

W.A.(MD)Nos.2516 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
20.02.2025	25.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.2516 of 2024
and
C.M.P.(MD).No.17680 of 2024

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Kokkirakulam, Tirunelveli,
Tirunelveli District – 627 009.
- 4.The District Educational Officer,
Tirunelveli,
Tirunelveli District – 627 009.
- 5.The Headmaster,
Government Higher Secondary School,
Thalapathisamuthiram,
Tirunelveli District – 627 101.

... Appellants

-Vs-



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2.The Accountant General,
Office of the Accountant General (A and E),
361, Anna Salai, Teynampet,
Chennai – 600 018.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.17324 of 2024, dated 29.07.2024.

For Appellants	:Mr.J.Ashok Additional Government Pleader
For R1	:Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers
For R2	:M/s.S.Mahalakshmi

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed by the respondents in the writ petition challenging the order dated 29.07.2024 passed in W.P.(MD)No.17324 of 2024.

2. The Writ Petition was filed for issuance of a Writ of Mandamus, directing the respondents to sanction and disburse forthwith the arrears of salary with effect from 31.07.2021 in the revised scale of pay in terms of



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G.O.Ms.No.216 dated 22.03.1993 as directed by the Hon'ble Full Bench of the High Court in Rev.Appln.No.313 of 2015, dated 09.12.2016, by considering the petitioner's representation, dated 30.03.2024.

3. The brief facts are that the petitioner possessed Teachers' Certificate in Physical Education (Higher Grade), and was appointed as Physical Education Teacher on 21.08.1985 and continued the service as Physical Education Teacher and voluntarily retired from service on 31.07.2021, thereby served for 35 years, 11 months and 11 days. The petitioner was awarded Selection Grade on 21.08.1995 and was awarded Special Grade on 21.08.2005. The contention of the petitioner is that prior to 1988 the scale of pay of Physical Education Teacher was identical with scale of pay of Primary School Headmaster and Secondary Grade Teacher i.e.Rs.610-1075. Based on the recommendations of the 5th Tamil Nadu Pay Commission, while dispensing with the Selection Grade and Special Grade, the Government granted separate scale of pay of Rs.1400-2600 for Head Masters of Primary Schools and the scale of pay of Rs.1200-2040 for Secondary Grade Teachers and Physical Education Teachers. This **disparity** has caused prejudice to the Secondary Grade Teachers / Physical Educational Teachers. Thereafter, the government



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reintroduce Selection Grade and Special Grade with improved scale of pay in G.O.Ms.No.304 Finance (Pay Commission) Department, dated 28.03.1990, by granting Selection Grade and Special Grade to all the categories of posts in the scale of pay Rs.750-945 and above and up to the scale of pay 2500-4200. Further, in order to remove the ambiguity in awarding Selection Grade and Special Grade to the post where no promotion opportunity was available, the Government issued G.O.Ms.No.216 dated 23.09.1993, by introducing the uniform scale of pay for all the Secondary Grade Teachers and as per Annexure-1 of G.O.Ms.304, the ordinary grade, selection grade and special grade scales of pay fixed at Rs.1200-2040, 1400-2600 and 1640-2900 respectively. Thereafter, one N.Govindarajan, had filed petition in O.A.No. 8276 of 1997 before the Tamil Nadu Administrative Tribunal to re-fix scale of pay at Rs.2000-60-2300-75-3200, which was prescribed for the Primary School Headmaster (Special Grade) in terms of G.O.Ms.No.216 dated 22.03.1993. The said petition was allowed. The Government after lapse of 9 years had filed W.P.No.8747 of 2009, challenging the Tribunal order and the same was dismissed on 14.07.2019. The Government filed S.L.P.(Civil) C.C.No.2746 of 2010 which was dismissed on 23.04.2010.



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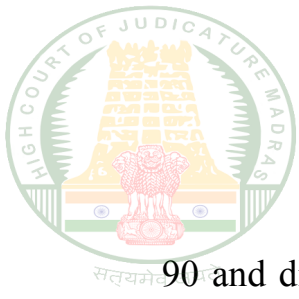
4. Thereafter, the Government passed G.O.Ms.No.258 dated 06.09.2010 granting the relief as per G.O.Ms.No.216. The petitioner previously filed W.P.No.17369 of 2013, and the same was dismissed on 18.11.2013. Aggrieved over the said order petitioner filed W.A.No.618 of 2014 and the same allowed and extending the benefits to the petitioner under G.O.Ms.No. 216. Against which the Government preferred Rev.Appln.No.313 of 2015, against the order passed in W.A.618 of 2014. The Hon'ble Full Bench has directed the respondents to grant the benefit with effect from 01.03.2017 but for prior period the employees are not entitled to arrears. The Government has revised the pay as per the direction of Full Bench with effect from 01.03.2017 and issued G.O.Ms.90 dated 09.05.2018 but the same benefit was extended only to retire employees to pay pension and family pension. But no such payment was granted to candidates in service. In the meanwhile, the petitioner voluntary retired from service on 31.07.2021, but the effect of G.O.Ms.No.216 was not granted to the petitioner. Hence, the petitioner submitted representations dated 22.06.2022 requesting to revise the pay with effect from 01.03.2017 and disburse the retirement and other consequential benefits including the earned leave surrender and leave on private affairs as per the revised pay. The respondents have revised the pay from the date of retirement



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vide order dated 20.12.2022 thereby the petitioner's salary was revised from Rs.75,900/- to Rs.90,000/-. But the petitioner is entitled to revision from 01.03.2017. Based on the revision the petitioner is entitled to earn leave surrender and leave on private affairs. Since the salary is revised as Rs.90,000/- the petitioner is entitled to Rs.7,88,433/- on 218 days earned leave surrender but the respondents had paid only Rs.6,68,555/-. Likewise, the petitioner is entitled to Rs.3,25,500/- towards 90 days leave on private affairs but the respondents had paid only 2,76,009/-. But the respondents rejected through the order dated 09.10.2023, hence the writ petition.

5. The said writ petition was allowed directing the respondents to consider in the light of observations made within a period of eight weeks. The Writ Court has observed the writ petitioner was in service when the Full Bench order was passed, hence based on the G.O.Ms.No.216, the respondents ought to have granted the benefits to the petitioner. Hence, directed to consider the petitioner's claim by invoking on G.O.Ms.No.90, School Education Department, dated 09.05.2018 and consequently pay the revised pensionary benefits. The appellants are aggrieved since the Writ Court had observed that the writ petitioner is entitled to the benefits of G.O.Ms.No.216 and G.O.Ms.No.



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90 and directed to pay the benefits for service period also, but the Full Bench had directed to grant only pension and family pension alone by fixing notional salary. Hence the present writ appeal.

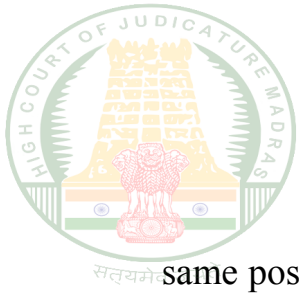
6. The primary contention of the appellants is that the G.O.Ms.No. 216, was not at all applicable to Special Teachers and Physical Education Teachers. But the same was made applicable by the Hon'ble Full Bench order for the first time. The writ petitioner never served as Headmaster during his entire career and the Physical Education Teacher is not covered under G.O.Ms.No.216. Further the Full Bench had directed to fix the benefits and grant pension benefits alone by fixing a cutoff date as 01.03.2017. Thereafter, the Government has passed G.O.Ms.No.90, granting the said benefit to the retired employees only by revising their pension and family pension. The writ petitioner was in service hence, the said benefits was not extended during the service period, but had extended after his retirement on 31.07.2021. But the petitioner is claiming to grant the benefits for the period from 01.03.2017 to 31.07.2021 i.e. during his in-service period. Therefore, the Writ Court erred in granting relief, hence the present writ appeal is filed by the State.



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7. This Court considered the rival submissions, perused the records and passing the following order. It is seen the G.O.Ms.No.216 has chequered history, hence the issue raised by the writ petitioner ought to be considered based on the several facts, judgments and G.Os. The **selection grade scale** of pay is granted to government employees if the person is stagnating in the same post without promotion for **10 years**. The **special grade scale of pay** is granted to the government employees if the person is stagnating in the same post without promotion for **20 years**. But through the G.O.Ms.No. 666 Finance (Pay Commission) dated 27.06.1989 the scheme of selection / special grade was cancelled. Since the employees demanded the scheme, again the scheme of granting selection / special grade was reintroduced vide G.O.Ms.No.304 Finance (Pay Commission) Department dated 28.03.1990. In partial modification in paragraph 9 of the G.O. 666, the G.O. 304 was issued granting the selection / special grade. The aforesaid scheme of selection grade and special grade was applicable to all departments and also to Education Department. Due to peculiar situation prevailing in Education Department the issue arose like Tsunami. In Education Department prior to 01.06.1988 the post of Secondary Grade Teacher and Primary School Headmaster in Government Schools and Panchayat Union Schools are interchangeable and considered as



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same post. The grade pay of the Secondary Grade Teacher and the grade pay of the Primary School Headmaster are same, with an additional special pay to the Headmaster. After 01.06.1988 the post of Headmaster was made as “promotional post” by amending the relevant rules. Based on the said amendment, in the Fifth Pay Commission to the Headmaster post the scale of pay was fixed as Rs.1400-2600 without special pay and the Secondary Grade Teacher scale of pay was paid 1200-2040. The teachers who had worked in the Panchayat Schools / Government Schools in Secondary Grade Post were allowed to serve as Headmaster of Primary School with extra allowance to the post of Headmaster post prior to 01.06.1988. Since from 01.06.1988 the post of Headmaster was made as promotion post, a claim was submitted to add the service of Secondary Grade Post and Headmaster of Primary School which was served prior to 01.06.1988 (since the same was interchangeable) for calculating the selection grade and special grade. The government issued G.O.Ms.No.1381 Education Department dated 05.10.1990 wherein selection / special grade was granted to teachers who were holding the HM post **as on 01.06.1988** be awarded selection / special grade in the revised scales on or after 01.06.1988 by computing the **“Secondary Grade Teacher and Primary School HM prior to 01.06.1988”**. The G.O. also states that “at the post of HM carries higher scale



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of pay above that of the Secondary Grade Teachers, those promoted as HM on and prior 01.06.1988 shall be allowed fixation of pay in the post of HM as provided under Fundamental Rules 22B". The persons promoted after 01.06.1988 opposed to fix the scale of pay for persons who had actually served and they prayed to grant selection / special grade as granted to HM by taking both secondary grade service and HM post even after 01.06.1988. Since the same was declined, those persons filed petition before Tribunal in O.A. No. 2899, 3009 and 3010 of 1989 and the Tribunal has held that the classification is wrong and set aside the paragraph 3 and 4 of the G.O.Ms.No.1381. Hence the Government issued a **G.O.Ms.No.300 Education, Science and Technology Department dated 07.04.1994** wherein the grant of selection / special grade in G.O. 1381 was quashed and the benefit already disbursed were ordered for recovery. In the G.O. it has been categorically stated that the service of HM post alone will be taken for granting selection / special grade. In other words, the Secondary Grade post will not be taken into account while counting the service for Primary School HM. Unfortunately, the G.O.Ms.No.300 dated 07.04.1994 cancelling to add secondary grade post and HM post to grant selection and special grade was not brought to the knowledge of the Courts at the earliest point of time. Hence, the Writ Court and Writ Appeal Court had



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passed several orders granting the benefits by referring to the cancelled G.O. and directed to add both service.

8. In the meanwhile, the government issued G.O.Ms.No.216 Finance (Pay Commission) Department dated 22.03.1993, extending the selection / special grade to the “Secondary Grade Teachers in Middle School”, since they will not be having any promotional opportunities. It is pertinent to note that the G.O. is not stating to calculate both the Secondary Grade post + Primary School HM post to grant selection / special grade. It simply states to grant selection / special grade to Secondary Grade Teachers working in Middle School, since they are not having promotional opportunities. However, on later point of time this G.O. 216 dated 22.03.1993 was misinterpreted. Thereafter, the issue started exploding when the teachers in order to retain the wrong benefits granted under G.O.Ms.No.1381 (which G.O. was quashed by Tribunal) started filing writ petitions by referring to G.O.Ms.No.216 and the wrong started perpetuating. Writ petition was filed in W.P. No. 8079 / 2005 and vide order dated 28.04.2008 the writ petitions were allowed. In another writ petition vide order dated 18.04.2001 the government was directed to consider the claim. Since several writ petitions were filed and the said petitions were allowed by

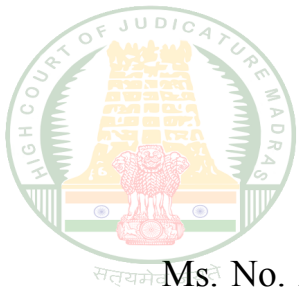


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holding “similarly placed persons were granted”. Then helplessness gripped the government. Hence pending writ petitions the government issued G.O. Ms. No. 207 School Education (G2) Department dated 30.09.2008 and G.O. states that pension benefits shall be granted and the government would incur an additional expenditure of Rs.1,87,93,225/- with a specific condition that the said G.O. was passed in order to avoid contempt and the said G.O. was issued which is subject to the outcome of the pending writ petitions and appeals.

9. Then the issue turned to an extreme level wherein the G.O.Ms.No.210 School Education (G2) Department dated 14.08.2009 was issued and this G.O. was passed again to comply with the order of the Courts. In this the teachers prayed to calculate the Secondary Grade Post service + Primary School HM service and thereafter fix the service in Middle School HM post and grant Selection / Special Grade. It is pertinent to state in between B.T. Assistant promotion post is available. The said G.O. granted the benefits to the persons mentioned in the G.O. Then in G.O.Ms.No.190 School Education (G1) Department dated 12.07.2010 was issued extending to some more persons by taking the Secondary Grade post + Primary School HM and grant selection / special grade in Middle School HM post. A correction G.O. was issued in G.O.



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Ms. No. 230 School Education (G1) Department dated 10.08.2010. Then G.O.

Ms. No. 146 School Education (G1) Department dated 19.06.2012 was issued to some more persons to calculate Secondary Grade post + Primary School HM was taken to grant Middle School HM selection / special grade. In this G.O. it has been stated that more than six crores would be the financial implications for the 260 teachers. As pointed out supra the employee is entitled to selection / special grade if a person is “stagnating” in the same post. But now the teachers would be promoted as Primary School HM, then also they will demand to calculate the period of service in Primary School HM post along with secondary grade teacher for fixing selection / special grade. Then again, the person would be promoted to Middle School HM, then also the person will demand to calculate both the secondary grade service + primary school HM and fix the same in Middle School HM post and grant selection / special grade. In short, the entire service should be taken into account to grant selection / special grade. That too “along with promotion”, which means the teachers were granted promotion and also selection grade and special grade, that is the high light of the issue which is totally against the concept of granting selection grade and special grade.



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10. Thereafter numerous government orders were passed. The Court has passed an order in W.P. No. 29644 / 2003 and 29645 / 2003 dated 21.03.2008 covering 61 persons and to implement the order the G.O.Ms.No. 234 School Education (G2) Department dated 10.09.2009 was issued wherein, the Secondary Grade post + Primary School HM was calculated. Again, based on Court's order G.O.Ms.No.270 School Education (G2) Department dated 20.09.2010 was issued. Likewise based on court's order, G.O. Ms. No. 216 School Education (G2) Department dated 30.12.2011, G.O. Ms. No. 179 School Education (Elementary2) Department dated 06.09.2013, G.O. Ms. No. 180 School Education (S.E.3(1)) Department dated 06.09.2013, G.O. Ms. No. 181 School Education (S.E.3(1)) Department, dated 06.09.2013 were issued, wherein the Secondary Grade post + Primary School HM was calculated. These G.O. were passed in a fond hope that this issue will come to an end, but the issue could not see the end at all, inspite of so many G.O.s The Court has allowed several petitions and the government finally filed review application in Rev. Appl. No. 227 / 2015, Rev. Appl.No.313 of 2015 and the same was referred to Full Bench. The review application was taken up along with several writ appeals and writ petitions, wherein it was held the issue cannot be reagitated again and has held that the benefits shall be calculated, then give



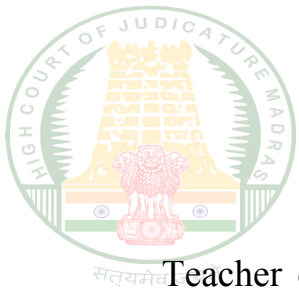
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effect in the pensionary benefits and family pension and the monetary benefits shall be payable on and from 01.03.2017. Thereafter the Rev. Appl. (MD) No. 35 / 2018 dated 19.03.2018, W.A. 34 / 2017 dated 03.01.2019 and W.A. 73 / 2016 dated 03.01.2019 was passed dismissing the review applications / writ appeals filed by the government.

11. Even though several writ petitions were allowed, some of the writ petitions were dismissed by rejecting the claim of the employees. One such case is the order dated 09.12.2015 passed in W.A. (MD) No. 312 / 2011 by the Division Bench headed by Justice V. Ramasubramanian and Justice N. Kirubakaran, wherein it has been held in paragraph 5, “that the employees who were in service in 1997-1998 as well as in the year 2002 did not rise a little finger either at the time of when the original applications were filed in the year 1997-1998 or at the time when the original application were allowed by the Tribunal in the year 2002”. And rejected the dead and stale claims. Thereby some of the teachers were declined by the above order.

12. Under this background the present writ appeal ought to be considered. The writ petitioner had joined the service as Physical Education



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Teacher on 21.08.1985, continued the service as Physical Education Teacher and voluntarily retired from service on 31.07.2021, thereby served for 35 years, 11 months and 11 days. Since from the Physical Education Teacher post the petitioner was not having any promotional opportunity, as per rules the petitioner was awarded Selection Grade on 21.08.1995 and was awarded Special Grade on 21.08.2005.

13. The Special Teachers and Physical Education Teachers was not considered as feeder category for promotion to the post of Secondary Grade HM post at all. Hence the petitioner being Physical Education Teacher cannot claim the benefits of G.O.Ms.No.216 at all. The government issued G.O.Ms.No.1381 Education Department dated 05.10.1990 wherein selection / special grade was granted to teachers who were holding the HM post **as on 01.06.1988** be awarded selection / special grade in the revised scales on or after 01.06.1988 by computing the **“Secondary Grade Teacher and Primary School HM prior to 01.06.1988”**. When the petitioner is not even a Secondary Grade Teacher and when the petitioner cannot hold the post of Primary School HM when the Physical Education Teacher is not considered as feeder category, then the claim of the petitioner is illegal. Infact the said G.O. itself is



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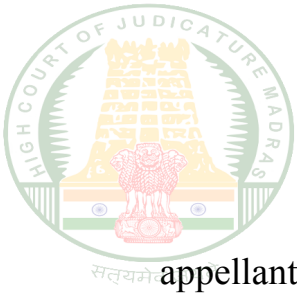
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misinterpreted by the secondary grade teachers. Then the claim of the Special Teachers and Physical Education Teachers is totally illegal. This fact was taken note of by the earlier Division Bench in W.A.(MD)No.312/2011, wherein it is observed as under:

“16. One more reason as to why the petitioners cannot have any of the benefits is that they were not even Secondary Grade Teachers. Secondary Grade Teachers themselves came up with a mistaken impression. Taking clue from them, the teachers who were Special Teachers and Physical Education Teachers started having a jolly ride on the back of the Secondary Grade Teachers, at the cost of the exchequer”.

Therefore, this Court is of the considered opinion that on merits the petitioner being a Physical Education Teacher is not entitled to fix the Primary School HM selection grade of pay or the special grade of pay. Consequently, the petitioner cannot claim to fix the benefits from 01.03.2017 while he was in service.

14. Even though the petitioner is not entitled to the benefits of G.O.Ms.No.216, in order to comply with the order passed by the Hon’ble Full Bench in Rev.Appl.No.227 of 2015 and Rev.Appl.No.313 of 2015, the



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appellants had granted the benefits from the date of retirement (voluntary) i.e. from 31.07.2021. The relevant portion of the order of the Hon'ble Full Bench is extracted hereunder:

*“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;”*

Strictly speaking the Full Bench has not directed to pay the benefits to Physical Education Teacher, but only states to Special Teachers. Even then the appellants had paid the benefits by giving effect in pension.

15. But the petitioner is seeking to grant the benefits from the cutoff date 01.03.2017 fixed by the Full Bench. On perusing the Full Bench Judgment, it is seen that the Full Bench was under the impression that the writ petitioners were already retired from service and hence fixation can be carried out and pensionary benefits can be disbursed from 01.03.2017. But in the present case the petitioner was in-service and the Full Bench has not dealt with



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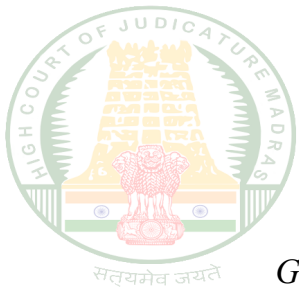
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the in-service persons. This Court had already held on merits the writ petitioner is not entitled to the benefits of G.O.Ms.No.216 at all, hence only based on the order passed in Full Bench the petitioner is entitled to. The Hon'ble Full Bench had directed to calculate the benefits but directed to give effect in pension and family pension by taking into consideration the financial constraints on the government. The relevant portion of the judgement is extracted hereunder:

“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



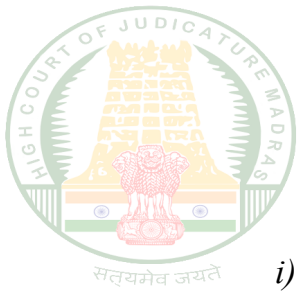
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G.O.Ms.No.216, Finance (PC) Department dated 22.3.1993, it is open to the Government to consider the financial position and the burden that would fall on the exchequer, subsequent to the implementation of the recommendations of the V Pay Commission.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



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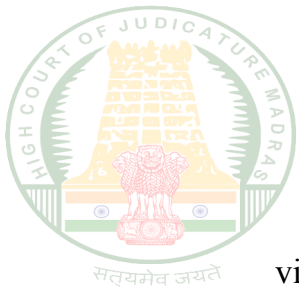
i) *The Government is directed to implement the G.O.Ms.No.216, dated 22.3.1993 for the period between 1.6.1988 and 31.12.1995, on and from 1.3.2017 onwards in respect of all the Secondary Grade Teachers of High/Higher Secondary Schools including the Special Teachers who attained Selection grade/Special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



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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;”

It is seen the Full Bench vide interim direction dated 24.11.2016 had directed the government to take a stand regarding the pensionary benefits and arrears of monetary benefits by taking into financial strain and had left open to the government to consider regarding arrears of benefits. Thereafter the government had reported huge financial constraint, hence the Full Bench had passed an order to grant only pension and family pension. Therefore the claim of the petitioner to fix salary from 01.03.2017 is against the order of the Full Bench. Further it will have huge financial strain to the government, when the other teachers start claiming arrears benefits. Therefore, the appellants had rightly granted the benefits notionally and actual pension benefits was granted from the date of retirement and the writ petitioner had also received the same. Hence, the appellants are right in rejecting to grant for the in-service period.

16. The above discussion would clearly indicate that the petitioner has no right to claim on merits and based on the Full Bench order the petitioner was granted the benefits on the date of his retirement. The Full Bench has also granted liberty to the government to decide on arrears of monetary benefits and

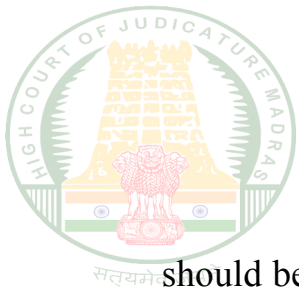


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the government had decided to reject the arrears or monetary benefits for in-service period. Hence there is no infirmity in the rejection order. Further the petitioner is relying on the cutoff date alone, but the petitioner missed to see the direction to grant only pension and family pension alone, by truncate reading of Full Bench order. Therefore, this Court is of the opinion the petitioner is not entitled to monetary benefits for the in service period from 01.03.2017 to 31.07.2021.

17. The contention of the writ petitioner that in 5th Tamil Nadu Pay Commission, while dispensing with the Selection Grade and Special Grade, the Government granted separate scale of pay of Rs.1400-2600 for Head Masters of Primary Schools and the scale of pay of Rs.1200-2040 for Secondary Grade Teachers and Physical Education Teachers, hence there is **disparity**. This contention of the writ petitioner is absolutely incorrect. The writ petitioner failed to state reason for fixing higher scale of pay for Primary School Headmaster post and the same is deliberate. The government had amended the rules and had made the Primary School Headmaster post as promotional post. Hence while V Pay Commission the government had fixed the higher scale of pay for the promotional post. Whenever the post is promotional post, then there



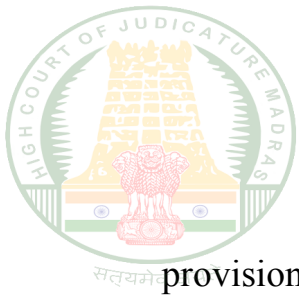
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all.

should be higher scale of pay, hence the allegation of disparity has no ground at

18. Further, if the petitioner is claiming Primary School HM selection grade of pay or the special grade of pay, then already granted selection grade of pay or the special grade of pay in the post of Physical Education Post ought to be reversed. If such exercise is carried out then the selection grade of pay or the special grade of pay in the post of Physical Education Post would be more beneficial to the petitioner than the Primary School HM post.

19. The petitioner has relied on G.O.Ms.No.90 and claiming benefits. This Court is of the considered opinion that the government after taking policy decision had issued G.O.Ms.No.1381 (which G.O. was quashed by Tribunal) to grant benefits to certain class of people, then the same was withdrawn in G.O.Ms.No.300. Except these two G.O.'s none of the G.O.s were passed based on policy decision of the government. The G.O.Ms.Nos.216, 210, 234, 190, 146 and so many other G.O.,s were passed in order to implement the orders of this Court. The petitioner ought to establish his right based on any



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provisions of law, rules, regulations and any government order passed based on the any policy decision of the government to claim benefits. In other words, if the government order is passed on the basis of the policy decision of the government i.e. G.O. passed in “rem” is applicable to all. The petitioners cannot claim any right based on any government order which were passed in order to obey the orders of the Court i.e. government order passed to person specific / “in persona” cannot be cited to claim any right. In fact, several writ petitions are filed citing the G.O.s which were passed to obey the orders of this Court and if this G.O.s are relied on there will not be end to litigations at all. Further the individuals would be claiming benefits without rights, therefore any G.O. passed in order to obey the orders of the Court can never be relied on. If this is strictly followed then several writ petitions would be dismissed and pendency of the writ petitions would be considerably reduced. Also, the total mess created in these writ petitions would have been avoided. In fact, the submission of the writ petitioners that “similarly placed persons granted the relief” cannot be entertained and the Courts ought to be cautious while applying such similarly placed persons plea and orders. Each case ought to be dealt with on its own merits.



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20. In this issue 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. 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



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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.

21. This Court is inclined to record that the Tribunal had passed order in N.Govindarajan's case which has opened the flood gate. The said order had missed the attention of the government. When the government started releasing the impact of the order, the government had preferred W.P.No.8747 of 2009 challenging the Tribunal order, but had preferred belatedly after lapse of 9 years. Hence the said writ petition was dismissed on 14.07.2019 on the ground of delay and laches. If there is fraud, delay and laches would not arise. Likewise, if there is illegal claim, then the delay and laches shall not be a ground to dismiss the writ petition / writ appeal.

22. The wrong claim of selection grade / special grade by calculating two or three different services were the subject matter from 1991 onwards. The Government has passed several orders to put an end to the claim and this Court has passed orders to put an end to the claim, but still several claims are arising until 2025. Therefore, this Court is of the considered opinion



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that illegal claim should end and this Court is putting an end to the illegal claims by this judgment, of course with a found hope.

23. For the observations and reasons stated supra, the present Writ Appeal is allowed. The order passed by the Writ Court is set aside and the prayer of Mandamus is declined. No costs. Consequently, connected Miscellaneous Petition is closed.

[J.N.B., J.] [S.S.Y., J.]
25.03.2025

Index : Yes / No

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To:

- 1.The Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Kokkirakulam, Tirunelveli,
Tirunelveli District – 627 009.
- 4.The District Educational Officer,
Tirunelveli,
Tirunelveli District – 627 009.
- 5.The Headmaster,
Government Higher Secondary School,
Thalapathisamuthiram,
Tirunelveli District – 627 101.



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J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

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25.03.2025