

(2009) 09 MAD CK 0046

In the Madras High Court

Case No : Writ Petition No. 25236 of 2006 and M.P. No. 1 of 2006

M. Devanathan

APPELLANT

Vs

The Director of School Education and The Chief Educational Officer

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Citation : (2009) 09 MAD CK 0046

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : A.R. Suresh, for the Appellant; A. Suresh, G.A., for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The prayer in the Writ Petition is to call for the records of the proceedings in Na. Ka. No. 7874/Aa4/2003 dated

1.6.2006 passed by the second respondent, and quash the same and for a direction on the respondents to sanction the selection grade scale of pay

in the post of Tamil Pandit with effect from 1.12.1992 to the petitioner with all monetary and service benefits.

2. According to the petitioner, he is working as Tamil Pandit Grade-I at the Government Higher Secondary School (Boys), Arakkonam, Vellore

District. He was initially appointed as Craft Instructor on 1.12.1972 and upgraded to selection grade Craft Instructor on 1.12.1982. Thereafter, he

was promoted as Tamil Pandit with effect from 12.9.1989. Prior to V Pay Commission, in order to avoid frustration in the minds of the employees,

the Government of Tamil Nadu has decided to award selection grade/special grade of pay to the servants, to those who have completed 10/20

years of service respectively without any promotion and were given this benefit. This was further extended to award selection grade in the

promotional post by way of counting the services rendered in the lower post of selection grade wherever the scale of pay of the selection grade in

the lower post was equal to that of ordinary grade pay of the promotional post in the Government Order in G.O.Ms. No. 210, P&AR

Department, dated 11.3.1987 and this concession be allowed only at the first promotional level.

3. Since the ordinary grade pay of the post of Tamil Pandit/B.T. Assistant was Rs. 1400-40-1600-50-2300-60-2600 (pre-revised scale) and the

selection grade pay of the lower post of Secondary Grade Teacher/Craft Instructor was Rs. 1400-50-2300-60-2600 (pre-revised scale), the

services put in the selection grade post of Secondary Grade Assistant were not taken into account for awarding selection grade in the promotional

post and the benefits given under the above G.O. were not extended to the teachers similarly placed like the petitioner herein.

4. The Government of Tamil Nadu had issued another order in G.O.Ms. No. 238, School Education (E2) Department, dated 26.6.1998, wherein

the services in the selection grade in the post of Secondary Grade Teacher and other equivalent posts shall be counted for the award of selection

grade in B.T.Assistant/Tamil Pandit posts and this concession be allowed only at the first promotion level, since the increment defers and the basic

pay remains the same. Further, the Government issued an erratum to the above G.O. in G.O.Ms. No. 24, School Education (E2) Department

dated 2.2.21999, wherein it is stated that this order shall take effect notionally from 1.10.1984 with monetary benefits from 1.4.1986 and the

identical scale of pay between the above categories came into force only from 1.6.1988 and this order will take effect from 1.6.1988. Therefore,

the petitioner is entitled to award of selection grade in the post of Tamil Pandit with effect from 1.12.1992 by taking into account the services

rendered in the post of selection grade Secondary Grade Teacher/Crafts Instructor till 11.9.1989 and in this regard he made representation to

extend the benefits and award selection grade scale of pay in the post of Tamil Pandit from 1.12.1992.

5. The said benefit was extended to the petitioner and sanction was accorded by the second respondent by giving scale of pay in the post of Tamil

Pandit with effect from 1.12.1992 vide proceedings dated 26.5.1999. However, this order was not implemented by the respondents for a long time and the petitioner has made representations. As there was no reply from the respondents, a legal notice was issued to the respondents. The second respondent has issued another order in proceedings dated 26.8.2002, cancelling the earlier order. Against it, he made an appeal to the first respondent on 21.10.2002. As there was no order passed in the appeal for nearly one year, he filed an Original Application in O.A. No. 3009 of 2003 before the Tamil Nadu Administrative Tribunal. As there was no Presiding Officer in the Tribunal, the petitioner filed an application for transfer of the above Original Application before this Court. Accordingly, as per the direction of this Court, the above Original Application was transferred to this Court and was renumbered as W.P. No. 27291 of 2005.

6. This Court disposed of the above Writ Petition and passed the following order:

Hence, without going into the merits of the matter, the impugned order is set aside on the sole ground of not following the principles of natural justice and the Chief Educational Officer, Vellore is directed to pass fresh orders after hearing the petitioner and taking note of the relevant Government Orders and the proceedings issued by the Director of School Education within four weeks from the date of receipt of a copy of this order.

7. Pursuant to the above order, the second respondent had issued a show cause notice dated 23.3.2006 calling for explanation from the petitioner within 15 days as to why selection grade should not be given with effect from 1.6.1998 by cancelling the earlier order dated 26.5.1999 granting selection grade in the post of Tamil Pandit with effect from 1.12.1992. The petitioner had submitted his explanation to the show cause notice on 6.4.2006 claiming for the award of selection grade in the post of Tamil Pandit on the basis of the Government Orders. However, the second respondent has rejected the claim of the petitioner and passed an order in Na. No. 7874/Aa4/2003 dated 1.6.2006. Aggrieved by the above order, the petitioner has filed the present Writ Petition on the grounds that the order is arbitrary, violative of rule and principles of natural justice and there will be serious disparity between seniors and juniors since the award of selection grade will be from 1.6.1998 irrespective of moving to

selection grade in the lower post and the promotion to the next higher post namely Tamil Pandit/B.T. Assistant Teacher among the Teachers will

not be same and also the order is tainted with mala fides since the cancellation of the earlier order of selection grade was immediately on receipt of

the legal notice.

8. The respondents have filed counter affidavit. In the counter, it is stated that the petitioner was initially appointed as Craft Instructor on

1.12.1972. He was awarded selection grade on completion of 10 years of service in the post of Craft Instructor with effect from 1.10.1982.

Subsequently he was promoted as Tamil Pandit on acquiring the requisite qualification on 12.9.1989.

9. As per the Government Order in G.O.Ms. No. 210, P&AR Department dated 11.3.1987, the services in the selection grade of the lower post

shall be counted for awarding selection grade in the higher post provided, the selection grade scale of pay of the lower post and the ordinary grade

scale of pay of the post of the higher post are identical. The selection grade scale of pay of the Craft Instructor (lower post) and the ordinary grade

scale of pay of the Tamil Pandit (Higher post) were not equal till 31.5.1988 i.e. till the introduction of revised scale of pay as per V Pay

Commission which took effect from 1.6.1988. As per the revised scale of pay under V Pay Commission, the selection grade scale of pay of lower

post is fixed as Rs. 1400-50-2300-60-2600 and ordinary grade scale of pay of the higher post is fixed as Rs. 1400-40-1600-50-2300-60-2600

with effect from 1.6.1988. It could be seen from the above pay structure that there is a difference in the increment stage though the starting and

ending of the pay is one and the same. Therefore, the Government in G.O.Ms. No. 238, Education (E2) Department dated 26.6.1998 issued

clarifications and ordered that though there is a difference in the increment stage, these two scales of pay may be considered as identical for the

purpose of awarding selection grade in the higher post taking into account the services rendered in the selection grade post of the lower post with

effect from 1.10.1984 with monetary benefits from 1.4.1986. In the instant case, the selection grade scale of pay of the lower post was not equal

to the ordinary grade of the higher post during the above dates.

IV PAY COMMISSION V PAY COMMISSION

(From 1.10.1984 to 31.5.1988) (1.6.1988 TO 31.12.1995)

a. Selection grade 705-1235 1400-2600

scale of pay of

lower post

b. Ordinary grade 780-1385 1400-2600

scale of pay of

higher post

As illustrated above, the scale of pay became identical from 1.6.1988 as per V Pay Commission. As such the selection grade services rendered in

the lower post till 31.5.1988 could not be taken into account for computing 10 years of service on awarding selection grade in the Higher post as

the scale of pay of these two categories were not identical till 31.5.1988.

10. In this regard, certain clarifications were sought for by the Directorate of Education Department in regard to the implementation of the

Government Orders in G.O.Ms. No. 210, P&AR Department dated 11.3.1987 and G.O.Ms.238, Education (E2) Department dated 26.6.1998

in regard to the reckoning of 10 years of service for awarding selection grade in the higher post. The Government in G.O.Ms. No. 38, Education

Department dated 5.3.2001 have issued clarifications in regard to the counting the period of services in the lower post for computing 10 years of

service for awarding selection grade in the higher post. Few illustrations have also been worked out and shown in the Government Order for

proper guidance and strict adherence.

Pay structure of Secondary Grade Assistant and other equal categories like Craft Instructor etc., and Tamil Pandits/B.T. Assistants under various

pay commissions:

Pay Commission Date of effect Selection Ordinary Grade

Grade scale of scale of pay

pay of Secondary of Tamil Pandits/BT

Grade Assistant/Craft Assistants

Instructor etc.

III Pay Commission 1/4/78 400-700 450-800

IV Pay Commission 1/10/84 705-1235 78-1385

V Pay Commission 1/6/88 1400-2600 1400-2600

VI Pay Commission 1/10/96 5300-8300 5500-9000

Therefore, it could be vividly seen from the above pay structure, the selection grade scale of pay of the lower posts were not identical till

31.5.1988 and became identical only during V Pay Commission i.e. from 1.6.1988 to 31.12.1995. Therefore the Government have ordered to

count the services from 1.6.1988 to 31.12.1995 only for the purpose of computing 10 years of service in the higher post. The service details of the

petitioner are furnished hereunder for favour of perusal:

i) Date of selection grade in the lower post (Craft Instructor) 01.12.1982

ii) Date of promotion as Tamil Pandit (Higher post) 12.09.1989.

iii) Period of service for which the S.G. of the lower post and O.G. of the higher post are equal which could be counted for YMDSG in the higher

post 1.6.1988 to 11.9.1989.

iv) Date of promotion to higher post 12.09.1989

v) Remaining period of service rendered in the higher post for computing Y M D 10 years of service i.e., from 12.9.1989 to 31.5.1988 8 19

vi) Eligible date for awarding selection grade in the higher post as per G.O.Ms. No. 38, Edn., dated 5.3.2001 01.06.1998

Therefore, as per the G.O.Ms. No. 38, Education Department dated 5.3.2001, the selection grade issued to the petitioner with effect from

1.12.1992 was cancelled vide proceedings dated 26.9.2002. It is also stated that the Original Application in O.A. No. 3009 of 2003 was

transferred to this Court and was renumbered as W.P. No. 27291 of 2005 and an order was passed by this Court on 15.2.2006 and thereafter

only the respondent has issued the show cause notice and explanation was called for on the relevant facts. Therefore, the claim of the petitioner

cannot be sustainable in the light of the Government Order in G.O.Ms. No. 38, Education Department dated 5.3.2001 and prayed for dismissal of

the Writ Petition.

11. On the above background of the pleadings, I have heard Mr. A.R. Suresh, learned Counsel for the petitioner and Mr. A. Suresh, learned

Government Advocate for the respondents.

12. A strenuous contention has been raised by the learned Counsel for the petitioner that the Government Order in G.O.Ms. 238 is beneficial in nature. Therefore, the Government, on examination of the entire issue with regard to the scale of pay of selection grade Secondary Grade Teacher and ordinary grade B.T. Assistant/Tamil Pandit came to the conclusion that it cannot be treated as identical as there is difference in increments rates and therefore, clarified by directing the authorities that the service in the selection grade in the Secondary Grade Teacher and other equivalent posts shall be counted for the award of selection grade in B.T. Assistant/Tamil Pandit post and that this concession be allowed only at the first promotion level and G.O.Ms. No. 210 P&AR Department dated 11.3.1987 would not have effect in the petitioner's case. The learned Counsel further would contend that even though the respondents have stated in the counter that based on the Government Order in G.O.Ms. No. 38, Education Department, dated 5.3.2001, the impugned order was passed, the aforesaid G.O. has not been referred to in the impugned order. Therefore, the decision of the authority is arbitrary and with total non-application of mind.

13. Per contra, the learned Government Advocate for the respondent would contend that the subsequent clarification made in G.O.Ms. No. 38, Education Department dated 5.3.2001 is the basis on which the selection grade granted to the petitioner has been cancelled by the second respondent on 26.9.2002 and that clarification is of the recent one. Therefore, based on the clarification in the aforesaid Government Order, the second respondent has passed the impugned order. There is no infirmity in the order passed by the second respondent.

14. In the light of the above submissions, it is to be seen that the petitioner was appointed as Craft Instructor on 1.12.1972 and promoted as Tamil Pandit on acquiring the requisite qualification on 12.9.1989. Before that, he was awarded selection grade on completion of 10 years of service in the post of Craft Instructor with effect from 1.10.1982. It is also seen that the second respondent has passed an order on 26.5.1999, by which the petitioner has been granted the benefit of selection grade in the post of Tamil Pandit with effect from 1.12.1992. Thereafter, on issuance of a legal notice, the second respondent has passed the order on 26.9.2002, cancelling the earlier order dated 26.5.1999. The petitioner challenged the said

proceedings in W.P. No. 27291 of 2005 and this Court set aside the order of the second respondent dated 26.9.2002 on the sole ground of not

following the principles of natural justice and directed the second respondent to pass fresh orders after hearing the petitioner and taking note of the

relevant Government Orders and the proceedings issued by the Director of School Education within four weeks from the date of receipt of that

order. Based on the above order of this Court, the second respondent has issued show cause notice. Thereafter, the petitioner has submitted his

explanation. Pursuant to that the second respondent has passed the impugned order on 1.6.2006.

15. A perusal of the impugned order would show that the order of the Government in G.O.Ms. No. 210 P& AR Department dated 11.3.1987

has made clear that the services in the selection grade of the lower post shall be counted for the selection grade in the promoted post provided that

the selection grade scale of the lower post is identical to the ordinary grade of the higher post and that concession be allowed only at the first

promotion level. Subsequently, the Government in G.O.Ms.238, considered the question with regard to counting of services rendered in the

selection grade of the Secondary Grade Teacher post for the award of selection grade in the post of B.T. Assistant/Tamil Pandit and following

orders have been passed:

2. Representations have been received from the Teachers Association that the Secondary Grade Teachers and equivalent categories on rendering

10 years of service moved to selection grade in the scale of pay of Rs. 1400-50-2300-60-2600 (pre-revised scale). After rendering one or two

years of service in the selection grade when promoted to a higher post viz., either as B.T. Assistant or as Tamil Pandit such teacher's pay is fixed

in the scale of pay of 1400-40-1600-50-2300-60-2600 Pre-revised scale). The services put in the selection grade post of Secondary Grade

Teachers are not taken into account for awarding selection grade in the promoted post (i.e.) B.T. Or Tamil Pandit. Instead for such teachers the

selection grade is being awarded in the higher post only after rendering 10 years of service and their pay fixed in the scale of Rs. 1640-60-2600-

75-2900 (Pre-revised scale) had they continued in the post of selection grade Secondary Grade Teachers itself they will move to Special Grade

earlier on completing 10 years of service in the scale of Rs. 1640-60-2600-75-2900 (Pre-revised scale). As the scale of pay in the selection grade

of the lower post and the ordinary grade of the promoted post starts from Rs. 1400 and ends at Rs. 2600 (pre-revised scale) they have

represented that they may be considered as identical scales and to pass suitable orders to count the services of selection grade in the lower post

for awarding selection grade in the higher post as was granted in the Government Order first read above.

3. The Government have examined the matter in detail with the Director of School Education, Chennai 6. The scale of pay of selection grade

Secondary Grade Teacher and ordinary grade B.T. Assistant/Tamil Pandit cannot be treated as identical as there is difference in increments rates.

But, however the selection grade scale of pay of Secondary Grade Teachers (i.e.) Rs. 1400-50-2300-60-2600 (pre-revised scale) is higher than

the ordinary grade scale of pay of B.T. Assistant/Tamil Pandi which is Rs. 1400-40-1600-50-2300-60-2600 (Pre-revised scale). The

Government have therefore decided to accept the request as a special case.

4. They accordingly direct that the service in the selection grade in the Secondary Grade Teachers and other equivalent posts shall be counted for

the award of selection grade in B.T. Assitant/Tamil Pandit post and that this concession be allowed only at the first promotion level.

16. From the above Rulings of the Government Order, it would reveal that it is not the case that the service in the selection grade of the lower post

shall be counted for the selection grade in the promoted post, provided that selection grade of the lower post is identical with that of the ordinary

grade of the higher post. That position has been clarified in G.O.Ms. 238 dated 26.6.1998, when there is a difference in increment rates. Hence,

the selection grade of Secondary Grade Teachers and ordinary grade of B.T. Assistant (promoted post) cannot be treated as identical, as there is

a difference in increment rates. Therefore, the Government have directed that the service in the selection grade in the Secondary Grade Teachers

and other equivalent posts shall be counted for the award of selection grade in B.T. Assistant/Tamil Pandit post and that this concession be

allowed only at the first promotion level.

17. From the scrutiny of the impugned order, it would reveal that the impugned order is passed based on the Government Orders in G.O.Ms. No.

210, dated 11.3.1987 and G.O.Ms. 238, dated 26.9.1998. But, now the respondents in the counter stated that the impugned order, cancelling the

earlier order, is passed based on the Government Order in G.O.Ms. No. 38, dated 5.3.2001, which is not referred to in the impugned order.

Therefore, the respondent's conclusion that based on the Government Order in G.O.Ms. No. 38, dated 5.3.2001, the impugned order was

passed, without reference to it and the decision made thereon by the respondent, cannot be a ground to reject the claim of the petitioner and the

benefit given by the Government in G.O.Ms.238, School Education (E2) Department, dated 26.6.1998 has to be taken into account. The reason

assigned by the respondent in the impugned order that in this case where the scale of pay of the selection grade in the lower category of Secondary

Grade Teacher as well as the ordinary grade in the promoted post in B.T. Assistant/Tamil Pandit were identical only during V Pay Commission

i.e., from 1.6.1988 to 31.12.1995, the selection grade granted to the petitioner with effect from 1.10.1992 was cancelled on the basis of G.O.Ms.

No. 38, Education Department dated 5.3.2001 cannot be accepted. Therefore, the impugned order is passed without application of mind and

without looking into the orders of the Government in force and it suffers from legal infirmity.

18. In the light of the above discussion and analysing the provisions of law and the various Government Orders, the impugned orders are infirm and

cannot be sustained. Therefore, the impugned order passed by the second respondent dated 1.6.2006 is set aside and the respondents are

directed to consider the claim of the petitioner in accordance with the G.O.Ms. 238, Education (E2) Department dated 26.6.1998 and pass

appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

19. The Writ Petition is allowed. No costs. The connected Miscellaneous Petition is closed.