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CONT.P.(MD)NO.2893 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

CONT.P.(MD)No.2893 of 2024

in

W.A.(MD)No.1679 of 2011

P.Ramasubramanian

... Petitioner / Appellant

Vs.

D.Mary Dayana Jeyanthi,
District Educational Officer,
(Elementary), Kovilpatti,
Thoothukudi.

... Contemnor / 3rd Respondent

Prayer: Contempt petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the contemnor / 3rd respondent herein for her deliberate and willful disobedience of the order of this Court dated 09.01.2012 in W.A.(MD)No.1679 of 2011 under Article 215 of the Constitution of India r/w. Section 11 of the Contempt of Courts Act 1971.

For Petitioner : Mr.K.Ragatheesh Kumar,
for M/s.Isaac Chambers.



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For Respondent : Mr.R.Baskaran, Additional Advocate General,
assisted by Mr.T.Amjath Khan,
Government Advocate.

* * *

ORDER

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

The petitioner herein filed W.P.(MD)No.4629 of 2010 seeking extension of the benefit granted to 61 Teachers under G.O.(Ms). No.234 School Education (G) Department dated 10.09.2009 to him also. The writ petition was taken up along with a batch of writ petitions and dismissed vide order dated 17.09.2010. Aggrieved by the same, the petitioner filed W.A.(MD) No.1679 of 2011 before the Hon'ble Division Bench. The writ appeal was taken up along with a number of similar writ appeals and allowed on 09.01.2012. Contending that the direction given by the Hon'ble Division Bench was not complied with, the petitioner filed Cont.P.(MD)No.947 of 2012. The said contempt petition was again taken up along with other contempt petitions. Since the authorities undertook to implement the order, the contempt petitions were closed on 23.08.2013. The petitioner states that the benefit conferred under



G.O.(Ms)No.234 School Education (G) Department dated 10.09.2009

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was extended to the petitioner and his pensionary benefits were also duly revised and paid with arrears. While so, vide proceedings dated 05.06.2024, the District Educational Officer (Elementary Education), Kovilpatti once again revised the pension payable to the petitioner and the position that originally obtained was restored. This according to the petitioner, constitutes a clear contempt. In this background, the present contempt petition came to be filed.

2.The learned counsel for the petitioner states that the Education Department should be mandated to recall the proceedings dated 05.06.2024 and restore the position that earlier prevailed. The impugned order dated 05.06.2024 has been passed in view of G.O. (Ms)No.179 School Education Department dated 06.09.2013. The stand of the petitioner is that the rights of the petitioner cannot be prejudicially altered by subsequent developments. Reliance is placed on the decision of the Hon'ble Supreme Court reported in **(2014) 5 SCC 551 (Bhushan Power and Steel limited and Others V. Rajesh Verma and Others)**.



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3. Per contra, the respondent has filed counter affidavit and the learned Additional Advocate General submitted that the revision of the petitioner's pension was rightly made and that no case for contempt has been made out. The learned Additional Advocate General relied on the order dated **14.06.2024** in ***W.A.Nos.1216 and 1222 of 2021(N.Asaithambi Vs. The State of Tamil Nadu)*** passed by the Hon'ble Division Bench wherein the factual matrix was absolutely similar. He pointed out that this order was questioned before the Hon'ble Supreme Court which declined to interfere. He called upon this Court to dismiss the contempt petition.

4. We carefully considered the rival contentions and went through the materials on record.

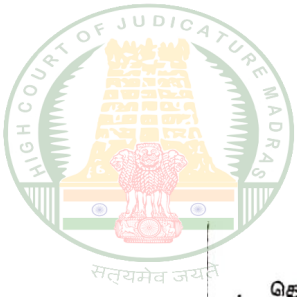
5. The basic facts are not in dispute. The petitioner herein joined as Secondary Grade Teacher in the Education Department on 12.10.1987. He was conferred with Selection Grade on 12.10.1997. He was promoted to the post of Elementary School Headmaster on 23.07.1999. He was promoted as Middle School Headmaster on 29.10.2004. He was reverted to the post of Elementary School



Headmaster on 30.06.2006. Once again, he became Middle School

Headmaster on 23.07.2007.

6.The case of the petitioner is that the benefit conferred under G.O.(Ms)No.234 School Education (G) Department dated 10.09.2009 should also be extended to him. In fact, the Hon'ble Division Bench while allowing the petitioner's writ appeal on 09.01.2012, also observed that the benefit conferred under G.O.(Ms)No.234 School Education (G) Department dated 10.09.2009 should be extended to him. G.O.(Ms)No.234 School Education (G) Department dated 10.09.2009 reads as follows:-



சுருக்கம்

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தொடக்கக்கல்வி - ஊராட்சி ஒன்றிய பள்ளிகள் - தமிழ்நாடு நிர்வாக தீர்ப்பாயம் / உயர்நீதிமன்ற தீர்ப்பாணைக்குட்பட்டு இடைநிலை ஆசிரியர்களாகவும் மற்றும் தொடக்கப்பள்ளி தலைமையாசிரியர்களாகவும் பணியாற்றிய காலத்தை கணக்கிட்டு 01.06.1988க்குப் பின்பு தொடக்கப்பள்ளி தலைமை ஆசிரியர்களாக பதவி உயர்வு பெற்ற நான் முதல் தொடக்கப் பள்ளி தலைமை ஆசிரியர் பணியில் தோஷநிலை சிறப்புநிலை அனுமதித்து ஆணை வெளியிடப்படுகிறது.

பள்ளிக் கல்வித்(ஜி)துறை

அரசாணை (நிலை) எண் 234

நாள் : 10.09.2009

படிக்கப்பட்டவை

1. தமிழ்நாடு நிர்வாகத் தீர்ப்பாய வழக்கு ஒ.எ.எண்.கள். 68/97, 177/97 மற்றும் 5548/1998ல் தீர்ப்பாணைய நாள் 12.07.2002.
2. சென்னை உயர்நீதிமன்ற வழக்கு டி.பிள்யூ. பி. எண்.கள்.29644/03 மற்றும் 29645/03-ல் தீர்ப்பாணைய நாள் 21.02.2008.
3. தொடக்கக் கல்வி இயக்குநர் கமிட்டி த.க.எண்.33609/எஸ்3/2008 நாள் 18.11.2008, 01.12.2008, 01.06.2009 மற்றும் 15.06.2009.

ஆணை.

1. கடலூர் மாவட்டம், குறிஞ்சிப்பாடி ஒன்றியத்தில் ஊராட்சி ஒன்றிய தொடக்கப்பள்ளித் தலைமை ஆசிரியர்களாகப் பணிபுரிந்து ஓய்வு பெற்ற சி.ரு.ஏ.பி.சொக்கலிங்கம், திரு.டி.செந்தாமரைக்கண்ணன் மற்றும் 61 நாட்கள் 01.06.1988க்கு முன் பணியாற்றிய காலத்தை கணக்கில் கொண்டு, தொடக்கப்பள்ளித் தலைமையாசிரியர் பதவியில் சிறப்பு நிலை கோரி தமிழ்நாடு நிர்வாகத் தீர்ப்பாயத்தில் வழக்கு தொடுத்திருந்தனர். அவ்வழக்கில் தமிழ்நாடு நிர்வாகத் தீர்ப்பாயம் அவர்களின் மனுவை ஏற்று ஆணை பிறப்பித்துள்ளது. மேற்காண் தமிழ்நாடு நிர்வாகத் தீர்ப்பாய தீர்ப்பாணையை எதிர்த்து சென்னை உயர்நீதிமன்றத்தில் கடலூர் மாவட்டத் தொடக்கக் கல்வி அலுவலரால் மேல்முறையீடு செய்யப்பட்ட வழக்கின் தேதி 21.02.2008 அன்று வழங்கப்பட்ட சென்னை உயர்நீதிமன்றத் தீர்ப்பாணையில், தமிழ்நாடு நிர்வாகத் தீர்ப்பாயத்தில் வழங்கப்பட்ட உத்தரவு இறுதியானது எனத் தெரிவித்து நள்ளாய்வு செய்துள்ளது, எனவே 01.06.1988க்கு பின்பு தொடக்கப் பள்ளித் தலைமையாசிரியர்களாக பதவி உயர்வு பெற்றவர்களுக்கு 01.06.1988க்கு முன்பு (31.05.1988 முடிய) இடைநிலை ஆசிரியர்களாகவும் மற்றும் தொடக்கப் பள்ளித் தலைமை ஆசிரியர்களாகவும் பணியாற்றிய காலத்தை கணக்கிட்டு, 01.06.1988க்கு பின்பு தொடக்கப்பள்ளித் தலைமை ஆசிரியர்களாக பதவி உயர்வு பெற்ற நான் முதல் தொடக்கப் பள்ளித் தலைமை ஆசிரியர் பணியில் தோஷநிலை / சிறப்புநிலை அனுமதித்து ஊரிய நிர்ணயம் செய்ய அரசாணை பிறப்பிக்குமாறு தொடக்கக் கல்வி இயக்குநர் அரசை கோரியுள்ளார்.

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2. மேலே பத்தி 1ல் காணும் தொடக்கக் கல்வி இயக்குநரின் கருத்துருவை அரசு நன்கு பரிசீலனை செய்து மேலே ஒன்றில் படிக்கப்பட்ட தமிழ்நாடு நிர்வாக தீர்ப்பாயத்தின் ஆணைப்படி தீர்ப்பு பெற்ற மொத்தம் 63 நபர்களுக்கு மட்டும் அவர்கள் 01.06.88க்கு முன் பணியாற்றிய இடைநிலை ஆசிரியர் மற்றும் தொடக்கப்பள்ளி தலைமையாசிரியர் பணிக்காலத்தை கணக்கில் கொண்டு தொடக்கப்பள்ளி தலைமையாசிரியர் பதவியில் தோஷ நிலை/சிறப்பு நிலை வழங்க தொடக்கக் கல்வி இயக்குநருக்கு அனுமதி வழங்க அரசு ஆணையிடுகிறது.

3. இவ்வாணை நிதித்துறையின் அ.சா.எண்.240/JS/APA/09 நாள் 09.09.2009-ன் இசைவு பெற்று வெளியிடப்படுகிறது.

(ஆளுநரின் ஆணை-2419)

ம. குற்றாலிங்கம்,
அரசு முதன்மைச் செயலாளர்.

பெறுநர்

தொடக்கக் கல்வி இயக்குநர், சென்னை - 6
அனைத்து மாவட்ட கல்வி அலுவலர்கள்
(தொடக்கக் கல்வி இயக்குநர் வழியாக)
மாநிலக் கணக்காய்வு, சென்னை -18

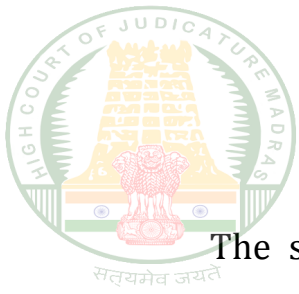
கருவுல கணக்கு ஆணையர், சென்னை-15
அனைத்து மாவட்ட கருவுல அலுவலர்கள்
(தொடக்கக் கல்வி இயக்குநர் வழியாக)

நகல் :

நிதி (கல்வி)த்துறை, சென்னை-9
பணியாளர் மற்றும் நிர்வாகச் சீர்திருத்தத் துறை, சென்னை -- 9
பள்ளிக் கல்வி(வ.செ.) துறை, சென்னை -9.
இருப்பு, கோப்பு, உதிரி.

// அனுப்பப்படுகிறது //

பிரிவு அலுவலர்



The said Government Order implements the order passed by the Tribunal on 12.07.2002 in O.A.Nos.68 of 1997, 177 of 1997 and 5548 of 1998 etc. which was confirmed by the Madras High Court in W.P.Nos.29644 of 2003 and 29645 of 2003 etc. vide order dated 21.02.2008. Paragraph No.2 of G.O (Ms) NO.234 dated 10.09.2009 states that the service rendered in the post of Secondary Grade Teacher as well as the Elementary School Headmaster prior to 01.06.1988 should be taken into account for the purpose of conferring Selection Grade / Special Grade in the post of Elementary School Headmaster.

7.As already noted, the Hon'ble Division Bench vide order dated 09.01.2012 had only directed extending the benefit conferred under G.O (Ms)No.234 dated 10.09.2009 to the appellant also. It can only mean that the service rendered by the appellant as Secondary Grade Teacher prior to 01.06.1988 should be taken into account for the purpose of conferring Selection Grade in the post of Elementary School Headmaster. Only till the said date, the scales of pay of these posts were identical. The petitioner was conferred with selection grade in the post of Secondary Grade Teacher on 12.10.1997 as he



had completed ten years by then. The petitioner was promoted as Elementary School Headmaster only on 23.07.1999. He became Middle School Headmaster on 29.12.2004. He was reverted as Elementary School Headmaster on 30.06.2006 and he again became Middle School Headmaster on 23.07.2007. Thus, a simple arithmetic would show that the petitioner had served as Elementary School Headmaster only for 7 years 1 month and 18 days. This includes the period of 7 months and 20 days rendered by the petitioner as Secondary Grade Teacher prior to 01.06.1988. Unless one has put in ten years, selection grade cannot be conferred. The petitioner did not render ten years of service as Elementary School Headmaster. According to the respondents herein, the order of the Hon'ble Division Bench was misconstrued and mistake was committed earlier and that it has been rectified now. The authority can be said to have committed contempt only if there has been a willful breach of an order passed by this Court. In the case on hand, the stand of the authority is that they had only set right a mistake earlier committed. If according to the petitioner, this was incorrect, the petitioner probably can mount an independent challenge. The action of the authority cannot be characterized as contempt.



8.The Hon'ble Division Bench vide order dated 14.06.2024 in

WA No.1216 and 1222 of 2021 held as follows :

“14. The issue before this court in these appeals involves the entitlement of counting of their service rendered before 01.06.1988 to grant selection and special grade benefits to the appellants herein who worked as primary school headmasters, and the validity of the cut-off date of 31.12.1995 fixed by the Government for granting these benefits. Though appellants argue that they are entitled to these benefits based on the Government Orders and on the principle of equality, the respondents strongly contend that the cut-off date fixed by the Government is valid and reasonable and extending the benefits beyond the cut-off date would lead to a substantial financial burden on the State, therefore as per the cut-off date (i.e 31.12.1995) fixed by the Government, the appellants herein, who were promoted after the said cutoff date, are not entitled to the said benefits.

15. Admittedly, in the earlier order in G.O.Ms.No.300, Education Department, dated 07.04.1994 the Government has not specified the period to be taken into account for the purpose of awarding Selection Grade/Special Grade, but it was clearly mentiond that awarding of Selection Grade and Special Grade for Primary School Headmaster should be granted only based on the service rendered in the post of Primary School Headmaster alone. Hence to avoid ambiguity, the Government has issued G.O.Ms.No.179, School Education (G2) Department, dated 06.09.2013 specifically mentioning the period to be taken for consideration for awarding Selection Grade/Special grade as



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01.06.1988 to 31.12.1995. The relevant portion of the Government Order is extracted below;

“5.The Government after careful consideration of the proposal sent by the Director of Elementary Education, has decided to accept the same as on introduction of Tamil Nadu 5th Pay Commission on 01.06.1988 the scale of pay of the Secondary Grade Teacher is fixed as Rs.1200-2040 and Rs. 1400-2600 fixed for Primary School Headmaster separately, the Government cancels the Government Order 3rd referred above and issue order as follows:-

i) This Government Order is applicable to those 1528 persons as founded in the Annexure who filed writ petitions and obtained orders from the court.

ii) The Primary School Headmasters who were promoted for a period between 01.06.1988 and 31.12.1995 in Government Primary School / Panchayat Union Primary School and obtained orders from the court as per the Annexure and retired from service are alone are entitled to count the service rendered as Secondary Grade Teacher and Primary School Headmaster before 01.06.1988 for the purpose of granting Selection and Special Grade scale of pay in the post of Primary School Headmaster and accordingly permission is granted to the Director of Elementary Education for sanction. iii) This order is applicable to those Secondary Grade Teachers who were promoted as Primary School Headmasters for a period between 01.06.1988 and 31.12.1995. iv) The Director of Elementary Education is instructed to verify that above said persons are not granted Selection and Special Grade scale of pay by counting the service rendered as Secondary Grade Teacher, in the post of Primary School Headmaster, in Government Primary School and Panchyat Union Primary School and thereafter grant the benefit of Selection and Special Grade scale of pay.”

16. It is also useful to refer the decision of the Hon'ble Supreme Court in the case of GOVERNMENT OF ANDHRA PRADESH v. N.SUBBARAYUDU AND OTHERS [(2008) 14 SCC 702], wherein, the Hon'ble Supreme Court by relying on



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the Judgment of the Constitution Bench in D.S.NAKARA Vs.

UNION OF INDIA [(1983) 1 SCC 305, held as follows:

“5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary.

In support of the contention that the appellants are not entitle for the relief as sought for by them, the 4 th respondent/the District Elementary Educational Officer has filed counter affidavit. Paragraph 20 & 21 of the counter affidavit is extracted below;

20.It is humbly submitted that this Hon'ble Court has allowed the writ appeals filed by the persons who have retired as Headmasters after 01.01.1996 who were also given the said benefit of Selection Grade and Special Grade as per the V Pay Commission which amounts to grant of double monetary benefit, one under the said G.O. and the other under the revised pay scale of VI Pay Commission. Consequently, the Government will incur a huge financial loss which will run to several crores of rupees if the relief is granted as prayed for by the petitioners. 21. It is in the aforesaid circumstances that the Government in G.O. (Ms) No. 179, School Education Department, dated 06.09.2013 ordered that the 1528 retired Primary School Headmasters who were promoted as Headmasters of Primary Schools between 01.06.1988 to 31.12.1995 alone will be entitled to selection Grade and Special Grade provided the aforesaid persons have not been granted Selection Grade/Special Grade earlier in the cadre of Primary School Headmaster by counting the service rendered in the post of Secondary Grade Teacher. It is submitted that the cutoff date



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fixed is valid and reasonable having regard to the huge financial burden to which the State would be subjected to in case the cutoff date is extended beyond 31.12.1995”.

17. Admittedly, the appellants herein were promoted as Headmasters after 31.12.1995. The learned Single Judge, while issuing directions to consider the case of the appellants for granting benefits, ultimately upheld the validity and applicability of Government Order in G.O.Ms.No.179 dated 06.09.2013. The said Government Order clearly specifies the eligibility criteria for granting the benefit of selection grade and special grade in the post of Primary School Headmaster, limiting it to those who were promoted between 01.06.1988 to 31.12.1995. As per the provisions of G.O.Ms.No. 179, School Education Department, dated 06.09.2013, the appellants, who were promoted as Primary School Headmasters after 31.12.1995, do not meet the eligibility criteria for the benefits claimed by them. Further, no subsequent Government orders are placed before this Court to claim the benefit to count the period of service for extending benefits of Selection Grade and Special Grade of pay to the appellants as per the aforesaid G.O. Ms. No. 179.

18. The Government has the authority to fix a cut-off date for granting selection and special grade benefits, considering the financial strain it would face otherwise. The principle of equality does not require the benefits to be extended beyond the cut-off date, especially when it would impose a significant burden on the State. As per the clear and unambiguous provisions of the said Government Order, the



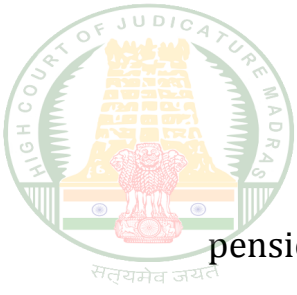
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appellants, who were promoted as Primary School Headmasters after 31.12.1995 and have not worked as Primary School Headmasters for the period from 01.06.1988 to 31.12.1995, are not entitled to the benefits of selection grade and special grade in the post of Primary School Headmaster. On a careful consideration of the arguments and the relevant legal provisions, this Court finds that the rejection order passed by the respondent department is perfectly valid and finds no force on the contention of the learned counsel for the appellants for claiming benefits as per G.O.Ms.No. 179, School Education Department, dated 06.09.2013.”

9.The appellants in the above writ appeal and the petitioner herein are identically placed. According to the respondents, the Hon'ble Supreme Court declined to interfere with the aforesaid order of the Hon'ble Division Bench.

10.Even though we are unable to hold that the respondents have committed contempt, relief has to be given to the petitioner in respect of recovery. The petitioner is now a retired employee. He had not committed any misrepresentation. Therefore, recovery of the benefit already given cannot be made. However, we decline to interfere with the order re-fixing the petitioner's scale of pay and



pension. If the petitioner is aggrieved by the same, remedy is to file an independent writ petition. No further relief can be granted in contempt proceedings beyond what has been granted by us.

11.This contempt petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)
24th April 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/SKM

To:

The District Educational Officer,
(Elementary), Kovilpatti,
Thoothukudi.



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CONT.P.(MD)NO.2893 OF 2024

G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

PMU/SKM

CONT.P.(MD)No.2893 of 2024 in
W.A.(MD)No.1679 of 2011

24.04.2025