

(2013) 08 MAD CK 0201

In the Madras High Court

Case No : Writ Petition No. 8915 of 2008

S. Esther

APPELLANT

Vs

The Joint Director of School Education (Elementary Education), The Chief Educational Officer and Assistant Educational Officer

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0201

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : V.S. Jagadeesan for Mr. J. Shanmugasundara Babu, for the Appellant; R. Vijayakumar, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—This writ petition has been filed by a retired teacher seeking issuance of a writ of certiorarified mandamus, to call for the proceedings passed by the first respondent, the Joint Director of School Education/Elementary Education, Chennai in Na.Ka. No. 37614/L1/2006 dated 31.7.2007, to quash the same with a consequential direction to the respondents to pay the petitioner's pension at Rs. 5,238/- on the basis of the last drawn salary of Rs. 10,475/- as per the G.O.Ms. No. 160, Education Department dated 23.8.2005. Assailing the impugned order, the learned counsel for the petitioner submitted that the petitioner, after joining the service on 21.10.70 as Higher Grade Teacher in T.D.T.A. Primary School at Sundavilai Nazarath in Valliyoor Range, Tirunelveli District, was promoted as Secondary Grade Teacher on 1.1.71 on the basis of G.O.Ms. No. 347, Education Department dated 15.9.98. Thereafter, her services were regularised in the post of Secondary Grade Teacher w.e.f. 1.1.71. After sometime, she was also promoted as Headmistress in the same school on 2.6.88. However, it was stated that she had taken charge as Headmistress on 1.6.88 at 3.20 p.m., from the previous Headmaster. But, prior to 1.6.88, it was

pleaded that the scale of pay of Secondary Grade Teacher and Headmaster of Primary School were identical. Therefore, the Secondary Grade Teachers appointed as Headmasters of Primary Schools were also allowed the same scale of pay in the ordinary grade, selection grade and special grade that were applicable to the Secondary Grade Teachers, by allowing to enjoy the special pay of Rs. 5/10/15 depending upon the strength of the students in the concerned school. In view of that, the petitioner also received Rs. 15/- as special pay on her promotion. When the Fifth Pay Commission came into force, the Government granted separate scale of pay of Rs. 1400-2600 without special pay to the Headmaster of primary school and for the Secondary Grade Teacher, fixing at Rs. 1200-2040. However, in the year 1990, the Government passed the G.O.Ms. No. 1381 dated 5.10.90 granting selection grade and special grade scale of pay to the Headmasters of primary school, who worked on 1.6.88, counting their service in the post of Secondary Grade Teachers. In the meanwhile, some of the Secondary Grade Teachers, who were appointed as Headmasters of primary schools on 2.6.88, seeking the benefit of G.O.Ms. No. 1381 dated 5.10.90, approached the Tamil Nadu Administrative Tribunal by filing O.A. Nos. 1198, 1999 of 2000 & 3470 of 1992. The said applications were allowed by the Tribunal. Again when G.O.Ms. No. 185 dated 16.12.2002 was issued to revise the scale of pay of Special Grade Headmasters of primary school, who were appointed on 1.6.88, several writ petitions had been filed. In the meanwhile, the petitioner was allowed to retire from service on 13.4.2003, as a result, she received the last drawn salary of Rs. 10,475/- in the scale of pay of Rs. 8000-275-13500. When the petitioner's pension papers were sent, the same was also entered in her service register, however, on the basis of G.O.Ms. No. 185 dated 16.12.2002, the petitioner's pension was fixed on the minimum of time scale of pay at Rs. 6,500/- and she is getting only Rs. 3,250/-. Therefore, the grievance of the petitioner is that if the G.O.Ms. No. 160 dated 23.8.2005 is applied, the petitioner is entitled to receive the benefit of selection grade and special grade for the purpose of fixing her pension. When the G.O.Ms. No. 160 dated 23.8.2005 clearly shows that any primary school Headmaster who took charge after 1.6.88 is entitled to be fixed with the benefit of selection grade and special grade scales of pay, the respondents cannot refuse the benefit of the said Government Order to the petitioner alone. It was also further submitted that when the case of the petitioner is fully covered by the said Government Order, the impugned order passed, without appreciating the said Government Order, is liable to be interfered with. Finally, it was also stated that in similar and identical circumstances, when some of the primary school Headmasters, who took charge on 2.6.88, were also given the benefit of revision of pay as per G.O.Ms. No. 1381 dated 5.10.90, the same department cannot discriminate the petitioner.

2. No counter affidavit has been filed by the respondents. However, the learned Additional Government Pleader for the respondents, opposing the prayer of the petitioner, submitted that the G.O.Ms. No. 160, Education Department dated 23.8.2005 does not whisper anything in favour of the petitioner, since it speaks

of the benefit to be extended only to those Headmasters who had taken charge before 1.6.88. Therefore, the petitioner cannot seek the benefit of the said G.O.Ms. No. 160 dated 23.8.2005.

3. Heard the learned counsel for the parties. Although the submission made by the learned Additional Government Pleader for the respondents, opposing the relief, stating that the benefit conferred under G.O.Ms. No. 160, Education Department dated 23.8.2005 cannot be made applicable to the petitioner, much water has flown after the proceedings dated 5.10.2010 was issued by the Director of Elementary Education. It is true that the petitioner, while serving as Secondary Grade Teacher in T.D.T.A. Primary School at Sundavilai Nazarath in Valliyoor Range, Tirunelveli District, was promoted as Headmistress and thereupon, she had taken charge on 2.6.88, retired on 13.4.2003 and her pension was also fixed on the basis of last drawn salary, namely, Rs. 10,475/- in the scale of pay of Rs. 8000-275-13500. Subsequently, although the G.O.Ms. No. 160 dated 23.8.2005 was issued clarifying the G.O.Ms. No. 185 dated 16.12.2002 that the Headmasters and Headmistress who were appointed on 1.6.88 and retired before 1.8.2005 were entitled to get their pay fixed only from 1.6.88 till the date of their retirement in the selection grade or special grade, but the subsequent proceedings dated 5.10.2010 passed in Na.Ka. No. 2200/C2/2010 by the Director of Elementary Education brings home the case of the petitioner within the scope of G.O.Ms. No. 160 dated 23.8.2005, because the said G.O.Ms. No. 160 states that any Secondary Grade Teacher appointed as Headmaster/Headmistress of primary/middle school after 1.6.88, his/her special grade and selection grade can be re-fixed for the purpose of receiving the pensionary benefits. It is more appropriate to extract paragraph-2 of the proceedings dated 5.10.2010 issued by the Director of Elementary Education, which reads as follows:-- VERNACULAR (TAMIL) PORTION DELETED

The above paragraph of the said proceedings clearly shows that the petitioner's pension is to be fixed on the basis of her last drawn salary as Headmistress. Therefore, the impugned order is set aside and the writ petition is allowed, resultantly, the respondents are directed to pay the petitioner's pension at Rs. 5,238/- on the basis of her last drawn salary of Rs. 10,475/-, as per the proceedings dated 5.10.2010, and it is made clear that the petitioner is entitled to get the said pensionary benefit from the date of her retirement. Consequently, M.P. No. 2 of 2008 is closed. No costs.