarappa and others [(2003) 12 SCC 192]

(iii) P.Subramanian Vs. Government of Tamil Nadu, represented by the Secretary to the Government Adi Dravidar & Tribal Welfare Department, Chennai [(2010) 3 MLJ 934]

(iv) P.Mani Vs. State of Represented by Secretary, Home Department, Fort St. George, Chennai [(2019) 4 MLJ 273]

(v) Prof.C.D.Tase Vs. University of Bombay and others [1989 Supp (1) Supreme Court Cases 273]

(vi) A.Sagayanathan Vs. Divisional Personnel Officer, S.B.C.Division, Southern Railway, Bangalore [1992 Supp (2) Supreme Court Cases 172]

(vii) M.R.Gupta Vs. Union of India and others [(1995) 5 SCC 628]

(viii) Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648]

(ix) Union of India and another Vs. Tarsem Singhy [(2008) 7 MLJ 1245 (SC)]

(x) R.Shankar Vs.Government of Tamil Nadu [(2019) 7 MLJ 727



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(xi) K.C.Sharma and others Vs. Union of India [(1997) 6 SCC 721

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(xii) Maharaj Krishnan Bhatt and another Vs. State of Jammu and  
Kashmir and others [(2008) 9 SCC 24]

(xiii) State of Karnataka and others Vs. C.Lalitha [(2006) 2 SCC 747

(xiv) N.S.Balasubramanian & others Vs. Food Corporation of India and  
others [(2006) Writ. L.R.327]

(xv) Government of Tamil Nadu, represented by its Secretary to  
Government versus G. Eswar and others reported in (2017) 2 MLJ 257 (FB)

(xvi) W.A.Nos.815 of 2010 and etc batch, dated 07.07.2011

(xvii) W.A.No.2793 of 2018, dated 02.01.2019

(xviii) W.A.No.37 of 2017 and etc., batch dated 03.01.2019

(xix) W.A.No.1143 of 2019, dated 02.04.2019

(xx) W.P.No.5302 of 2017 and etc., batch dated 29.04.2019

(xxi) W.A.No.73 of 2019 and etc., batch, dated 26.03.2019

(xxii) W.P.No.33581 of 2019 & etc., batch dated 04.08.2023

(iv) The learned counsel for the respondent also invited the attention  
of this Court to several orders passed by this Court and the judgments passed  
by the Division Bench on appeal and contended that the Division Bench of this  
court confirmed the orders passed by the learned Judges of this Court by



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dismissing the writ appeal(s), thereby granting the benefit under G.O. Ms.

No.210 dated 14.08.2009 in favour of the aggrieved individuals. The orders/

judgments relied on by the learned counsel are:

- (i) W.A.No.815 of 2010 and etc., batch dated 07.07.2011
- (ii) W.A.(MD)No.1420 of 2017, dated 20.11.2017
- (iii) W.A.Nos.34 of 2017 and etc., batch dated 03.01.2019
- (iv) W.A.No.73 of 2019 and etc., batch dated 26.03.2019
- (v) W.A.No.4235 of 2019, dated 19.02.2020
- (vi) W.A.No.199 of 2021, dated 09.02.2021
- (vii) W.A.No.2793 of 2018, dated 02.01.2019
- (viii) W.A.No.199 of 2021, dated 09.02.2021

(v) By pointing out the above decisions, the learned counsel for the respondent submitted that the respondent has been claiming to extend the benefits of G.O. Ms. No.210 dated 14.08.2009 by filing writ petitions before this Court. In the writ petitions, reliance was placed on the various orders passed by this Court in favour of similarly placed persons. While so, denying the same benefit to the respondent herein would lead to discrimination. The learned Judge, taking note of the above and the earlier orders passed by this Court, in order to ensure complete justice, has rightly allowed the writ petition filed by the respondent. The learned counsel, therefore, prayed for dismissing the writ appeal and to confirm the order passed by the learned Judge.



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8. Heard the learned Government Advocate appearing for the appellants and the learned counsel for the respondent and also perused the materials available on record.

9. It is not in dispute that the respondent joined service as a Secondary Grade Teacher on 28.10.1971 and was subsequently promoted as Tamil Pandit on 06.01.1988. It is also not in dispute that he got further promotion to the post of BT Headmaster on 28.07.1993 and retired from service on 31.01.2007. According to the respondent, as per G.O. Ms. No. 210 dated 14.08.2009, he is eligible for selection grade and special grade in the BT Headmaster post by including his previous service as a Secondary Grade Teacher and Tamil Pandit Grade I. However, the first appellant rejected his claim on the ground that the respondent did not satisfy the condition of being a Middle School Headmaster on the cut-off date of 01.06.1988, as stipulated in the said G.O., and hence was ineligible for the benefit. At this juncture, it would be useful to refer to the relevant portion of G.O.Ms.No.210, dated 14.08.2009:-

"2. மேலே பத்தி 1-ல் காணும் தொடக்கக் கல்வி இயக்குநரின் கருத்துருவை அரசு நன்கு பரிசீலனை செய்து, தமிழ்நாடு நிர்வாகத் தீர்ப்பாயத்தில் வழக்கு தொடுத்து தீர்ப்பாணை பெற்றுள்ள 65 நடுநிலைப் பள்ளி பட்டதாரி தலைமை ஆசிரியர்கள் பொருட்டு அவர்கள் 01.06.1988-க்கு முந்தைய இடைநிலை ஆசிரியர் மற்றும் துவக்கப் பள்ளி தலைமை ஆசிரியர்



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பணிக்காலத்தை (31.05.1988 முடிய) கணக்கிட்டு 01.06.1988 அன்று 5 ஆம் ஊதியக்குழு பரிந்துரையின் அடிப்படையில் 01.06.1988 முதல் நடுநிலைப் பள்ளி பட்டதாரி தலைமையாசிரியருக்கான சிறப்பு நிலையில் ரூ.2200-75-2800-100-4000 என்ற ஊதிய விகிதத்தில் ஊதிய நிர்ணயம் செய்ய தொடக்கக் கல்வி இயக்குநருக்கு அனுமதி வழங்கி அரசு ஆணையிடுகிறது."

10. A perusal of the aforementioned Government Order makes it clear that the key point is the specified cut-off date of 01.06.1988, as per G.O. Ms. No. 210 dated 14.08.2009. This date is crucial to be noted to examine as to whether the benefits conferred therein can automatically be extended in favour of others, like the respondent. In this case, the respondent was promoted to the post BT Headmaster only on 28.07.1993, which falls after the cut-off date. Therefore, as per the guidelines specified in the G.O., the respondent is not eligible for the benefit. The Government Order was issued with specific conditions and criteria, which cannot be arbitrarily extended to employees who fail to meet the prescribed requirements. Such an approach would exceed the scope and intent of the Government, with which the order was passed. Even otherwise, G.O. Ms. No.210 itself was passed to comply with the order passed by this Court in favour of specific persons, thereby restricting its application in favour of others.

11. It is pertinent to mention that if an employee has been in the same



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job for more than 10 years without promotion, he will receive a selection grade. If no promotion is granted after 20 years in the same role, he becomes eligible for a special grade. These grades are meant to compensate the lack of promotional avenue for a long period of service rendered by an employee. However, in this case, the respondent after getting selection grade on 28.10.1981, subsequently promoted as Tamil Pandit on 07.01.1988 and further promoted as B.T. Middle School Headmaster on 28.07.1993, still seeks to get the benefits under G.O. Ms. No.210 dated 14.08.2009. Therefore, the claim of the respondent for counting his past service in the lower categories of Secondary Grade Teacher and Tamil Pandit Grade I for the purpose of granting selection/special grade in the promoted post of BT Headmaster is fundamentally flawed and unsustainable.

12. It is also to be noted that for counting the past service in lower category posts for selection grade/special grade to certain persons who were working as Middle School Headmasters, not only this G.O. Ms. No. 210 dated 14.08.2009 was issued, but several Orders have been issued. To grant such benefits, several writ petitions and writ appeals have been filed. Subsequently, Review Application No.227 of 2015 and connected matters were referred to the Full Bench. The Full Bench of this Court held that the issue cannot be agitated again and determined that the benefit shall be notionally calculated,



with monetary benefits payable on and from 01.03.2017. In the Full Bench Judgment, one of the learned Judges has given the consenting order vide a separate order, wherein, it was observed as follows:

*“4. The Government at last woken up to the fact that the entire issue needs to be addressed by this Court afresh, as thousands of Writ Petitions were allowed without proper examination and adjudication. Orders passed by this Court over the years, in favour of the employees by following the earlier order one after the other may be correct or incorrect and this Court may still hold in favour of the employees after proper judicial scrutiny and critical examination of the issues on hand. But the fact of the matter is that there was no proper adjudication of the claim by the Teachers vis-a-vis the Government Order in question and that precisely is the issue. However, it has become too late in the day for fresh adjudication and start the litigation process from the scratch all over again which means that thousands of beneficiaries of the orders passed by this Court would be forced to confront an uncertain future, which situation would be unwholesome. particularly the beneficiaries, most of them retired, many of them no more, they and the families have been living in a small comfort of recurring monthly pensionary hope. After all in the old age, hope is the only will for their remaining survival.*

*5. In these circumstances, the Full Bench in quest for equitable, just and fair solution, has to find the terms with pragmatism acceptable to both parties and at the same time, not upsetting the stated position of the parties. Such an arduous task was meant to be tight rope walking, not falling on either side and tilting the scales of justice, one way or the other. The Full Bench was bestowed with the task of remedying the extraordinary situation brought upon the institution, on its own, equally contributed by the employees and the Government and such extraordinary situation called for extraordinary remedy. The Full Bench with the best of its intention attempted only that and by an order the age old controversy which has been engaging the attention of this Court at the instance of both the employees and the Government is effectively put an end to.*

*6. Courts being overburdened at all times, develop tendencies to dispose of cases as early as possible with good intention, having public interest in mind, but in its anxiety so, the Courts like in the present batches, fall in error in disposing of matters without complete adjudication. A small error of judgment followed routinely by others has snow balled into a behemoth today threatening the very efficacy of the justice delivery system.*

*7. The extraordinary situation as we have seen now in the batch of cases, should be an eye opener for the institution in future, as our perennial urge for quick disposal, howsoever, well meaning, has its flip side too.”*



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13. From the above, it is evident that although the Full Bench declined to interfere with the appeals filed by the Government, it observed that some of the claims have been wrongly made. The Full Bench further gave an ultimatum for filing of any further writ petitions relating to the subject matter of controversy until 09.12.2016 and thereafter, no writ petition shall be filed. In this case, the instant writ petition has been filed only in the year 2017. Thus, the writ petition has been filed after 09.12.2016, i.e., beyond the date fixed by the Full Bench of this Court for entertaining any further litigation in this regard.

14. The learned counsel for the respondent has cited numerous judgments to contend that judicial decorum and discipline demand that an order passed by a Bench has to be followed by Coordinate Benches. There is no quarrel with respect to this proposition of law. Even if this principle is applied to this case, the Full Bench of this Court in the Judgment dated 09.12.2016 in Review Application No. 227 of 2015 etc., mentioned supra, issued a direction to refrain from entertaining any further writ petition(s) after 09.12.2016. Therefore, on this score alone, the instant writ petition filed by the respondent cannot be entertained as it is contrary to the specific direction issued by the Full Bench of this Court. That apart, a coordinate bench of this



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Court took a different view in the order dated 10.12.2015 in WP (MD) No. 7061 of 2011 etc., batch. In that decision, the Division Bench refused to extend the benefit of G.O. Ms. No.216 issued by the Government by specifically observing that as on the date when the Government Order was issued, the individual teachers were not holding the post of Secondary Grade Teachers at all. The Division Bench also examined the delay and laches on the part of the individuals in approaching the Court after 19 to 23 years of passing of the Government Order. Taking note of all the above, the Division Bench refused to extend the benefits of G.O. Ms. No.210 or G.O. Ms. No.216 in favour of the persons similarly placed like the respondent.

15. Further, a Division Bench of the Madurai Bench of this Court also passed an order dated 10.06.2016 in W.A (MD) Nos. 582 of 2016 etc., in which it was observed that the directions issued by this Court to refix the scales of pay of teachers in Selection Grade/Special Grade remain pending for four years after final adjudication. The orders were passed on the concession that the writ petitions are similar in character without examining the individual merit of the case. It is as against these orders passed by the Division Benches of this Court, Review Application Nos. 227 of 2015 were filed before the larger bench of this Court, as mentioned above.



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16. In the present case, the learned Judge, without independently examining the claim of the respondent, has followed the earlier orders passed by this Court and allowed the writ petition of the respondent. It is a well settled principle that each case must be examined based on its own merits, facts, and service particulars of the employees concerned and the benefit conferred on a person cannot be mechanically extended in favour of the other. It is no doubt true that several orders have been passed by this Court in the writ petition(s) as well as Writ Appeal(s). There are several cases filed by persons similarly placed like the respondent herein. However, there must be an end to entertain such litigation so as to prevent docket explosion. This is more so that the respondent herein seeks to re-fix his pensionary benefits with effect from 28.7.1993 by submitting a representation for the first time on 11.11.2011. Therefore, we hold that the claim of the respondent is a stale and dead claim which cannot be entertained. To be precise, the respondent submitted such a representation four years after his retirement on 31.01.2007. Further, at the time when G.O. Ms. No.210 dated 14.08.2009 was issued by the Government, the respondent was not at all in service and he retired on 31.01.2007. Thus, we are of the firm view that the respondent is not entitled to the benefits conferred under G.O. Ms. No.210 dated 14.08.2009. That apart, the respondent filed the instant writ petition only on 29.06.2017, i.e., after the order passed by the Full Bench in Review Application No.227 of 2015 and connected matters on



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09.12.2016. This would clearly show that the contention of the respondent lacks credibility and should be outrightly rejected. Therefore also, we are not inclined to consider the claim of the respondent made in the writ petition which was filed much after the date fixed by the Full Bench of this Court i.e., on 09.12.2016.

17. In the light of the above findings, the order dated 19.06.2023 passed by the learned Judge in W.P. No. 20836 of 2017 is set aside. The Writ Appeal filed by the appellants is accordingly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]  
10/05/2024

r n s/rsh

Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

**R. MAHADEVAN, J.**  
**and**  
**MOHAMMED SHAFFIQ, J.**

r n s/rsh

To

1.The Secretary to Government,  
Government of Tamil Nadu,

<https://www.mhc.tn.gov.in/judis>



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School Education Department,  
Secretariat, Fort St.George,  
Chennai - 600 009.

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

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

4.The Assistant Elementary Educational Officer,  
Kattankolathur, Kancheepuram District.

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