

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA  
AND  
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.23144 of 2001

N.Murugaiyan

.. Petitioner

vs.

1. The Principal Accountant  
General (A & E) of Tamil Nadu,  
Teynampet, Chennai-18.
2. The State of Tamil Nadu Rep. by the  
Secretary to Government,  
Department of Adi-Dravidar and  
Tribal Welfare,  
Fort St.George, Chennai-9.
3. The Director of Adi-Dravidar and  
Tribal Welfare,  
Chepauk, Chennai-5.
4. The District Adi-Dravidar and  
Tribal Welfare Officer,  
Thanjavur District.
5. The Special Tahsildar,  
Adi-Dravidar and Tribal Welfare  
Department,  
Thiruvaiyaru, Thanjavur District.
6. The Registrar,  
Tamil Nadu Administrative Tribunal,  
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pursuant to the order dated 9.8.2001 passed in O.A.No.2675 of 2001 on the file of the Tamil Nadu Administrative Tribunal, Chennai and quash the same.

For petitioner : Mr.S.M.Subramaniam  
For respondent-1 : Mr.T.Ravikumar, ACGSC  
For respondents 2 to 5 : Mr.M.Dhandapani, Spl.G.P.

ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

The petitioner is aggrieved by the order of the Tamil Nadu Administrative Tribunal, dated 9.8.2001 passed in O.A.No.2675 of 2001.

2. In the Original Application, the petitioner challenged the proceedings of the first respondent, dated 14.2.2001 and 14.3.2001 and while seeking for quashing of those orders, prayed for upholding the order of the fourth respondent dated 10.7.2000 fixing the scale of pay of the petitioner in the post of Elementary School Headmaster with effect from 1.6.1988, awarding Selection Grade and Special Grade, as per G.O.Ms.No.1381, Education Department, dated 5.10.1990.

3. Brief facts which are required to be stated are that the petitioner joined as Secondary Grade Teacher on 2.7.1962. Initially, he was functioning as Headmaster of an Elementary School. As he had served in the post of Secondary Grade Teacher for more than 10 years, he was awarded the Selection Grade scale of pay on 18.6.1972, i.e. when he completed ten years of service in that post and Special Grade scale of pay in the post of Secondary Grade Teacher on 13.4.1983 after completion of 20 years of service.

4. It is relevant to note that prior to V Pay Commission's recommendations which came into effect on and from 1.6.1988, the scale of pay for Secondary Grade Teacher as well as Primary School Headmaster was one and the same. The scale of pay which was prevalent pursuant to IV Pay Commission in respect of Secondary Grade Teacher/Primary School Headmaster, was as under:

Ordinary Grade : Rs.1200-2040  
Selection Grade : Rs.1400-2600  
Special Grade : Rs.1640-2900

After the implementation of V Pay Commission with effect from 1.6.1988, the scale of pay of Secondary Grade Teacher and Primary School Headmaster was revised as under:

Name of the post	Ordinary Grade	Selection Grade	Special Grade
Secondary Grade Teacher	4000-100-6000	5000-150-8000	5500-175-9000
Primary School Headmaster	5000-150-6000	5500-175-9000	6500-200-10500

5. One other document which is required to be mentioned is G.O.Ms.No.1381, Education Department, dated 5.10.1990. Under the said G.O., in the light of different scales of pay, having been introduced in V Pay Commission, the grant of Selection Grade and Special Grade scales of pay to the Headmasters who were in position as on 1.6.1988, came to be granted by taking into account the services rendered by them in the post of Secondary Grade Teachers as Headmasters of Primary Schools for the purpose of awarding the Selection Grade and Special Grade. Strict application of the said G.O. would only result in the counting of the services as Secondary Grade Teacher along with the service rendered as Primary School Headmaster only in respect of those persons who were functioning as Headmasters as on 1.6.1988.

6. Be that as it may, when the petitioner was promoted as Headmaster on 7.3.1990, he did not get the benefit of G.O.Ms.No.1381, dated 5.10.1990. Some of the affected Teachers like that of the petitioner made representation contending that their scale of pay in the post of Headmaster should be fixed from 1.6.1988 irrespective of their promotion on a later date and also for award of Selection Grade and Special Grade as ordered in G.O.Ms.No.1381, dated 5.10.1990. As the representation did not yield any result, they moved the Tamil Nadu Administrative Tribunal by filing a batch of Original Application in O.A.No.4499 of 1991 etc. Those Applications were disposed of by the Tribunal in its order dated 2.2.1996, directing the respondents to fix the pay of the applicants in the post of Headmaster of Elementary School from 1.6.1988 and also for awarding of Selection Grade and Special Grade as per G.O.Ms.No.1381, dated 5.10.1990. Irrespective of their promotion as Headmaster from a subsequent dates, they were all granted the benefits as from 1.6.1988 as per the direction of the Tribunal.

7. The petitioner who retired on superannuation on 31.12.1997, preferred a representation before the fourth and fifth respondents to extend the pay fixation benefits of the Tribunal's order on the ground that he was also similarly placed. Since there was no reply, the petitioner filed

O.A.No.2888 of 1999, which was disposed of by the Tribunal on 29.4.1999, directing the fourth respondent to consider the petitioner's representation dated 12.4.1999. Pursuant to the same, the petitioner's pay was fixed in the Elementary School Headmaster scale of pay with effect from 1.6.1988 and he was also granted the Selection Grade and Special Grade by extending the concession granted in G.O.Ms.No.1381, dated 5.10.1990 in the proceedings dated 10.7.2000. Accordingly, arrears were also drawn by the fifth respondent and paid to the petitioner.

8. When the pay was revised by the order dated 10.7.2000, it was held that the petitioner was paid Special Grade scale of pay applicable to the post of Headmaster with effect from 1.6.1988. Subsequently, the first respondent by communication dated 14.2.2001 addressed to the fifth respondent, pointed out that G.O.Ms.No.1381, dated 5.10.1990, was applicable to only those Headmasters who were in position as on 1.6.1988 and therefore, the fixation of the scale of pay for the petitioner was wrongly made in the order dated 10.7.2000 and therefore, the same had to be rectified and the excess payments to be recovered. The first respondent addressed a communication to the petitioner also on 14.3.2001 stating that the wrong fixation was made and the recovery to be made of the excess payments made. Challenging the same, the petitioner preferred the present Original Application in O.A.No.2675 of 2001 before the Tribunal. The Tribunal, having upheld the said order dated 14.3.2001 of the first respondent, the petitioner has come forward with this Writ Petition.

9. Mr.S.M.Subramaniam, learned counsel appearing for the petitioner contended that the petitioner was also identically placed like that of the other Headmasters who were governed by G.O.Ms.No.1381, dated 5.10.1990 and therefore, whatever benefits extended to them for counting of service as Secondary Grade Teacher prior to the date of promotion, should be extended to the petitioner also for the purpose of grant of Selection Grade and Special Grade scales of pay in the post of Headmaster. Learned counsel therefore contended that the order of the first respondent, dated 14.3.2001 and the confirmation of the same by the Tribunal in the order impugned in this Writ Petition, are liable to be set aside and the respondents should be directed to restore the grant of Selection Grade and Special Grade of the petitioner in the post of Headmaster right from 1.6.1988.

10. As against the above submissions, learned Special Government Pleader appearing for respondents 2 to 5 contended that G.O.Ms.No.1381, dated 5.10.1990 was applicable only to those Headmasters of the Primary Schools who were in position



as Headmasters on 1.6.1988, for whom alone, the counting of the earlier service as Secondary Grade Teacher was permissible for the purpose of grant of Selection Grade and Special Grade scales of pay. Learned Special Government Pleader therefore contended that since the petitioner was promoted as Headmaster of the Primary School only on 7.3.1990, the benefits of G.O.Ms.No.1381, dated 5.10.1990, were not applicable.

11. Having heard learned counsel for the respective parties, we find force in the submissions of the learned Special Government Pleader. A reading of G.O.Ms.No.1381, dated 5.10.1990 is clear to the effect that the same was meant only for such of those Headmasters of Primary Schools who were in position on 1.6.1988 and in respect of whom, services rendered in the post of Secondary Grade Teachers are to be taken into account for the purpose of awarding Selection Grade and Special Grade in the post of Primary School Headmaster. Apparently, the said G.O. seemed to have been passed taking note of the fact that V Pay Commission's recommendations which made a distinction in the scales of pay of Secondary Grade Teachers and Primary School Headmasters for the first time with effect from 1.6.1988 did create a situation, wherein such Headmasters if were to be granted Selection Grade or Special Grade scale of pay, had to wait for more than eight to ten years after assumption of office as Headmaster from 1.6.1988.

12. It was noted that such Headmasters when they assumed office on 1.6.1988, had already rendered services in the post of Secondary Grade Teachers for quite a length of time and that prior to V Pay Commission's recommendations, the post of Secondary Grade Teacher and the Headmaster carried the same scale of pay in the Ordinary, Selection and Special Grades, while after the introduction of V Pay Commission, separate scales of pay at three different levels, namely Ordinary Grade, Selection Grade and Special Grade came to be introduced, which necessitated the issuance of G.O.Ms.No.1381, dated 5.10.1990 to protect the interest of such of those Headmasters who were in position as on 1.6.1988. In respect of other Secondary Grade Teachers who assumed office as Headmaster after 1.6.1988 and who had functioned as Secondary Grade Teachers and had gained the benefit of Selection Grade and Special Grade scales of pay, may be justified in claiming that after assumption of office of Headmaster of Primary School, they should not be put into any monetary loss while fixing their scale of pay in the post of Headmaster. Such an anomalous situation might have arisen in these cases, since after the V Pay Commission's recommendations, the Special Grade scale and pay of Secondary Grade Teacher and the Selection Grade scale of pay of Primary School Headmaster were one and the same, while the Special

Grade scale of pay of the Headmaster was on the higher side. Therefore, a Secondary Grade Teacher in the Special Grade cannot be fitted in the Ordinary scale of Headmaster on his promotion which would otherwise result in extreme monetary loss. However, since G.O.Ms.No.1381, dated 5.10.1990 was specifically applicable to such of those Headmasters who were in position as Headmaster as on 1.6.1988, the grant of such benefits to the other Secondary Grade Teachers who assumed office of Headmaster subsequent to that date, cannot certainly claim that they are entitled for such award of Selection Grade and Special Grade in the scale of pay of Headmaster from the date on which they really did not hold the office as Headmaster, even though their claim for grant of appropriate scale of pay either in the Selection Grade or the Special Grade by counting their period of service in the post of Secondary Grade Teacher for fixation of their pay in the respective Selection Grade or Special Grade scale of pay applicable to the post of Headmaster after their appointment to the post of Headmaster as and from that date.

13. On the above basis, when the case of the petitioner is considered, it is not in dispute that he was promoted as Headmaster and assumed office as such only from 7.3.1990. It is also not in dispute that long prior to that date, by virtue of completion of required number of years of service put in by him in the post of Secondary Grade Teacher coupled with the service rendered by him in the post of Headmaster even as on 7.3.1990 and the further fact that prior to 1.6.1988, the post of Headmaster of Primary School as well as Secondary Grade Teacher was one and the same, the petitioner was entitled to claim Selection Grade and Special Grade scale of pay as from the date he was promoted as Headmaster, namely 7.3.1990.

14. It is pertinent to note that comparison of the Selection Grade and Special Grade scales of pay after the implementation of V Pay Commission's recommendations from 1.6.1988, discloses that if the petitioner's scale of pay in the post of Headmaster were to be fixed in the Ordinary Grade or Selection Grade applicable to the post of Headmaster, that would result in the petitioner getting lesser scale of pay even after his promotion to the post of Headmaster as from 7.3.1990. Therefore, by virtue of the Selection Grade and the Special Grade status acquired by him in the post of Secondary Grade Teacher long prior to 7.3.1990, the petitioner was lawfully entitled for fixation of his pay in the appropriate scale of pay in the post of Headmaster right from the date when he assumed office in the post of Headmaster on 7.3.1990. But the grant of the Special Grade scale of pay from 1.6.1988 as was granted in the proceedings dated 10.7.2000 by applying

G.O.Ms.No.1381, dated 5.10.1990, was on the face of it erroneous. The rectification of the same by the order dated 14.3.2001 cannot be found fault with. At the same time, it has to be made clear that the grant of Selection Grade/Special Grade scale of pay applicable to the post of Headmaster as per V Pay Commission's recommendations, in fulfilment of the required number of years of service, was certainly eligible for the petitioner as from 7.3.1990, i.e. the date on which the petitioner came to be promoted to the post of Headmaster.

15. Therefore, with the above declaration as regards the entitlement of the petitioner for fixation of scale of pay in the Special Grade as from 7.3.1990 in the post of Headmaster, the respondents 1 to 5 are hereby directed to restrict the recoveries directed to be made in the order dated 10.7.2000 for the period 1.6.1988 to 6.3.1990 and in other respects, continue to protect the payments made to the petitioner as from 7.3.1990 in the Special Grade scale of pay applicable to the post of Headmaster and regularise such payments in accordance with law.

16. The impugned order of the Tribunal is hereby set aside and the recovery ordered in the order of the first respondent dated 14.3.2001 is directed to be restricted from 1.6.1988 to 6.3.1990 in the manner set out in this order.

17. The Writ Petition is ordered on the above terms. No costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

CS

Copy to

1. The Principal Accountant  
General (A & E) of Tamil Nadu,  
Teynampet, Chennai-18.

WEB COPY

2. The Secretary to Government,  
The State of Tamil Nadu  
Department of Adi-Dravidar and  
Tribal Welfare,  
Fort St.George, Chennai-9.

3. The Director of Adi-Dravidar and  
Tribal Welfare,  
Chepauk, Chennai-5.

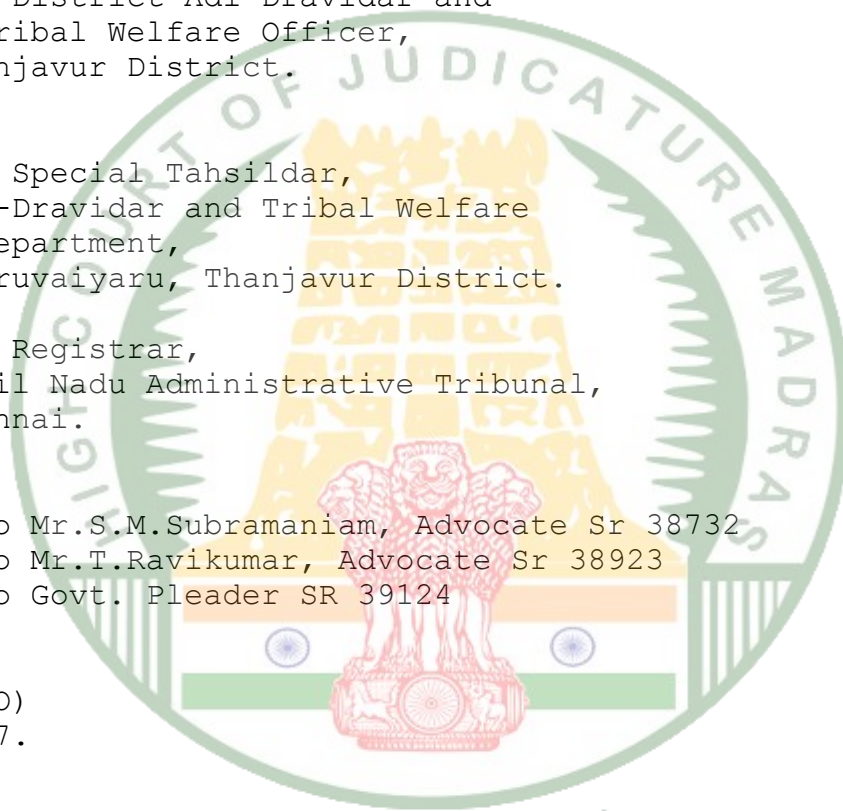
4. The District Adi-Dravidar and  
Tribal Welfare Officer,  
Thanjavur District.

5. The Special Tahsildar,  
Adi-Dravidar and Tribal Welfare  
Department,  
Thiruvaiyaru, Thanjavur District.

6. The Registrar,  
Tamil Nadu Administrative Tribunal,  
Chennai.

+1cc to Mr.S.M.Subramaniam, Advocate Sr 38732  
+1cc to Mr.T.Ravikumar, Advocate Sr 38923  
+1cc to Govt. Pleader SR 39124

KLT (CO)  
km/16.7.



सत्यमेव जयते

W.P.No.23144 of 2001

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