

V.Ganesan and ors. Vs. State of Tamil Nadu and ors.

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Court : Chennai

Decided On : Dec-23-2011

Judge : T.Raja, J.

Appeal No. : W.P.(MD)No.15177 of 2011

Appellant : V.Ganesan and ors.

Respondent : State of Tamil Nadu and ors.

Advocate for Def. : Mr.K.Chellapandian, Adv.

Advocate for Pet/Ap. : Mr.V.Panner selvam, Adv.

Judgement :

This writ petition has been filed seeking a prayer for the issuance of a Writ of Mandamus directing the respondents to fix the scale of pay to the petitioners as per G.O.Ms.No.234, School Education (G2) Department, dated 10.09.2009 counting entire length of service as a elementary school Headmaster for selection grade and Special grade and confer all consequential benefits.

2. The learned Counsel appearing for the petitioners would submit that prior to 01.06.1988, the post of Primary School Headmaster and the post of Secondary Grade Teacher were constituted in one classification in Class III of Special Rules for the Tamil Nadu Elementary Education Subordinate Service because the basic scale of pay for the post of Primary School Headmaster and the Secondary Grade

Teacher was identical viz., Rs.610-1075. The teachers who were appointed as Headmasters of the Primary School were entitled to get a Special Allowance of Rs.15/- only. As there was no separate scale of pay for the said post, there was no charm for the Headmaster post even though they were given a pittance of Rs.15/-. After the Fifth Pay Commission, the scale of pay of the Headmaster of Primary School was revised by treating the said post as higher cadre and subsequently the scale of pay of Secondary Grade Teacher was fixed in the Fifth Pay Commission at Rs.1200-2040, whereas, the scale of pay to the post of Headmaster was at Rs.1400-2600. Thus the post of Headmaster of Primary School became a promotional post from 01.06.1988. In view of the above reasons, the Teachers Associations approached the Government of Tamil Nadu to award Selection Grade and Special Grade to Primary School Headmasters. Accepting the said request, the Government of Tamil Nadu have issued G.O.Ms.No.304, Finance (PC) Department, dated 28.03.1990 awarding the Selection Grade and Special Grade to Primary School Headmasters and also fixed the scale of pay for the Selection Grade at Rs.1640-2900 and for Special Grade at Rs.2000-3200. However, the Secondary Grade Teachers promoted as Headmasters after 01.06.1988 were denied the benefit of Selection Grade and Special Grade, which compelled them to approach the Tamil Nadu Administrative Tribunal with a prayer to extend the same benefit. Such a request for extending the benefit of Selection Grade and Special Grade was also allowed by the Tribunal in O.A.Nos.68 and 177 of 1997 and 5548 of 1998. Aggrieved by the said order passed by the Tribunal, the Government of Tamil Nadu have preferred Writ Petitions in W.P.Nos.29644 and 29645 of 2003 to quash the order passed by the Tribunal. A Division Bench of this Court by dismissing the writ petition on 21.02.2008 has held that the petitioners are also entitled to Selection Grade and Special Grade in the cadre of Elementary School Headmaster by taking their service rendered earlier as Headmaster and Secondary Grade Teacher before 01.06.1988 or after 01.06.1988. Under these circumstances, it can be seen that the benefit of Selection Grade and Special Grade in the cadre of Elementary School Headmaster was extended to the Headmasters and Secondary Grade Teachers who were either before 01.06.1988 or after 01.06.1988. Subsequently, the Government also accepting the order passed by this Court in the above mentioned writ petitions, passed

G.O.Ms.No.234, School Education (G2) Department, dated 10.09.2009 wherein the Government have ordered to compute the year of service rendered as Secondary Grade Teacher and Primary School Headmaster prior to 01.06.1988 to award Selection Grade and Special Grade to those Teachers who were promoted as Headmasters of Primary School after 01.06.1988. But, the said benefit was restricted to only 63 persons who approached the Tribunal. These petitioners have come to this Court with this writ petition to extend the benefit of the Government Order in G.O.Ms.No.234, School Education (G2) Department, dated 10.09.2009, to them also.

3. When the matter stands as above, it has been brought to the notice of this Court by the learned Counsel appearing for the petitioners that the learned Single Judge by looking at the delay in approaching the High Court dismissed the writ petitions on the ground of laches. Challenging the said order passed by the Single Judge, Writ Appeals have been filed in W.A.Nos.815, 1531, 1691 to 1693 and 1165 of 2010 and the same were allowed by a Division Bench of this Court by common judgment dated 07.07.2011, wherein in paragraphs 20 and 22 it has been held as follows:

“20. The appellants are all senior citizens and they have been corresponding with the Government to grant them similar relief. In fact, the cause of action is a continuing one. In a matter like this, delay alone cannot be the determining factor to reject the claim. When it is found that the claim of the appellants are also covered by the issue decided in the Government Order in G.O.Ms.No.234, dated 10 September 2009, they should have been given similar treatment. Therefore, we are of the considered view that the learned Single Judge was not justified in dismissing the writ petitions solely on the ground of delay.

21. ...

22. In fact, the Government should have extended the benefits to all the similarly placed employees without driving them to the Court and that too during their old age.”

4. When this Court has already come to the conclusion that the Government should have extended the benefit to all the similarly placed persons without driving them to the Court and that too during their old age, a similar order needs to be followed by this Court also.

5. However, the learned Additional Advocate General appearing for the respondents would submit that though the Government have issued G.O.Ms.No.234, School Education (G2) Department, dated 10.09.2009, in view of the financial crisis in extending the benefit to others who have not approached the Court, the Government have issued another G.O.Ms.No.270, School Education (G2) Department, dated 20.09.2010 restricting the benefit only to those Teachers who have obtained specific orders from the Court. On that basis, the learned Additional Advocate General appearing for the respondents justified in passing the Government Order in G.O.Ms.No.270, School Education (G2) Department, dated 20.09.2010, stating that when the Government is facing financial crisis, restricting the benefit of Selection Grade and Special Grade to retired Teachers cannot be found incorrect.

6. But, this Court is of the considered view that the stand taken by the learned Additional Advocate General cannot be accepted as the G.O.Ms.No.270, School Education (G2) Department, dated 20.09.2010, has not been issued in the light of the paragraphs 22 of the Common Judgment passed by the Division Bench of this Court on 07.07.2011 in W.A.Nos.815, 1531, 1691 to 1693 and 1165 of 2010. When this Court, by a detailed order considering the case of the similarly placed persons, has already passed an order that the Government should have extended the benefit to all the similarly placed employees without driving them to Court, that too, during their old age, I have no other option except to follow the said judgment by holding that the case of the petitioners are also covered by the earlier order passed by the Tribunal and subsequent judgment passed by this Court in W.A.Nos.815, 1531, 1691 to 1693 and 1165 of 2010, dated 07.07.2011. Accordingly, this writ petition shall stand allowed by directing the respondents herein to sanction and award Selection Grade and Special Grade to the petitioners in the post of Elementary School Headmaster by counting entire length of service as Elementary School Headmaster and confer all consequential benefits. No

costs.

7. The learned Additional Advocate General appearing for the respondents would submit that since the petitioners have retired long time back, the Department is not having the service records of the petitioners. On that basis, he requested this Court to give a direction to the petitioners to submit their detailed representation mentioning their full service particulars. Therefore, the petitioners are also directed to submit detailed representations mentioning their full service particulars to the respondents and thereafter, the respondents shall consider and pass appropriate orders within a period of four months from the date of receipt of the said representations.

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