
(2016) 12 MAD CK 0020

In the Madras High Court

Case No : Rev. Appln. No. 227 of 2015, (Review Application is filed under Order 47, Rule 1 CPC, seeking to review the order passed by the Division Bench of this Court in W.A.No.352 of 2014, dated 04.02.2015)

The Government of Tamil Nadu

APPELLANT

Vs

G. Eswaran

RESPONDENT

Date of Decision : 09-12-2016

Acts Referred:

Citation : (2017) 2 LLN 241 : (2017) 1 LW 673 : (2017) 2 MLJ 257 : (2017) 2 SCT 510

Hon'ble Judges : Huvadi G. Ramesh, Pushpa Sathyanarayana and V. Parthiban, JJ.

Bench : Full Bench

Advocate : Mr. R. Muthukumarasamy, Advocate General, assisted by Mr. M.K. Subramanian, GP Mr. T.N. Rajagopalan, Spl.GP, for the Applicant; Mr. R. Singaravelan, SC for Ms. M. Srividhya Mr. P. Wilson, SC for Mr. V. Thirupathi, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Huvadi G. Ramesh, J. - Heard Mr. R. Muthukumarasamy, learned Advocate General, assisted by Mr. T.N. Rajagopal, Special Government Pleader, appearing for the Government and Mr. P. Wilson, learned senior counsel and Mr. R. Singaravelan, learned counsel and also respective counsel appearing for the Teachers.

2. Prior to 1.6.1988, the scales of pay in respect of Secondary Grade Teachers and Headmasters of primary Schools were identical, i.e. 610-1075. The Secondary Grade Teachers appointed as Head Masters of Primary Schools were allowed the scale of pay in the ordinary grade, selection grade and special grade, applicable to the Secondary Grade Teachers and they were allowed special pay in addition to their basic pay.

3. Based on the recommendations of the Fifth Tamil Nadu Pay Commission, while

dispensing with the selection grade/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. This disparity had caused prejudice to the Secondary Grade Teachers.

4. Aggrieved by the same, various Associations of Teachers have represented to the Government, seeking issue of necessary orders for restoration of the Selection Grade and Special Grade to the Head Masters of Primary Schools counting the total service rendered by them in the posts of Secondary Grade Teachers and Head Master of Primary School.

5. On consideration of the above, the Government, while re-introducing Selection Grade/Special Grade with improved scale of pay, issued G.O.Ms. No. 304 Finance (Pay Commission) Department, dated 28.3.1990, granting Selection Grade and Special Grade to all the categories of posts in the scales of pay Rs.750-945 and above and upto the scale of pay Rs.2500-4200, thereby, the employees in these scales of pay are entitled to move on to selection Grade after completion of 10 years service in the ordinary grade and to special grade after completion of 10 years in the selection grade or a total 20 years service in a post irrespective of the service in the selection grade post. The scales of pay of selection grade and special grade are specifically indicated in Annexure I to G.O.Ms. No. 304. It was made clear in para 4 of the said G.O.Ms. No. 304 that if the promotion post happens to be on the lower scale of pay than the selection grade scale of pay, the employees appointed on promotion are eligible for Selection Grade scale to the lower post.

6. In order to remove certain ambiguity in awarding Selection Grade/Special Grade pay in respect of the posts for which, there is no promotional opportunity, the Government issued G.O.Ms. No. 216 dated 22.3.1993 introducing uniform scale of pay for all the secondary grade teachers and as per Annexure-1 of G.O.304, the ordinary grade, selection grade and special grade scales of pay are fixed at Rs.1200-2040, 1400-2600 and 1640-2900 respectively.

7. Claiming benefits under the above said G.O.Ms. No.216, dated 22.3.1993 one Thiru N. Govindarajan approached the Tamil Nadu Administrative Tribunal by way of O.A. No.8276 of 1997. He sought for a direction to refix his scale of pay at Rs.2000-60- 2300-75-3200 which was prescribed for the post of Primary School Head Master (Special grade). By order, dated 7.10.1998, the Tribunal allowed the said O.A. and directed the authorities to refix the scale of pay as Rs.2000-3200 with effect from 1.6.1988 in terms of G.O.Ms.No.216, dated 22.3.1993. After a lapse of nearly 9 years, the Government filed a Writ Petition in W.P. No.8747 of 2009, challenging the correctness of the order passed by the Tribunal. By order, dated 14.7.2009, the Division Bench of this Court dismissed the Writ Petition on the ground of delay and laches, with costs of Rs.10000/-, directing the Government to comply with the order of the Tribunal. It was challenged by the Government before the Hon''ble Supreme Court by way of Special Leave Petition in SLP (Civil) C.C.No.2746 of 2010 which also came to be dismissed by order

dated 23.4.2010 by the Hon''ble Supreme Court. Consequently, the Government was constrained to pass G.O.Ms.258, dated 6.9.2010, granting relief to the said N.Govindarajan.

8. By virtue of this, similarly placed Secondary Grade Teachers, started filing writ petitions one after the other, hundreds in number, claiming benefits under G.O.Ms.No.216 both before this Court and also before the Madurai Bench of Madras High Court. Following the Division Bench order in W.P.No.8747 of 2009, both the Principal Bench and Madurai Bench, allowed the writ petitions. As and when the orders being passed in the Writ Petitions, the Government also started preferring writ appeals. In one such Writ Appeal in W.A.No.1566 of 2012, the Government challenged the order dated 17.4.2012 passed by the learned single Judge in W.P.No.9752 of 2012, etc., which came to be dismissed by order dated 22.8.2012 passed by the First Bench of this Court, headed by the then Hon''ble the Chief Justice and A. Arumughaswamy, J., with the following observation in para 3:

"2. The learned single Judge while allowing the Writ Petition directed the respondents to extend the benefits of G.O.Ms.No.216, Finance (PC) Department, dated 22.3.1993 to the petitioner. Paragraphs 8 & 9 of the impugned order read as under:

"8. The learned Special Government Pleader appearing for the respondents submitted that no appeal is preferred against the orders dated 20.12.2011 made in W.P.(MD) Nos.9713 to 9718 of 2011, batch and W.P.(MD) Nos.7233 to 7239 of 2011 dated 15.2.2012. The learned Special Government Pleader after going through the earlier orders submitted that similar orders may be passed in these writ petitions also.

9. Following the said orders, the respective impugned orders dated 15.4.2011 and 4.7.2011 passed by the first respondent are set aside and the writ petitions are allowed. The respondents are directed to extend the benefits of G.O.Ms.No.216, Finance (PC) Department, dated 22.3.1993 to the petitioner and revise their pensionary benefits and pay arrears within a period of four weeks from the date of receipt of a copy of this order. No costs."

"3. In the circumstances, we do not find any error in the order passed by the learned single Judge. The Writ Appeal, which has no merits, is hereby dismissed. No costs. Consequently, miscellaneous petition is closed."

9. Aggrieved by the same, the Government also preferred an appeal before the Hon''ble Supreme Court in SLP (Civil) CC No.2680 of 2013, which also came to be dismissed on 28.1.2013.

10. Likewise, in other Writ Appeals preferred by the Government in W.A. Nos.1949 of 2012, etc., as against the common order dated 04.04.2012 passed by the learned single Judge in W.P. Nos.11986 of 2012, etc., the First Bench of this Court, comprising by the then Hon''ble the Chief Justice and T.S.

Sivagnanam, J., by Judgment dated 05.09.2012, dismissed the Writ Appeals, with the following observation:

"Learned Special Government Pleader appearing for the appellants very fairly submitted that a similar appeal has been dismissed by this Court on 22.8.2012 in W.A. No.1566 of 2012. Following the same, these Writ Appeals are dismissed. No costs. Consequently miscellaneous petitions are closed."

11. Similarly, in another Writ Appeal in W.A.(MD) No.40 of 2013, preferred by the Government as against the order dated 19.04.2012 passed the learned single Judge in W.P.(MD) Nos.1027 of 2012, etc., the Division Bench of Madurai Bench of this Court, comprising by K.N.Basha, J., and K.Ravichandra Babu, J., also, by Judgment dated 18.1.2013 dismissed the Writ Appeal with the following observation:

"It is brought to the knowledge of this Court by the learned counsel for the respondent/caveator that similar appeals have been dismissed by the Hon'ble First Bench of this Court at the Principal Seat in W.A. No.1566 of 2012 and W.A. Nos.1943, 1944 and 1760 of 2012 by the Judgments dated 22.8.2012 and 5.9.2012.

"In the light of the dismissal of similar appeals, the writ appeal is hereby dismissed. Consequently, connected miscellaneous petitions are closed. No costs."

12. Inasmuch as there was no implementation of the orders passed by this Court, the writ petitioners have preferred various contempt petitions both before this Court and Madurai Bench of this Court. After filing the contempt petitions, the Government issued another G.O.Ms.No.69, dated 18.4.2013, wherein, it was ordered that the retired persons who had worked as Secondary Grade teachers during the period 1.6.88 to 31.12.1995, shall be granted with the selection grade/special pay on par with Headmaster of Primary Schools and that the benefits will not be extended to the persons in future. Consequently, amendments to the said G.O.Ms.No.69 came to be issued vide G.O.Nos.180 and 181, dated 6.9.2013, extending the benefit of granting selection grade/special grade to the persons who obtained the Court orders and who had attained the selection grade/special grade during the period from 1.6.1988 to 31.12.1995 subject to the outcome of the judgment of Writ Appeals and Review Applications filed before this Court. Further, in the said G.O.Ms.No.181, dated 6.9.2013, PET/Special Teachers were made eligible.

13. While the matters stood thus, irrespective of the above said orders both by the learned single Judges and the Division Benches on the subject issue, it is pertinent to note that while dealing with similar writ petitions in W.P.Nos.4505 of 2012 etc. batch, the learned single Judge (D.Hariparanthaman, J.) of this Court, having considered all the contentions which were reiterated before this Court, elaborately and having followed the various decisions of the Hon'ble Supreme Court, declined to entertain the writ petitions and accordingly, by order dated 18.11.2013 dismissed the Writ Petitions. The learned Judge was of the view that

the order dated 14.07.2009 in W.P.No.8747 of 2009 passed by the Division Bench of this Court and the order in SLP (CC) No.2746 of 2010 cannot be relied on by the writ petitioners as a binding precedent since they were dismissed at the threshold without any detailed reasons therefor and it did not constitute any declaration of law. The learned Judge fortified his view by relying upon the decision of the Apex Court in "Director of School Education v. A.N. Kandaswamy and another" reported in (1998) 8 SCC 26.

14. Aggrieved by the above order, the writ petitioners have preferred Writ Appeals in W.A.(MD) Nos.352 of 2014 etc. batch before the Division Bench of this Court, headed by V. Dhanapalan, J. and one of us (Pushpa Sathyanarayana, J.). Along with the said Writ Appeals, connected Writ Petitions in W.P. Nos.232 of 2014, etc. seeking to extend the benefits of G.O.216, were also clubbed together. While setting aside the order of the learned single Judge, by judgment dated 4.2.2015, the Division Bench has categorically held as under:

"20. When a policy has been taken by the Government to extend certain benefits, the same has to be extended to the eligible persons as per the scheme. Such extension of benefits may be by automatic process by the Government itself or at times in deserving cases, the beneficiaries also may approach this Court and seek for the relief.

"21. Normally, the benefits of the scheme could be extended to the eligible persons. Therefore, we are of the considered opinion that mere laches on the part of the petitioners would not deprive the benefits as per the scheme. At the same time, we are also concerned with the State exchequer in payment of arrears.

"22.

"23. It is true, implementation of the Government order in question to the teachers/individuals will cause enormous burden to the State exchequer and it is, certainly, a matter for concern. However, the views taken by the earlier Benches of this Court for extending the benefit to the employees therein are equally applicable to these cases in hand, as these individuals also are similarly placed to those in the earlier litigations. But the only point to be considered in these cases is, the individuals have approached the Court belatedly, which delay, according to them, was due to the pendency of the decision in those matters. However, as regards the claim of arrears for the period taken by the individuals in these matters in marking a belated approach, we are not inclined to pass any orders. Therefore, we leave it open to the State to take a decision as to the period of entitlement with regard to the said issue in accordance with law."

15. In the meantime, the Government issued G.O.Ms.No.62, dated 9.3.2015, bringing certain amendments to para 3(ii) of the G.O.Ms.No.216, to the effect that the Selection Grade/Special Grade scales of pay indicated in Annexure-I to the G.O.Ms.No.304, dated 28.3.1990 is applicable for the Fifth Tamil Nadu Pay Commission period only i.e. from 1.6.1988 to 31.12.1995 and as such, the

benefit of Selection Grade/Special Grade scales of pay as contemplated in para-3(ii) of the G.O.Ms.216 shall be made applicable only to the cases of Secondary Grade Teachers and other employees who were awarded Selection Grade/Special Grade between 1.6.1988 and 31.12.1995 and the same cannot be extended beyond this date since subsequent Pay Commission revisions were implemented from 1.1.1996.

16. While dealing with similar Writ Appeals in W.A.Nos.1696 of 2015 etc., and Writ Petitions in W.P.Nos.28792 of 2013 etc., the Division Bench of this Court, consisting of V.Dhanapalan, J. and K. Kalyanasundaram, J., while following Judgment rendered in W.A.Nos.352 of 2014, etc. batch, by order, dated 12.3.2015, disposed of both the Writ Appeals and Writ Petitions, with the following observation:

4. In the light of the above observations of this Court in the said batch of cases, all the present Writ Appeals and Writ Petitions are also disposed of as they are similar and identical in nature and the decision rendered by this Court in the said batch of cases is covered in the present batch of cases also and hence, we allow the present batch of Writ Appeals and Writ Petitions on similar lines with similar observations and directions to the extent indicated therein. No costs. The connected pending Miscellaneous Petitions are closed."

17. Similar Writ Appeals in W.A.(MD) Nos.351 of 2015 and Writ Petitions in W.P. (MD) Nos.2931 of 2012, etc., were filed before the Division Bench of Madurai Bench of this Court, comprising by S. Manikumar, J. and G. Chockalingam, J. which, after taking note of the fact that the Government issued G.O.Ms. No. 62, dated 9.3.2015, while allowing the writ appeals and writ petition, has granted the relief, having observed the following:

"3. After verifying the averments made in the Writ Appeals/Writ Petitions, Mr. V.R. Shanmuganathan, learned Special Government Pleader appearing for the State, submitted that in all the cases mentioned above (249) cases), Teachers are eligible to the benefits conferred of the said Government Order.

"4. In the light of the above, the Government and Official respondents are directed to extend the benefits to the Teachers as per the above said Government order. Re-fixation and disbursement of arrears of salary shall be done, within a period of four months from the date of receipt of a copy of this order, after due verification of the service particulars of Teachers. All the Writ Petitions/Writ Appeals/Review Applications are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed."

18. In similar batch of Writ Petitions in W.P. Nos. 27839 of 2015, the Division Bench of this Court, consisting of V. Dhanapalan, J. and R.S. Ramanathan, J., while following Judgment rendered in W.A. Nos. 352 of 2014, etc. batch, by order, dated 6.4.2015, allowed the Writ Petitions, with the following observation:

"4. In the light of the above observations of this Court in the said batch of cases,

all the present Writ Petitions are also disposed of as they are similar in nature and as the decision rendered by this Court in the said batch of cases is covered in the present batch of cases, we allow the present batch of writ petitions on similar lines with similar observations and directions to the extent indicated therein. No costs. Consequently, connected pending Miscellaneous Petitions are closed."

19. However, it is pertinent to note that while almost all the Division Benches of this Court, have granted the relief while dismissing the writ appeals preferred by the Government and also setting aside the order of the learned single Judge, who declined to grant the relief, a Division Bench of Madurai Bench of this Court headed by V.Ramasubramanian, J. and N.K.Kirubakaran, J., took a different view while dealing with Writ Petitions in W.P.(MD) Nos.7061 of 2011, etc. batch which were filed seeking to extend the benefits of G.O.Ms.No.216 and by order, 10.12.2015, dismissed the Writ Petitions, having observed as under:

"15. The post of Secondary Grade Teacher carry ordinary scale of pay Rs.1200-2040. Therefore, it fell under Sl.No.8 of the above Table. As a consequence, the selection grade scale of pay for the post was Rs.1400-2600, the Special Grade Scale of Pay was Rs.1640-2900. But unfortunately, the teachers started thinking that they would be entitled to selection grade scale of pay Rs.1640-2900 and special grade pay Rs.2000-3200. That was never the purport of G.O.Ms.No.304 and 216.

"16. One more reason as to why the petitioners cannot have any of the benefits is that they were not even Secondary Grade Teachers. The Secondary Grade Teachers themselves came up with a mistaken impression. Taking clue from them, 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.

"17. It is also stated that the Government had already passed a G.O.Ms.No.62, dated 9.3.2015 and that therefore, the petitioners are entitled to the benefit of the said Government Order. However, it is stated by the learned Special Government Pleader that the Government is already considering a proposal to withdraw the said Government Order. Strong reliance is placed upon paragraph 7(2) of the Government Order in G.O.Ms.No.62 Finance (CMPC) Department, dated 9.3.2013. In our opinion, G.O.Ms.No.62 itself is thoroughly misconceived. We wonder as to why G.O.Ms.No.62 has not so far been revoked by the Government. We direct the respondents to pass orders, at the earliest.

"18. Apart from the above, the petitioners are guilty of delay and laches. These writ petitions are filed mostly after 19 to 23 years of the Government Order. The contention that the Government Servants have a continuing cause of action is wholly misconceived.

"19. Therefore, in the light of the law laid down by the Supreme Court, all the writ petitions deserve to be dismissed and accordingly, dismissed. Connected

miscellaneous petitions are closed."

20. Consequent to the above said order, the Government has passed G.O.Ms.No.96, dated 17.3.2016 withdrawing the G.O.Ms.No.62, dated 09.03.2015, stating that the question of granting the pay scale of Primary School Head Master without actually getting regular promotion does not arise and that the Secondary Grade Teachers in High/Higher Secondary Schools, classified under the Tamil Nadu Educational Subordinate Service shall not have right for promotion as Primary School Head Master in Primary/Middle Schools classified under the Tamil Nadu Elementary Education Service. Accordingly, the Secondary Grade Teachers in High/Higher Secondary Schools cannot claim the pay scales of the Primary School Head Master by counting the service rendered in the post of Secondary Grade Teacher.

21. The First Bench of Madurai Bench of this Court, headed by the Hon'ble the Chief Justice and Nooty Ramamohana Rao, J., also, by order dated 10.6.2016 dismissed the Writ Appeals in W.A.(MD) Nos.582 of 2016, etc. including the writ appeals which were at SR stage, filed by the Government against the order of the learned single Judge in W.P.(MD) Nos.13467 of 2011 etc., having observed as under:

"6. We find that the directions issued by this Court to refix the scales of pay of Teachers in Selection Grade/Special Grade remain pending for four years after final adjudication. The impugned orders are passed on the concession that the writ petitions, thus, are similar in character and original issue has been tested till the Honourable Supreme Court unsuccessfully. We, thus, dismiss all these writ appeals. We also call for the connected writ appeals in W.A.(MD) SR Nos.15689 to 15692 of 2013, whether SR stage or otherwise and dismiss them as well. Consequently, the connected miscellaneous petitions are dismissed. No costs."

22. As against the above judgments of the various Benches of this Court, the Government has filed the Review Applications in Rev.Appl.Nos.227 of 2015, etc. both before this Court and the Madurai Bench of this Court. So also contempt petitions have also been filed by the beneficiaries of the orders being aggrieved by non-implementation of the orders of this Court by the Government.

23. Be that as it may, when similar Writ Appeals in W.A.(MD) Nos.145 and 1325 to 1327 of 2016 came up for consideration before the First Bench of the Madurai Bench of this Court headed by the Hon'ble The Chief Justice and S.Nagamuthu, J., by order, dated 04.10.2016, the First Bench, having considered the fact that there were conflict of views between the different Benches, referred the matters to the Larger Bench, having passed the following:

"The learned Special Government Pleader appearing for the Appellate/State Government points out that through various orders passed either at the Principal Seat or at the Madurai Bench, there appears to have arisen a conflict of views between different Benches.

"2. The Second Bench at the Principal Seat vide order dated 19.9.2016 has directed the Registry to call for the review petitions and Contempt petitions - both at the Principal Seat as well as the Madurai Bench, pertaining to the order passed in batch of cases relating to G.O.Ms.No.216, Finance (PC) Department, dated 22.3.1993, to be listed on 18.10.2016.

"3. It is stated that the present appeals are also connected with the same.

"4. We are of the view that a list be given of all such cases pending at the Madurai Bench and at the Principal Seat by the State Government within three days and thereafter order will be obtained by the Registrar (Judicial) at the Principal Seat from the Chief Justice for purposes of constitution of a Larger Bench, as once again hearing by a Division Bench may not subserve the purpose.

"5. The Order be so obtained so that these matters can be listed on 18.10.2016."

24. Pursuant to the above, all the connected matters pertaining to the G.O.Ms.No.216, dated 22.3.1993, viz., Writ Appeals, Writ Petitions, Review Applications and Contempt Petitions, which were captioned above, have been placed before this Bench, for the purpose of comprehensive pronouncement in respect of the subject matter.

25. Since a common issue regarding the implementation of G.O.Ms.No.216, Finance (PC) Department, dated 22.3.1993 has been involved in all these matters, the same are taken up together for final disposal.

26. At the outset, it is pertinent to mention that all the Secondary Grade Teachers, who came forward with the various writ petitions, claiming benefits that were granted by the Government way back more than two decades, by issuing the G.O.Ms.No.216, dated 22.3.1993, by now, almost all the teachers had retired from service having attained the age of superannuation and also some of the teachers have expired. If the implementation of the G.O.Ms.No.216 is taken place, it would revise the pensionary benefits in respect of retired teachers and family pension in respect of the teachers who have expired.

27. The petitioners, who came forward with the various Writ Petitions, seeking to extend the benefits of G.O.Ms.No.216 Finance (PC) Department dated 22.3.1993, were Secondary Grade Teachers working in the Government High Schools and Higher Secondary Schools. Their services are governed by the Tamil Nadu Educational Subordinate Service Rules and are under the control of the Directorate of School Education. According to them, by virtue of G.O.Ms.No.216, 22.3.1993 they are entitled to Selection Grade/Special Grade on par with the Primary School Headmasters with effect from 1.6.1988, i.e. from the date on which, higher pay scale was given to the Primary School Headmasters by way of awarding Selection/Special Grade by counting their total service.

28. Prior to 1988, the scales of pay in respect of Secondary Grade Teachers and Headmasters of primary Schools were placed identical, i.e. 610-1075. The Secondary Grade Teachers appointed as Head Masters of Primary Schools were

allowed the scale of pay in the ordinary grade, selection grade and special grade, applicable to the Secondary Grade Teachers.

29. Later, based on the recommendations of the Fifth Tamil Nadu Pay Commission, while dispensing with the selection grade/special grade, the Government granted separate scale of pay of Rs.1400-2600 without special pay for Head Masters of Primary Schools while the scale of pay of Rs.1200-2040 for Secondary Grade Teachers. This had created a disparity among the Secondary Grade Teachers of High/Higher Secondary Schools. In order to remove this disparity, the Government again introduced the Selection Grade/Special Grade with improved scale of pay by issuing G.O.Ms.No.304 Finance (Pay Commission) Department, dated 28.3.1990, granting Selection Grade and Special Grade to all the categories of posts in the scales of pay Rs.750-945 and above and upto the scale of pay Rs.2500-4200, thereby, the employees in these scales of pay are entitled to move on to selection Grade after completion of 10 years service in the ordinary grade and to special grade after completion of 10 years in the selection grade or a total 20 years service in a post irrespective of the service in the selection grade post. The scales of pay of selection grade and special grade are specifically indicated in Annexure I to G.O.Ms.No.304.

30. It is admitted fact that there was no promotional avenue for the Secondary Grade Teachers of High/Higher Secondary schools, however, for the Secondary Grade Teachers in Elementary Schools have promotion avenue, i.e. to become Headmaster of the Primary Schools. It is to be noted that in primary schools, Secondary Grade Teachers and Headmaster posts are interchangeable due to same scale of pay. Having considered this, in order to remove certain ambiguity in awarding Selection Grade/Special Grade pay in respect of the posts for which there is no promotional opportunity, the Government issued G.O.Ms.No.216 dated 22.3.1993 introducing uniform scale of pay for all the secondary grade teachers and as per Annexure-1 of G.O.Ms.No.304, the ordinary grade, selection grade and special grade scales of pay are fixed at Rs.1200-2040, 1400-2600 and 1640-2900 respectively.

31. The first and foremost claim of a Secondary Teacher was entertained by the Tribunal as early as on 7.10.1998 in O.A.No.8276 of 1997 filed by one N.Govindarajan, who was working as Secondary Grade Teacher in a High School and directed the Government to refix his scale of pay at Rs.2000- 3200 with effect from 1.6.1988 in terms of G.O.Ms.No.216, dated 22.3.1993. For the reasons best known to the Government, this order was not challenged for more than 11 years and only in the year, 2009, the Government has come forward with the Writ Petition in W.P.No.8747 of 2009, which was dismissed by the Division Bench of this Court vide order dated 14.7.2009 with costs of Rs.10,000/- with a further caution to the Government not to resort to this type of action of filing writ petitions with abnormal delay by overburdening the Court. On merits, it concluded by the Division Bench that the G.O. Ms.No.216 does not contemplate the requisite period of service for extending the benefit of Selection/

Special Grade. Therefore, if at all any delay and laches can be attributed, it should be only on the part of the Government alone and not on the persons who approached the Court belatedly since only after coming to know the subsequent orders of this Court, they approached. Further, as against the order of the Division Bench, though the Government preferred appeal before the Hon''ble Supreme Court in SLP (Civil) C.C.No.2746 of 2010, the same also came to be dismissed by order dated 23.4.2010. Consequently, in compliance to the order, the Government was constrained to pass G.O.258, granting relief to the said N. Govindarajan. Consequent to this, number of similar Writ Petitions were filed and while disposing of the same, this Court directed the authorities to consider the representations of the writ petitioners. Thereafter, the representations made by the writ petitioners were dismissed, which was challenged in a batch of Writ Petitions and the same were allowed.

32. Consequently, hundreds of Writ Petitions were filed by the similarly placed persons, claiming benefits under G.O.Ms. No.216 both before this Court and also before the Madurai Bench of Madras High Court. Right from the inception, following the Division Bench order in W.P. No.8747 of 2009 and taking note of appeal in SLP (Civil) CC 2746 of 2010 dismissed by the Supreme Court, both the Principal Bench and Madurai Bench, allowed the writ petitions, except a learned single Judge of this Court in W.P. Nos.4505 of 2012 etc. batch, whose order, dated 18.11.2013 was later came to be set aside by the Division Bench of this Court by common Judgment dated 4.2.2015 in W.A. Nos.352 of 2014 etc., batch.

33. In order to bring parity between the Selection Grade Teachers of High/Higher Secondary Grade Teachers and the Primary School Headmasters, G.O.Ms. No.304, dated 28.3.1990 was issued, granting Selection Grade and Special Grade to all the categories of posts in the scales of pay Rs.750-945 and above and upto the scale of pay Rs.2500-4200 by indicating the scales of pay of selection grade and special grade in Annexure I to G.O.Ms.No.304. It was made clear in para 4 of the said G.O.304 that if the promotion post happens to be on the lower scale of pay than the selection grade scale of pay, the employees appointed on promotion are eligible for Selection Grade scale to the ordinary post. However, in order to remove certain ambiguity in awarding Selection Grade/Special Grade pay in respect of the posts for which there is no promotional opportunity, the Government issued G.O.Ms.No.216 dated 22.3.1993 introducing uniform scale of pay for all the secondary grade teachers and as per Annexure-1 of G.O.Ms.No.304, the ordinary grade, selection grade and special grade scales of pay are fixed at Rs.1200-2040, 1400-2600 and 1640-2900 respectively.

34. Having regard to the above and since the Government have rightly issued the G.O.Ms. No.216, dated 22.3.1993 removing the disparity in the pay scales of the Selection Grade Teachers of High/Higher Secondary Schools on par with the Primary Schools Headmasters since there was no promotional avenue for them and in view of the fact that right from the inception all the Division Benches have upheld the G.O.Ms. No.216, dated 22.3.1993, we are unable to take a different

view at this distant point of time to frustrate the respective orders of the various Division Benches of this Court. In such view of the matter, the conflict order, dated 10.12.2015 passed by the Division Bench of this Court in W.P.(MD) Nos.7061 of 2011, etc. is set aside.

35. As we confirmed that the benefits of G.O.Ms. No.216 have to be extended to all the Secondary Grade Teachers of High/Higher Secondary Grade Schools on par with the Primary School Headmasters, it is for the Government to implement the order. It appears that having issued the G.O.Ms. No.216 and having faced the contempt proceedings, the Government is more concerned about the implementation of the G.O. rather to agitate the said G.O. According to the statistical data submitted by the Government, there were 30273 Secondary Grade Teachers in Government High/Higher Secondary Schools during the period 1989-90 and 13675 PET/Special Teachers (in total 43948) were in service as on 30.09.1989 and if the implementation of the G.O. is carried out, the expenditure would approximately more than 500 Crores of rupees, which would result in heavy financial constraints and consequently drain the financial position of the State.

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 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:

- 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;
- 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;

39. With the above directions, all the captioned matters, viz., Writ Appeals, Writ Petitions, Review Applications are disposed of and the Contempt Petitions are closed. There shall be no order as to costs. Consequently, all connected Miscellaneous Petitions are closed.

40. It is brought to the notice of this Court that Writ Appeals in W.A.(MD) Nos.1325 to 1327 of 2016 which were tagged with the present batch of matters inadvertently as they are not pertaining to G.O.Ms. No.216, dated 22.3.1993. Hence, the Registry is directed to de-link these matters and post the same in

regular course.

Rev. Application No.227 of 2015 etc., W.A.Nos.1744 of 2015, etc. W.P. Nos.29774 of 2016, etc. and Contempt Petition Nos.1545 of 2016 etc. batch

V. Parthiban, J. (Consenting...) - Concurring with conclusion of the Bench, it needs to be pointed out that how a seemingly innocuous original application filed by an individual employee before the Tamil Nadu Administrative Tribunal (now extinct) can give rise to a spate of litigation of stupendous proportion, flooding the institution and engaging very many Judges and Benches of this Court in rendering decisions routinely over the years, with little application, but more inclined to dispose of the Writ Petitions/Appeals due to impulsive urge for disposal of cases.

42. The Full Bench was constituted sans reference to remedy the extraordinary controversy which engulfed the institution with several Judges and Benches passing orders allowing and disallowing writ petitions/appeals filed by both the employees (Secondary Grade teachers etc.,) and the State Government. The starting point of controversy is the issue of G.O.Ms.No.216, dated 22.3.1993 wherein certain financial benefits were conceived and confined to a particular class of employees in a particular situation. The said G.O. was interpreted and misinterpreted by the parties to defend each one's action and on the basis of such (mis)interpretation plethora of orders came to be passed by this Court, some of which have been confirmed by the Hon'ble Supreme Court of India. The orders passed by the Court over a period of time cover thousands of employees who were working, retired and no more.

43. Batch after batch of writ petitions/appeals disposed off on the simple premise that the issue was covered in favour of the employees and they required no real adjudication. However, there were one or two exceptions to the mass routine disposal, of-course these exceptions got buried under colossal weight of the orders passed in respect of thousands of writ petitions. The Government on its part, found itself in unenviable position having to comply with the orders passed by this Court, lest they would be hauled up for contempt. The Government throughout the litigious journey before this Court has not made any sincere effort to address the issue as to the foundational factors or basis for issue of G.O.Ms.No.216, dated 22.3.1993. In all the litigations at least in most of them from the records, it could be seen that counsel representing the Government merely accepted the position that the matters were covered and thus they thought that their responsibility fairly ended. Fearing contempt action from this Court (hundreds of contempt applications have been filed by the employees for non-compliance), the Government even passed another G.O. allowing the claims of the employees, notwithstanding the fact that the Government itself has filed several review applications and appeals against the routine orders passed by this Court.

44. The Government at last woken up to the fact that the entire issue needs to

be addressed by this Court afresh, as thousands of Writ Petitions were allowed without proper examination and adjudication. Orders passed by this Court over the years, in favour of the employees by following the earlier order one after the other may be correct or incorrect and this Court may still hold in favour of the employees after proper judicial scrutiny and critical examination of the issues on hand. But the fact of the matter is that there was no proper adjudication of the claim by the Teachers vis-a-vis the Government Order in question and that precisely is the issue. However, it has become too late in the day for fresh adjudication and start the litigation process from the scratch all over again which means that thousands of beneficiaries of the orders passed by this Court would be forced to confront an uncertain future, which situation would be unwholesome. particularly the beneficiaries, most of them retired, many of them no more, they and the families have been living in a small comfort of recurring monthly pensionary hope. After all in the old age, hope is the only will for their remaining survival.

45. In these circumstances, the Full Bench in quest for equitable, just and fair solution, has to find the terms with pragmatism acceptable to both parties and at the same time, not upsetting the stated position of the parties. Such an arduous task was meant to be tight rope walking, not falling on either side and tilting the scales of justice, one way or the other. The Full Bench was bestowed with the task of remedying the extraordinary situation brought upon the institution, on its own, equally contributed by the employees and the Government and such extraordinary situation called for extraordinary remedy. The Full Bench with the best of its intention attempted only that and by an order the age old controversy which has been engaging the attention of this Court at the instance of both the employees and the Government is effectively put an end to.

46. Courts being overburdened at all times, develop tendencies to dispose of cases as early as possible with good intention, having public interest in mind, but in its anxiety so, the Courts like in the present batches, fall in error in disposing of matters without complete adjudication. A small error of judgment followed routinely by others has snow balled into a behemoth today threatening the very efficacy of the justice delivery system.

47. The extraordinary situation as we have seen now in the batch of cases, should be an eye opener for the institution in future, as our perennial urge for quick disposal, howsoever, well meaning, has its flip side too.