

(2014) 11 MAD CK 0514

Madras High Court

Case No: Writ Petition No. 25001 of 2012 and M.P. No. 1 of 2012

S. Chandrasekaran

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision: Nov. 11, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2015) 5 LW 140

Hon'ble Judges: D. Hari Paranthaman, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D. Hari Paranthaman, J.

Heard both sides.

2. The petitioners have filed this writ petition seeking to quash the order of the second respondent in Na.Ka.No. 2200/C2/2010, dated 23.07.2010 with a consequential direction to the respondents to grant them arrears of pay in respect of pay fixation done under the G.O.(Ms)No. 207, School Education (G2) Department, dated 30.09.2008.

2.1. The respondents filed counter-affidavit seeking to sustain the impugned order dated 23.07.2010 of the second respondent on the ground that the proceeding was issued as per G.O.Ms.No. 207, dated 30.09.2008 and no interference is called for.

3(i).The first petitioner was appointed on 28.01.1974 as Secondary Grade Teacher at Panchayat Union Elementary School, Thirupoondi North, Keelaiyur Panchayat Union, Nagapattinam District. He was granted selection grade scale of pay of Secondary Grade Teacher in 1984, on completion of 10 years of service as Secondary Grade Teacher. While so, he was promoted as the Primary School Headmaster on 28.03.1994. He retired from service on 31.05.2009.

3(ii).The second petitioner was appointed on 23.09.1978 as Secondary Grade Teacher at Panchayat Union Elementary School, Karapidagi, Keelaiyur Panchayat Union, Nagapattinam District. He was granted selection grade scale of pay of Secondary Grade Teacher in 1988, on completion of 10 years of service as Secondary Grade Teacher. While so, he was promoted as Primary School Headmaster on 01.07.1997. He retired from service on 03.09.2010.

3(iii).The third petitioner was initially appointed as Higher Grade Teacher in the Keelaiyur Panchayat Union School and then upgraded as Secondary Grade Teacher on 01.02.1972. He was granted selection grade scale of pay of Secondary Grade Teacher in 1982, on completion of 10 years of service as Secondary Grade Teacher. While so, he was promoted as Primary School Headmaster on 06.11.1992. He retired from service on 30.04.2008.

4. Before 01.06.1988, the post of Secondary Grade Teacher and Primary School Headmaster carried the same scale of pay. Therefore, in fact, no seniority was followed for appointment to the post of Primary School Headmaster. When the scale of pay of Government employees and the Teachers was revised, pursuant to the recommendations of the V Pay Commission, in G.O.Ms.No. 666, Finance Department, dated 27.06.1989, higher pay was fixed to the Primary School Headmaster and the Primary School Headmaster became the promotional post to Secondary Grade Teacher, with effect from 01.06.1988, the date on which the revised scale of pay came into effect.

5. While the scale of pay of Secondary Grade Teacher was revised to Rs.1200-2040 with effect from 01.06.1988 pursuant to V Pay Commission's recommendations, the scale of pay of the Primary School Headmaster with effect from 01.06.1988 was revised to Rs.1400-2600. Prior to the said revision, both the Secondary Grade Teacher and Primary School Headmaster were in the scale of pay of Rs.610-1075.

6. When the Primary School Headmaster became promotional post and higher scale was given to the said post, with effect from 01.06.1988, pursuant to G.O.Ms.No. 666, Finance Department, dated 27.06.1989, the Government should have made clear that the juniors who were holding the post of Primary School Headmaster would be reverted, and the vacancies that would arise due to such reversion in the Primary School Headmaster posts, should have been filled up based on the seniority. But this was not done by the Government for the reasons best known to them. This led to a lot of litigations.

7. On the other hand, the Director of Elementary Education issued the proceeding dated 17.02.1990 that the Secondary Grade Teachers, who were holding the post of Primary School Headmaster as on 01.06.1988, were allowed to be continued as Primary School Headmaster after 01.06.1988. That is, the juniors, who were holding the post as on 01.06.1988 as Primary School Headmasters, were not demoted and while they continued to hold the post of Primary School Headmasters, some of their

seniors continued to work as Secondary Grade Teachers.

8. While so, the Government issued orders in G.O.Ms.No. 1381, Education Department, dated 05.10.1990 that the Secondary Grade Teachers, who were holding the post of Primary School Headmaster as on 01.06.1988, are entitled for selection grade and special grade pay of Primary School Headmaster by counting the service rendered as Secondary Grade Teacher also.

9. After 01.06.1988, since the post of Primary School Headmaster became a promotional post to the Secondary Grade Teacher, the same shall have to be filled based on seniority in Secondary Grade Teacher. That is, though some persons were seniors, but were not occupying the post of Primary School Headmaster as on 01.06.1988, since nobody was interested in occupying the Primary School Headmaster post prior to 01.06.1988 as the scale of pay of Secondary Grade Teacher and Primary School Headmaster was same, they were not granted the benefit of counting the service of Secondary Grade Teacher for the fixation of selection grade and special grade in the post of Primary School Headmaster, when they were promoted as Primary School Headmaster, after 01.06.1988.

10. Hence, the aforesaid G.O.Ms.No. 1381 was challenged before the Tamil Nadu Administrative Tribunal by filing a batch of Original Applications in O.A.Nos. 2897, 2309 and 2310 of 1999 etc. The Tamil Nadu Administrative Tribunal passed an order dated 24.09.1993 in O.A.Nos. 2897, 3099 and 3010 of 1999 setting aside G.O.Ms.No. 1381 and also issued direction to Government to pass fresh order.

11. Even, after the aforesaid order of the Tribunal, the Government failed to revert the juniors, who were holding the post of Primary School Headmaster as on 01.06.1988 and filling those vacancies caused due to such reversion, based on seniority. Then, there was no scope for litigation.

12. (i) Pursuant to the aforesaid order dated 24.09.1993 of the Tamil Nadu Administrative Tribunal in O.A.Nos. 2897 of 1991 etc. batch., quashing G.O.Ms.No. 1381, Education Department, dated 05.10.1990, the Government issued orders in G.O.Ms.No. 300, Education, Science and Technology Department, dated 07.04.1994.

(ii) The Government Order in G.O.Ms.No. 300 directed that for all the Primary School Headmasters, the service rendered in the post of Primary School Headmaster alone would be taken for the purpose of granting Selection / Special Grade pay of Primary School Headmaster.

(iii) However, it is stated in G.O.Ms.No. 300 that the pay already drawn would be protected in the pay admissible to the Grade. That is, if selection grade / special grade scale of pay was given as per G.O.Ms.No. 1381, their pay was protected under G.O.Ms.No. 300, but in the lower scale of pay to which they are entitled to. That is, while protecting the pay drawn pursuant to fixation as per G.O.Ms.No. 1381, they were fixed in lower scale of pay, but without any monetary loss, as their pay was

protected.

13. Again G.O.Ms.No. 300 was put to challenge in a batch of writ petitions in W.P.Nos. 8896/1994 etc., batch. This Court disposed of the said writ petitions on 18.04.2001, by remitting the matter back to the Government to reconsider the entire issue at length and directed the Government to pass fresh order. This Court also expressed its views that the reduction of pay scale is a rare phenomenon and the Government would take care to protect the pay scales of the petitioners.

14. In the said circumstances, pursuant to the order dated 18.04.2001 in W.P.Nos. 8896 of 1994 etc. batch, the Government issued G.O.Ms.No. 185, School Education Department, dated 16.12.2002, laying down the mode of grant of selection grade and special grade for Primary School Headmasters, who were holding the post as on 01.06.1988 and after 01.06.1988. The following three modes are given at para 5 of the said G.O.

(i) For Primary School Headmasters holding the post as on 01.06.1988, the service rendered as Primary School Headmaster prior to 01.06.1988 also be taken into account for grant of selection and special grade pay of Primary School Headmaster though the Primary School Headmaster post prior to 01.06.1988 did not carry higher scale and the said post was given only a special allowance.

(ii) In respect of Primary School Headmasters promoted after 01.06.1988, the procedure laid down in G.O.Ms.No. 212, School Education Department, dated 07.08.2000 has to be followed for grant of selection grade and special grade for the post of Primary School Headmaster.

(iii) In respect of Primary School Headmaster holding the post as on 01.06.1988, their selection grade and special grade pay is already fixed as per G.O.Ms.No. 1381 by taking into account the service rendered as Primary School Headmaster and Secondary Grade Teacher before 01.06.1988 and their pay has to be refixed without causing any monetary loss as per the annexure given in the said Government Order.

In this case, we are concerned with the second mode, i.e., para 5(ii) of G.O.Ms.No. 185, Education Department, dated 16.12.2002.

15. But, again G.O.Ms.No. 185, School Education Department, dated 16.12.2002 was challenged before this Court by way of various writ petitions on the ground that G.O.Ms.No. 185 is just the reproduction of G.O.Ms.No. 300 in respect of Primary School Headmasters holding the post as on 01.06.1988.

16. (i) During the pendency of those writ petitions, the Government issued G.O.Ms.No. 160, School Education Department, dated 23.08.2005 clarifying G.O.Ms.No. 185. The clarification is relating to para 5(i) and 5(iii) of G.O.Ms.No. 185. Thus, clause 5(ii) of G.O.Ms.No. 185 was impliedly kept intact.

(ii) Para 2(i) of G.O.Ms.No. 160 states that the Primary School Headmasters, who were holding the post as on 01.06.1988 and are working continuously after 01.08.2005, their pay in selection grade and special grade has to be fixed by counting the Primary School Headmaster service alone. While fixing the pay as stated above, the difference would be treated as personal pay. It is also made clear that there would not be any recovery.

(iii) Clause 2(ii) of G.O.Ms.No. 160 states that the Primary School Headmasters, who were holding the post as on 01.06.1988, but retired before 01.08.2005, the pay shall not be refixed as stated in the aforesaid clause 2(i) of G.O.Ms.No. 160 and they would be allowed pension based on their last pay drawn.

(iv) That is, the persons who were holding the post of Primary School Headmaster as on 01.06.1988 and who were granted selection grade and special grade for Primary School Headmaster by counting the service rendered as Secondary Grade Teacher, their fixation was not touched / interfered, if they retired from service before 01.08.2005 and they were granted pension and other terminal benefits based on such fixation.

17. The aforesaid G.O.Ms.No. 160 is issued by way of classification of G.O.Ms.No. 185, Education Department, dated 16.12.2002 insofar as Primary School Headmasters who were holding the post of Primary School Headmaster as on 01.06.1988 and even in that category, it was further classified as those who retired before 01.08.2005 and who continued after 01.08.2005 as stated above. As far as the persons who retired before 01.08.2005, the grant of selection grade and special grade in the post of Primary School Headmaster by counting the service of Secondary Grade Teacher was protected with all benefits.

18. Thus, G.O.Ms.No. 160 does not deal with the selection grade and special grade pay fixation for Primary School Headmaster who were promoted after 01.06.1988, and those cases are covered by clause 5(ii) of G.O.Ms.No. 185.

19. As per para 5(ii) of G.O.Ms.No. 185, the procedure laid down in G.O.Ms.No. 212, School Education Department, dated 07.08.2000 has to be followed for grant of selection and special grade pay in the post of Primary School Headmaster, who were promoted after 01.06.1988.

20. (i) At this juncture, it is relevant to take note of G.O.Ms.No. 212, particularly in the context of G.O.Ms.No. 185, since it states that G.O.Ms.No. 212 has to be followed for the grant of selection grade and special grade pay to the Primary School Headmasters, who were promoted after 01.06.1988.

(ii) G.O.Ms.No. 212 is nothing but extending the benefit of G.O.Ms.No. 210, Personnel and Administrative Reforms Department, dated 11.03.1987 and G.O.Ms.No. 238, School Education Department, dated 26.06.1998.

(iii) As per G.O.Ms.No. 210, Personnel and Administrative Reforms Department, dated 11.03.1987, which is the general order applicable to all the departments, the service rendered in the selection grade in 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.

(iv) G.O.Ms.No. 238, School Education Department, dated 26.06.1998 directed to count the service rendered in the selection grade of the Secondary Grade Teacher post for the award of selection grade of the B.T. Assistant / Tamil Pandit posts on promotion to those posts. It was on the basis that the selection grade pay of the Secondary Grade Teacher and the ordinary pay scale of B.T. Assistant / Tamil Pandit are one and the same. That is, G.O.Ms.No. 238 was issued based on G.O.Ms.No. 210.

(v) Thus, as per para 5(ii) of G.O.Ms.No. 185, by applying G.O.Ms.No. 212, for the persons, who were promoted as Primary School Headmaster after 01.06.1988, their selection grade pay for the post of Primary School Headmaster has to be granted by counting the selection grade service in the Secondary Grade Teacher post, since the scale of pay of selection grade Secondary Grade Teacher is the same as that of the scale of pay of Primary School Headmaster.

(vi) By applying G.O.Ms.No. 185, more particularly clause 5(ii) of G.O.Ms.No. 185 and also in the light of G.O.Ms.Nos. 210, the petitioners herein, who were promoted as Primary School Headmasters, while they were serving as selection grade Secondary Grade Teachers, are entitled to the grant of selection grade in the post of Primary School Headmaster by counting their service rendered in the selection grade Secondary Grade Teacher post.

(vii) In view of Para 5(ii) of G.O.Ms.No. 185, the petitioners are entitled to be granted selection grade / special grade in the post of Primary School Headmaster, by counting the service rendered as the Secondary Grade Teacher and the consequent fixation of pay pursuant to such grant of selection grade / special grade, with arrears of pay.

21. While so, the Government issued orders in G.O.Ms.No. 38, School Education Department, dated 05.03.2001, stating that the service rendered as selection grade Secondary Grade Teacher before 01.06.1988 would not be counted for grant of selection grade in the post of Primary School Headmaster after 01.06.1988, on the ground that the selection grade pay of Secondary Grade Teacher was not the same as that of the ordinary grade pay of Primary School Headmaster before 01.06.1988. That is, the benefit of G.O.Ms.No. 210, that was extended by way of G.O.Ms.No. 185, was taken away by way of in G.O.Ms.No. 38.

22. But, the G.O.Ms.No. 38, dated 05.03.2001 was quashed by this Court by the order dated 22.08.2012 in W.P.No. 36752 and 36831 of 2006.

23. Further, the Tamil Nadu Asiriyar Kootani representing the Teachers in the Primary Schools and Middle Schools filed W.P.No. 8079 of 2006 seeking for issuance of mandamus directing the Government to settle the retirement benefits to the Headmasters of Elementary School, who were promoted after 01.06.1988, based on G.O.Ms.No. 185, School Education Department, dated 16.12.2002 and G.O.Ms.No. 160, School Education Department, dated 23.08.2005 without reference to G.O.Ms.No. 38, School Education Department, dated 05.03.2001. The aforesaid prayer was allowed by this Court in W.P.No. 8079 of 2006 on 28.04.2006.

24. Based on the order dated 28.04.2006 passed by this Court in W.P.No. 8079 of 2006, the Government issued orders in G.O.Ms.No. 207, School Education Department, dated 30.09.2008. As per G.O.Ms.No. 207, the Government Order in G.O.Ms.No. 185, School Education Department, dated 16.12.2002 and G.O.Ms.No. 160, School Education Department, dated 23.08.2005 has to be followed for grant of selection grade and special grade to the post of Primary School Headmaster and pay has to be fixed accordingly and retirement benefits has to be granted to the Primary School Headmasters, who were promoted after 01.06.1988.

25. While so, the Director of Elementary Education, issued the proceeding in Na.Ka.No. 2200/C-2/2010 dated 23.07.2010 that no monetary benefits would be given pursuant to the grant of selection grade / special grade in the post of Primary School Headmaster and consequent pay fixation as per G.O.Ms.No. 207, but only monetary benefits in respect of retiral benefits would alone be granted.

26. Since the monetary benefits pursuant to the fixation of Selection Grade / Special Grade pay of Primary School Headmaster as per G.O.Ms.No. 207 was not granted, this led to filing of a batch of writ petitions in W.P.Nos. 20706 of 2010 etc. batch seeking to quash the proceeding dated 23.07.2010 of the Director of Elementary Education on the ground that the same is contrary to G.O.Ms.No. 207.

27. This Court allowed the aforesaid writ petitions in W.P.Nos. 20706 of 2010 etc., batch on 05.08.2011 and quashed the proceeding of the Director of Elementary Education dated 23.07.2010 and held that the persons, who were promoted as Primary School Headmasters after 01.06.1988, are entitled to receive monetary benefits pursuant to their Selection Grade / Special Grade pay fixation of Primary School Headmaster, besides the monetary benefit in respect of retiral benefits. Para 6 and a passage in para 7 of the said judgment are extracted hereunder :

6. In all these matters, the petitioners had served as Primary School Headmasters and retired from service. It is seen from the perusal of the G.O.Ms.No. 207, School Education Department, dated 30.09.2008 that for the persons, who have been appointed as Primary School Headmasters after 01.06.1988, their pay scales have to be fixed pursuant to the fixation of pay in the selection and special grade. The said Headmasters are entitled to claim retiral monetary benefits and benefits of fixation of pay.

7. Therefore, this Court is of the considered view that the impugned orders of the Director of Elementary Education, Chennai, rejecting the claim of the petitioners that they are entitled only to receive the monetary benefits in respect of arrears of pension alone are unsustainable.

28. This judgment attained finality. The petitioners therein were granted the monetary benefits pursuant to the grant of selection grade / special grade in the post of Primary School Headmaster and consequent fixation of pay and also the terminal benefits based thereon.

29. After the issuance of G.O.Ms.No. 207, the first petitioner retired from service on 31.05.2009 as Primary School Headmaster and the second petitioner retired from service on 03.09.2010 as Primary School Headmaster. The third petitioner retired from service on 30.04.2008 as Primary School Headmaster before the issuance of G.O.Ms.No. 207.

30. This writ petition has also made a similar prayer to quash the proceeding of the Director of Elementary Education in Na.Ka.No. 2200/C-2/2000 dated 23.07.2010 insofar as it denies arrears of pay and sought for a consequential direction to the respondents to grant arrears of pay in respect of pay fixation done under G.O.Ms.No. 207, School Education Department, dated 30.09.2008 to the petitioners. That is, the petitioners sought for monetary benefits, i.e. arrears of pay pursuant to pay fixation in granting selection grade / special grade in the post of Primary School Headmaster, since they were paid only monetary benefits in respect of retirement benefits only, in view of the impugned proceeding dated 23.07.2010 of the Director of Elementary Education.

31. In view of the order dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch quashing the proceeding dated 23.07.2010 of the Director of the Elementary Education with a consequential direction to grant monetary benefits pursuant to the fixation of Selection Grade and Special Grade pay of Primary School Headmaster by counting the service of Secondary Grade Teacher also, besides paying the monetary benefits in respect of retiral benefits, this writ petition has to be allowed, particularly, when the aforesaid order dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch attained finality.

32. Furthermore, it is relevant to note that a learned Single Judge of this Court following the order dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch, has also passed the order dated 16.08.2013 in W.P.No. 13147 of 2011 quashing the proceeding dated 23.07.2010 of the Director of Elementary Education and issuing a consequential direction to grant monetary benefits pursuant to the fixation of selection grade and special grade in the post of Primary School Headmaster, by counting the service of the Secondary Grade Teacher. In paragraph 4 of the order dated 16.08.2013 in W.P.No. 13147 of 2011, the learned Single Judge relied on the order of this Court dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch, and

extracted paras 6 and 7 of the order dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch, which is also extracted by me in paragraph 27 of this judgment and in paragraph 5 of the order dated 16.08.2013 in W.P.No. 13147 of 2011, the writ petition was allowed and the said paragraph 5 is also extracted hereunder :

5. Thus, in the light of the above quoted order, the petitioner is entitled to succeed and accordingly the Writ Petition is allowed and the impugned order is quashed and the respondents are directed to consider the claim of the petitioner and grant the arrears of pay, as sought for by the petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. ...

33. Though this Court has categorically held in the order dated 05.08.2011 that the Primary School Headmasters, who are promoted after 01.06.1988, are entitled to the grant of Selection Grade and Special Grade in the post of Primary School Headmaster by counting the service rendered as Secondary Grade Teacher also, the counter-affidavit of the respondents seeks to sustain the impugned order dated 23.07.2010 of the Director of Elementary Education restricting the payment of monetary benefits to the retiral benefits alone pursuant to the fixation of pay in Selection Grade and Special Grade in the post of Primary School Headmaster by counting the service of the Secondary Grade Teachers only. That is, the fixation of pay in Selection Grade and Special Grade in the post of Primary School Headmaster is taken only on notional basis in respect of the petitioners, for the purpose of retirement benefits alone, which is, contrary to the judgment of this Court, dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch, and the judgment dated 16.08.2013 in W.P.No. 13147 of 2011, as stated above.

34. The counter-affidavit admits that the petitioners were awarded Special Grade in the post of Primary School Headmaster on 01.07.1994, 14.01.1999 and 07.11.1992 respectively vide G.O.Ms.No. 207 School Education (G2) Department, dated 30.09.2008, by the fourth respondent / the Assistant Elementary Educational Officer, Keelaiyur, in his proceedings dated 07.01.2012, 27.01.2012 and 10.02.2012 respectively and based on such award of Special Grade, the pensionary benefits were paid to the petitioners, as ordered in G.O.Ms.No. 207, School Education Department, dated 30.09.2008. In this regard, the following passage in paragraph 7 of the counter-affidavit is extracted hereunder :

7. But the three petitioners were awarded Special Grade in Primary School Head Master posts with effect from 01.07.1994, 14.01.1999 and 07.11.1992 respectively vide G.O.Ms.No. 207 School Education (G2) Department, dated 30.09.2008, by the fourth respondent/the Assistant Elementary Educational Officer, Keelaiyur, by his proceedings dated 07.01.2012, 27.01.2012 and 10.02.2012 and all the pensionary benefits were paid to the petitioners as ordered in the G.O.Ms.No. 207, School Education Department, dated 30.09.2008.

35. The aforesaid averment made in the counter-affidavit of the respondents proceeds on the basis that G.O.Ms.No. 207 contemplates the payment of pensionary benefits alone pursuant to the fixation of Special Grade in Primary School Headmaster post to the petitioners, but the petitioners are not entitled to actual monetary benefits pursuant to such grant of Special Grade in Primary School Headmaster post. The said averment is opposed to the categorical pronouncement of this Court in the order dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch and the order dated 16.08.2013 in W.P.No. 13147 of 2011. The relevant passages from both the orders are already extracted.

36. Apart from the aforesaid order dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch and the order dated 16.08.2013 in W.P.No. 13147 of 2011, the Tamil Nadu Administrative Tribunal passed the order dated 12.07.2002 in O.A.Nos. 68 of 1997, 177 of 1997, 5548 of 1998 directing the Government to grant Selection Grade and Special Grade in the post of Primary School Headmaster to the applicants therein by counting the service of those teachers as Secondary Grade Teachers, as the persons were promoted as Primary School Headmasters after 1.6.1988. That is, even before the issuance of G.O.Ms.No. 207 and the orders dated 05.08.2011 in W.P.No. 20706 of 2010 etc. batch and the order dated 16.08.2013 in W.P.No. 13147 of 2011, the Tamil Nadu Administrative Tribunal passed the order in the year 2002 itself on 12.07.2002 in O.A.No. 68 of 1997 etc. batch to grant selection grade / special grade to Primary School Headmaster, who were promoted after 01.06.1988, by counting their Secondary Grade Teacher Service also.

37. The Government filed W.P.Nos. 29644 and 29645 of 2003 against the aforesaid order dated 12.07.2002 and the order of the Tribunal was upheld by this Court by rejecting those writ petitions on 21.02.2008. Thereafter, the Government implemented the order by issuing G.O.Ms.No. 234, School Education (G2) Department, dated 10.09.2009, in respect of 63 teachers, who were the parties in those proceedings. The petitioners are also similarly situated like those persons. Hence, the same benefit shall not be denied to the petitioners and thus, the petitioners are entitled to the monetary benefits pursuant to the grant of Special Grade in the post of Primary School Headmaster.

38. At this juncture, it is relevant to refer paragraph 2 of G.O.Ms.No. 234, dated 10.09.2009, which is extracted hereunder :

39. After this Court passed the order dated 21.02.2008 in W.P.Nos. 29644 and 29645 of 2003 confirming the order dated 12.07.2002 in O.A.Nos. 68 of 1997 etc. batch, hundreds of teachers approached this Court by filing writ petitions seeking to extend the benefits, as given to those 63 persons, as they are also similarly situated. But the learned Single Judge rejected their claim on the ground of laches. Those teachers preferred W.A.No. 815 of 2010 etc. batch. A Division Bench of this Court while allowing those writ appeals on 07.07.2011, also noted that besides the order dated 21.02.2008 in W.P.Nos. 29644 of 29645 of 2003 confirming the order of the

Tribunal dated 12.07.2002 in O.A.Nos. 68 of 1997, 177 of 1997 and 5548 of 1998, leading to the passing of G.O.Ms.No. 234, dated 10.09.2009, the Tamil Nadu Administrative Tribunal also passed an earlier order dated 19.03.2002 in O.A.Nos. 3745 and 3911 of 1992 granting similar relief. In this regard, paragraph 12 of the order dated 07.07.2011 in W.A.No. 815 of 2000 batch is extracted hereunder :

12. It is a matter of record that Original Applications were filed by some of the teachers, who were similarly situated like the appellants in O.A.No. 3745 and 3911/1992. Those applications were allowed by the State Administrative Tribunal as per order dated 19.03.2002. Similar orders were made in favour of the appellants in O.A.No. 68, 177/1997, 5548/1998. The writ petitions in W.P.No. 29644 and 29645/2003, filed by the Government against the orders in O.A.Nos. 68, 177/1997 and 5548/1998 were dismissed as per order dated 21.02.2008. The directions issued by the Tribunal was ultimately complied with by the Government by issuing G.O.Ms.No. 234, dated 10.09.2009 whereby and whereunder, earlier service was counted for the purpose of granting selection / special grade. It was only thereafter, the appellants have filed the writ petitions.

40. It is also relevant to extract paragraph 20 of the order dated 07.07.2011 in W.A.No. 815 of 2010 etc. batch, wherein, the Division Bench held that persons, who are similarly situated like that of the persons, who are covered under G.O.Ms.No. 234, are entitled to similar treatment. Paragraph 20 of the judgment of the Division Bench dated 07.07.2011 is extracted hereunder:

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 appellant are also covered by the issue decided in the Government Order in G.O.Ms.No. 234, dated 10.09.2009, 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.

41. The Division Bench which allowed W.A.Nos. 815 of 2010 on 07.07.2011 also allowed a batch of writ petitions in the order dated 25.07.2011 in W.P.No. 23996 of 2010 etc. batch, extending the benefit of G.O.Ms.No. 234 to the petitioners therein. There are a number of petitioners in the batch, as in the case of W.A.No. 815 of 2010 batch. Paragraph 2 of the order dated 25.07.2011 of the said Bench in W.P.No. 23996 of 2011 is as follows :

2. Similar question came up before this Court in a batch of writ appeals in W.A.Nos. 815/2010, etc. batch, challenging the order of the learned Single Judge dismissing similar writ petitions solely on the ground of delay and laches. This Court, by judgment dated 07.07.2011, after hearing on either side, allowed the writ appeals in the following terms :-

24. Accordingly, we allow the writ appeals by setting the order passed by the learned Single Judge in the respective appeals.

25. The first respondent is directed to extend the benefits of the order in G.O.Ms.No. 234 dated 10.09.2009 to the appellants. Such exercise shall be completed within a reasonable period and in any case within three months from the date of receipt of a copy of this Judgment.

26. In the upshot, we allow the writ appeals. No costs.

42. Further, the same Division Bench passed another order dated 29.07.2011 in W.P.No. 23624 of 2009 etc. batch, wherein also, hundreds of teachers are the petitioners seeking to extend the benefit of G.O.Ms.No. 234 to them. Paragraph 2 of the order dated 29.07.2011 in W.P.No. 23624 of 2009 is similar as that of the order dated 25.07.2011 in W.P.No. 23996 of 2011, that is extracted above.

43. But the learned Additional Government Pleader heavily relied on the order dated 30.11.2011 of the same Division Bench in W.P.No. 22015 of 2011, etc. batch, restricting the benefit under G.O.Ms.No. 234 only for pensionary benefits and not for arrears of pay consequent to re-fixation of pay on the ground that those petitioners approached this Court after the Division Bench passed the order dated 07.07.2011 in W.A.No. 815 of 2010, etc. batch.

44. But such a reliance placed on the said judgment dated 30.11.2011 of the Division Bench in W.P.No. 22015 of 2011 etc. batch is of no use to the respondents, since the Government themselves did not choose to follow the aforesaid judgment dated 30.11.2011 and had chosen to follow the other orders, referred to above, by issuing G.O.Ms.No. 216, School Education (G2) Department, dated 30.12.2011 subsequently, extending the benefit of G.O.Ms.No. 234 to all the persons, whether they approached the Court and obtained order in their favour or not. It is relevant to extract the entire G.O.Ms.No. 216, School Education Department, dated 30.12.2011 :

45. In fact, earlier to G.O.Ms.No. 216, the Government issued G.O.Ms.No. 270, School Education Department, dated 20.09.2010 extending the benefits to those persons, who approached the Court and obtained the order in their favour. But in G.O.Ms.No. 216, dated 30.12.2011, it is stated that it is extended to all those teachers, who were promoted as Primary School Headmasters after 01.06.1988, Selection Grade and Special Grade pay by taking into account the service rendered by them as Secondary Grade Teachers and to grant the monetary benefits thereon.

46. The aforesaid extracted portion of G.O.Ms.No. 216, more particularly, paragraph 3 of the G.O.Ms.No. 216 makes it very clear that already 2263 teachers were granted the monetary benefits pursuant to the pay fixation of Primary School Headmasters, who were promoted after 01.06.1988, by granting them Selection Grade and Special Grade in the post of Primary School Headmaster by counting the service in Secondary Grade Teacher also. Apart from those 2263 persons, who obtained order

from the Court, there are 3137 teachers and G.O.Ms.No. 216 granted the benefit to those teachers also.

47. However, the Government cancelled the aforesaid G.O.Ms.No. 216 by issuing another G.O.Ms.No. 179, School Education Department, dated 06.09.2013, wherein, the benefits are restricted only to 1528 teachers, who have approached the Court and obtained orders in their favour.

48. Paragraph 5(i) of G.O.Ms.No. 179, School Education Department, dated 06.09.2013 is relevant and the same is extracted hereunder:

49(i).G.O.Ms.No. 179, restricts the extension of benefit of G.O.Ms.No. 234, on two aspects.

(ii) .Firstly, G.O.Ms.No. 179, restricts the benefits of G.O.Ms.No. 234 to those persons, who were promoted as Primary School Headmasters, between 01.06.1988 and 31.12.1995 on the ground that there was a revision in the scale of pay from 01.01.1996 pursuant to VI Pay Commission recommendations. That is, the G.O.Ms.No. 179 grants the benefit of selection / special grade in the post of Primary School Headmaster by counting the service of Secondary Grade Teacher also to the persons, who were promoted as Primary School Headmaster before 01.01.1996, though they joined as Secondary Grade Teacher before 01.06.1988.

(iii) .Secondly, G.O.Ms.No. 179 also restricts the benefit of extension of the benefit of G.O.Ms.No. 234 to persons, who approached the Court and obtained the orders in their favour alone.

50. In view of G.O.Ms.No. 179, School Education Department, dated 06.09.2013, the first and third petitioners would succeed, since they were promoted as Primary School Headmasters on 28.03.1994 and 06.11.1992 respectively, that is before 01.01.1996.

51. But in my view, the revision of pay to the teachers pursuant to VI Pay Commission recommendation from 01.01.1996 has nothing to do with the grant of Selection Grade and Special Grade to the persons in the post of Primary School Headmaster by counting the service of Secondary Grade Teacher and the persons, who were promoted after 01.01.1996 as Primary School Headmaster, also are entitled to the extension of the benefit of G.O.Ms.No. 234, if they joined service as Secondary Grade Teachers before 01.06.1988. The benefit of counting the service of Secondary Grade Teachers to grant Selection Grade and Special Grade to the post of Primary School Headmaster shall be confined to the Secondary Grade Teachers, who were appointed prior to 01.06.1988. That is ,the cut off date shall be fixed as 01.06.1988 and those Secondary Grade Teachers, who joined before 01.06.1988 constitute one class and there shall not be any discrimination between them in the grant of Selection / Special Grade in the post of Primary School Headmaster by denying the benefits to one set of persons among them, who were promoted as

Primary School Headmaster after 01.01.1996, though they joined the service as Secondary Grade Teachers before 01.06.1988. There is no rational or nexus with the fixing of 01.01.1996 as cut off date.

52. The Secondary Grade Teachers, who were recruited before 01.06.1988, constitute one class and the teachers, who were recruited after 01.06.1988 as Secondary Grade Teachers, constitute a different class.

53. In the case of the Secondary Grade Teachers recruited prior to 01.06.1988, and on their promotion to Primary School Headmaster after 01.06.1988, those teachers shall be granted the benefit of counting the service of Secondary Grade Teacher also for the grant of Selection Grade and Special Grade in the post of Primary School Headmaster, without restricting the benefit only to those who were promoted upto 01.01.1996.

54. There is no rational in fixing the cut off date as 31.12.1995 to grant the benefit of counting the service of Secondary Grade Teacher for grant of Selection Grade and Special Grade in the post of Primary School Headmaster.

55. The reason for fixing the cut off date as 01.06.1988 is that the scale of pay of Secondary Grade Teacher and Primary School Headmaster was one and the same prior to 01.06.1988 and the post of Primary School Headmaster was given higher scale and was made a promotional post to Secondary Grade Teacher with effect from 01.06.1988. As already stated in paragraph 6 of this judgment, the Government failed to revert the teachers, who were juniors but holding the post of Primary School Headmaster, as on 01.06.1988, when the higher scale was given to Primary School Headmaster with effect from 01.06.1988 and filling the vacancies caused due to such reversion by following seniority.

56. The said mistake led to the filing of so many litigations, as stated above. Hence, the fixation of cut off date as 31.12.1995 in G.O.Ms.No. 179 is bad and on the other hand, Education Department has to choose whether the person was a Secondary Grade Teacher before 01.06.1988 or not and it is not relevant as to what date he became Primary School Headmaster after 01.06.1988. Since the Government counted the service of Secondary Grade Teachers to grant Selection Grade and Special Grade to the post of Primary School Headmaster to those persons, who were promoted after 01.06.1988, the persons, who got promotion after 31.12.1995, also come well within that category and they shall not be denied the benefit. Hence, the second petitioner is also entitled to succeed.

57. At this juncture, it is also relevant to take note of the fact that in the case of Middle School Headmaster, the cut off date is 01.10.1970, since the Middle School Headmasters were granted higher scale of pay from 01.10.1970 and prior to 01.10.1970, the posts of Secondary Grade Teacher, Primary School Headmaster and the Middle School Headmaster carried the same scale of pay and for the grant of Selection Grade and Special Grade to the Middle School Headmasters, the service

rendered as Secondary Grade Teachers and the Primary School Headmasters to those Secondary Grade Teachers, who joined before 01.10.1970, is counted without reference to the date on which they were promoted as Middle School Headmasters.

58. G.O.Ms.No. 210, School Education Department, dated 14.08.2004, was issued in respect of 65 persons, who obtained orders from this Court, to count the service of Secondary Grade Teachers, who joined served prior to 01.10.1970 for granting the Selection Grade / Special Grade to the post of Middle School Headmaster. Many writ petitions were filed by the similarly situated person, who joined as Secondary Grade Teacher prior to 01.10.1970 to extend the benefit of G.O.Ms.No. 210 to them also. These writ petitions were allowed. I also allowed a similar claim by the order dated 12.11.2011 in W.P.No. 15307 of 2011.

59. The Government filed a review application in Rev.Aplw.No. SR.No. 122760 of 2013 with a condone delay petition in M.P.No. 1 of 2013, to review the order dated 12.11.2011 in W.P.No. 15307 of 2011, I rejected the review application on merits by an order dated 27.03.2014. It is useful to extract paragraphs 11 to 13 of the order dated 27.03.2014 in Rev.Aplw.No. SR.No. 122760 of 2013 as hereunder :

11. The plea raised in the review application that the said benefit should be given only to the persons who retired before 31.12.1995, has no merit. It has nothing to do with the revision of pay due to the 6th Pay Commission recommendations with effect from 01.01.1996. Just because the petitioner retired subsequent to 31.12.1995, the same could not be denied to him. The other ground raised in the review application is that G.O.Ms.No. 146, School Education Department, dated 19.06.2012, should have been challenged by the petitioner and without doing the same, he could not claim the benefit. This also has no merit. G.O.Ms.No. 146 was issued to another set of 260 persons, who approached this Court and got orders and those persons retired on various dates and the last person was retired on 30.09.1994. The said Government Order was passed to implement the various orders of this Court and hence, the date of retirement has no relevance.

12. The relevant criteria for extending the benefit of G.O.Ms.No. 210 and G.O.Ms.No. 146 is that the concerned Teachers should have joined the service as Secondary Grade Teacher before 01.10.1970. Thus, irrespective of his date of retirement, the selection grade and special grade in the post of Middle School Headmaster shall be granted taking into account the service rendered by him as Secondary Grade Teacher and Primary School Headmaster upto 01.06.1988. The Secondary Grade Teachers who joined subsequent to 01.10.1970 are not entitled to the benefit of G.O.Ms.No. 210.

13. In this case, as stated in my order in the writ petition, the petitioner joined service as Secondary Grade Teacher, even long before 01.10.1970, on 29.06.1964 as Middle School Headmaster and therefore, the period of service rendered by him as Secondary Grade Teacher and Primary School Headmaster, shall be counted for the

purpose of grant of Selection / Special Grade pay to Middle School Headmaster. In these circumstances, I am not inclined to prolong the agony of a poor Teacher, who is now aged 77 years.

60. Applying the same analogy, the persons who joined as Secondary Grade Teachers before 01.06.1988 is entitled to claim the benefit of counting the service of Secondary Grade Teachers for Selection Grade and Special Grade in the post of Primary School Headmaster, if they were promoted as Primary School Headmaster after 01.06.1988, without fixing the cut off date as 31.12.1995.

61. As far as the persons, who were holding the post of Primary School Headmasters as on 01.06.1988, the Government themselves granted the benefit, though they were juniors, as stated above.

62. It is well settled in a catena of decisions that the State shall not discriminate its employees in granting monetary benefits, if they are similarly situated only on the ground that some did not come to the Court, as such discrimination amounts to violation of Articles 14 and 16 of the Constitution.

63. A learned Single Judge of this Court in [N.S. Balasubramanian and Others Vs. Food Corporation of India,](#), by relying on the judgments of the Apex Court in [K.C. Sharma and others Vs. Union of India and others,](#) and [State of Karnataka and Others Vs. N. Parameshwarappa and Others,](#), held in paragraph 16 as hereunder :

16. From the analysis of the judgments cited above, it is beyond doubt and clear that once the point is decided in favour of a group of persons, there is no further point in waiting for each and every person to file petition and pray for the same relief. As held by the Honourable Court, the benefit of the judgment is equally applicable to similarly placed persons to do complete and substantial justice.

64. In paragraph 14 of the judgment in [N.S. Balasubramanian and Others Vs. Food Corporation of India,](#), the learned Single Judge also held as follows :

14. Article 14 of the Constitution of India clearly prohibits discrimination and if any discrimination without any intelligible differentia, certainly violation will be hit by Article 14 of the Constitution of India, which is a guaranteed fundamental right available to any person.

65. For all the aforesaid reasons, the writ petition is allowed and the proceeding dated 23.07.2010 in Na.Ka.No. 2200/C2/2010 of the second respondent is quashed and a direction is issued to the respondents to extend the benefit of counting the service of Secondary Grade Teacher for grant of Selection Grade and Special Grade in the post of Primary School Headmaster with monetary benefits to the persons who were promoted after 01.06.1988, if those teachers joined prior to 01.06.1988 without reference to the date of promotion as Primary School Headmaster and without driving them to this Court to obtain an order in their favour and also a direction is issued to the respondents to pay the monetary benefits, i.e., arrears of

pay to the petitioners, pursuant to the grant of Special Grade in the post of Primary School Headmaster with effect from 01.07.1994, 14.01.1999 and 07.11.1992 by the fourth respondent in the proceeding dated 07.01.2012, 27.01.2012 and 10.02.2012 respectively, within a period of eight weeks from the date of receipt of a copy of this order.