



W.P. Nos.12275/2024, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	Pronounced on
02.02.2026	02.03.2026
11.02.2026	
13.06.2026	
16.02.2026	
18.02.2026	
20.02.2026	
25.02.2026	
26.02.2026	
27.02.2026	

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NOS. 12275, 12350, 17118, 18070, 18456, 27165, 27192, 27197,
27202, 27207, 27180, 27184, 27189, 27464, 28330, 28334, 28336,
28339, 29516, 29521, 29524 OF 2024**

**W.P. NOS. 11197, 14081, 19434, 19481, 33090, 45621, 45628, 45652, 45647,
45658, 45605, 45611, 45618, 45620, 45633, 45639, 45643, 33541, 34841, 35241,
35268, 36104, 36129, 36108, 36123, 36548, 36558, 36701, 36709, 36803, 36812,
36818, 36881, 36891, 36896, 37356, 37403, 37412, 37420, 37424, 37427, 37480,
38116, 38123, 40287, 40358, 41687, 41696, 41701, 40407, 41707, 41713, 40608,
40671, 40684, 40692, 40681, 40673, 40676, 40680, 40987, 40993, 41926, 41932,
42396, 42415, 42417, 42418, 42425, 42421, 42406, 42408, 43173, 43183, 43193,
43186, 43187, 43192, 43194, 43195, 43228, 43224, 43189, 43197, 43198, 43200,
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44504, 44507, 44509, 44511, 44512, 44514, 44516, 44503, 44553, 44846, 44855,
45339, 45686, 45707, 45724, 45696, 46011, 46776, 46786, 46794, 46804, 46805,
46810, 46813, 46821, 46840, 46849, 47210, 47351, 47814, 47819, 47822, 47851,
47856, 47886, 47889, 47863, 47914, 47871, 47877, 47882, 47890, 47899, 47904,
48330, 48339, 48364, 48374, 48386, 48396, 49028, 49042, 49084, 49051, 49058,
49047, 49088, 49036, 49045, 49062, 49076, 49179, 49783, 50159, 50198 &
50238 OF 2025**



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W.P. NOS. 212, 250, 260, 221, 223, 220, 226, 231, 232, 234, 243, 268, 296, 647, 653, 738, 812, 751, 757, 761, 784, 787, 789, 795, 796, 797, 798, 800, 805, 811, 748, 2122, 2156, 2161, 2168, 2213, 2216, 2232, 2234, 2167, 2130, 2133, 2134, 2135, 2140, 2143, 2144, 2145, 2149, 2154, 2218, 2226, 2973, 4458, 4469, 4476, 4481, 4482, 4486, 4488, 4490, 4492, 4495, 4500, 4503, 4509, 4607, 4613, 4622, 4626, 4029, 3781, 3788, 4029, 5433, 5438, 7388, 7409, 7411, 7413, 7414, 7417, 7569, 7392, 7395, 7406, 6981, 7378, 7382, 7592, 7603 & 8115 OF 2026

AND

W.M.P. NOS. 27266, 13369, 13370, 13463, 31064, 18890,18891,19862, 19863, 20248, 20250, 29694, 29701, 29704, 29689, 29668, 29692,50213, 29671, 29672, 29682, 29683, 29685, 29693, 29699, 29700, 29715,29706, 29690, 29714, 29687, 29691, 29705, 29686, 29713, 29684, 29968, 29969, 29967, 30892, 30893, 30894, 30895, 30896, 30898, 30904, 30891, 30900, 30901, 30902, 30903,32177, 32182, 32172 OF 2024

W.M.P. NOS. 8011, 48911, 50212, 48912,50772,33334, 17167, 23705, 23707, 12630, 15828, 15829, 15830, 21774, 21696, 50831, 37167, 50810, 50829, 50849, 50850, 50863, 37161, 50811, 50816, 50819, 50823, 50824, 50864, 50871, 50873, 37688, 37689, 37693, 39024, 39455, 39456, 39480, 39484, 40348, 40359, 40349, 40357, 40377, 40854, 41054, 41049, 41050, 41055, 41166, 41169, 41176, 41178, 41190, 41191, 41247, 41249, 41265, 41266, 41279, 41282, 41794, 41794, 41839, 41873, 41877, 41878, 41840, 41852, 41853, 41867, 41869, 41872, 42609, 42611, 42606, 45243, 45249, 45381, 45386, 46727, 46730, 46756, 45536, 45614, 45595, 45604, 45606, 45607, 45615, 45733, 45596, 45942, 45946, 45956, 45959, 48594, 46978,47393, 47436, 47447, 47412, 47426, 47435, 47394, 47434, 47410, 48317, 48314, 48325, 48327, 48331, 48332, 48340, 48341, 48347, 48349, 48398, 48399, 48407, 48342, 48374, 48378, 48352, 48355, 48359, 48362, 48363, 48367, 48376, 49507, 49656, 49661, 49641, 49681, 49634, 49644, 49654, 49578, 49670, 49672, 49676, 49635, 49659, 49707, 50041, 50045, 50494, 50945, 50932, 50944, 50958, 50960, 50916, 50918, 50929, 51320, 51318, 52295, 52210, 52211, 52221, 52237, 52247, 52249, 52252, 52257, 52258, 52261, 52262, 52298, 52312, 52316, 52750, 52860, 52859, 52861, 52287, 53383, 53385, 53394, 53397, 53399, 53400, 53440, 53441, 53443, 53445, 53446, 53489, 53491, 53493, 53477, 53478, 53482, 53483, 53496, 53497, 53503, 53458, 53460, 53467,53468, 53965, 53968, 53977, 53979, 54025, 54027, 54773, 54787, 54761, 54763, 54771, 54789, 54792, 54813, 54834, 54835, 54836, 54941, 55673, 56100, 56161, 56210 OF 2025



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W.M.P. NOS. 247, 248, 254, 255, 258, 259, 261, 264, 273, 274, 276, 277, 281, 294, 295, 304, 305, 280, 348, 789, 793, 934, 916, 961, 963, 967, 969, 970, 985, 2302, 2314, 2315, 2316, 2317, 2430, 2284, 2285, 2303, 2344, 2354, 2355, 2359, 2360, 2361, 2423, 2424, 2432, 2433, 2442, 2445, 2454, 2463, 2293, 2299, 2301, 2306, 2318, 2324, 2333, 2335, 2340, 2341, 2467, 3332, 3334, 4499, 4501, 4987, 5144, 5007, 5011, 5012, 5123, 5124, 5125, 5145, 5149, 5150, 5151, 4975, 4976, 4979, 4980, 4988, 5135, 5137, 4982, 4983, 4984, 4986, 4989, 4990, 4963, 4965, 4970, 4973, 4992, 4993, 4994, 4995, 4998, 4999, 5001, 5002, 5003, 5004, 5006, 4499, 4501, 5963, 5936, 5958, 5962, 5963, 5996, 6001, 6006, 6008, 6009, 6010, 6529, 6530, 6531, 6532, 6533, 6521, 6526, 6522, 6525, 6527, 6528, 6518, 6520, 7939, 7938, 7942, 7944, 7947, 7948, 7964, 7965, 7966, 7968, 7969, 7971, 7972, 7974, 7977, 7975, 7976, 7978, 7980, 7985, 7987, 7989, 8176, 8177, 8178, 7620, 7622, 7924, 7925, 7928, 7929, 8209, 8212, 8213, 8224, 8226, 8784 & 8786/2026

W.P. NO. 12275 OF 2024

1. K.Poongodi
2. C.Hemalatha
3. N.V.Santhi .. Petitioners

- Vs -

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government
School Education Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Director of School Education
Perasiriyar Anbazhagan Kalvi Valagam
College Road, Chennai 600 006.
3. The Director of Elementary Education
Perasiriyar Anbazhagan Kalvi Valagam
College Road, Chennai 600 006.
4. The District Educational Officer (Elementary)
Thanjavur District, Thanjavur.

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5. The Block Development Officer
Kumbakonam Block
Thanjavur District.

6. The Secretary
Finance Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.
(R-6 suo motu impleaded vide order
Dated 18.9.2025 made in WP 12275/2024) .. Respondents

W.P. No.12275 of 2024 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the impugned Government letter issued by the 1st respondent in Letter No.11100/Tho.Ka.(1)/2023-1 School Education Department dated 15.12.2023 and quash the same and consequently directing the respondents to continue to pay salary to the petitioners in accordance with fixation of Selection Grade scale of pay granted for the post of Primary School Headmaster granted prior to 01.06.2009 with corresponding fixation of pay in the post of Middle School Headmaster/B.T. Assistant as well as to sanction Selection Grade in the post of Middle School Headmaster/B.T. Assistant.

For Petitioners : Mr. G.Sankaran, SC for
Mr. S.Nedunchezhiyan in WP
Nos.12275, 12350 , 17118,
18070, 18456, 27165, 27192,
27197, 27202, 27207, 27180,



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27189, 27464, 28330, 28334,
28336 & 28339/2024

W.P. Nos.11197, 33541, 35241,
37356, 38116, 40608, 40987,
40993, 41932, 45686, 45707,
45714, 45696, 46011, 47814,
47819, 47822, 47851, 47856,
47886, 47889, of 2025, 647,
653, 7378 & 7382/2026

Mr. P. Murali in WP Nos.29516,
29521, 29524 of 2024, 33090,
45621, 45628, 45628, 45652,
45647, 45658, 45605, 45611,
45618, 45620, 45633, 45639,
45643, 35268, 36104, 36129,
36108, 36123, 36701, 36709,
36803, 36812, 36818, 36881,
36891, 36896, 37403, 37412,
37420, 37424, 37427, 40358,
41687, 41696, 41701, 40407,
41707, 41713, 40671, 40684,
40692, 40681, 40673, 40676,
40680, 42396, 42415, 42417,
42418, 42425, 42421, 42406,
42408, 43173, 43183, 43193,
43186, 43187, 43192, 43194,
43195, 43228, 43224, 43189,
43197, 43198, 43200, 43201,
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46804, 46805, 46810, 46813,
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47914, 47871, 47877, 47882,



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47890, 47899, 47904, 48330,
48339, 48364, 48374, 48386,
48396, 49028, 49042, 49084,
49051, 49058, 49047, 49088,
49036, 49045, 49062 &
49076/2025

WP Nos.212, 250, 260, 221, 223,
220, 226, 231, 232, 234, 243,
268, 738, 812, 751, 757, 761,
784, 787, 789, 795, 796, 797,
798, 800, 805, 811, 748, 2122,
2156, 2161, 2168, 2213, 2216,
2232, 2234, 2167, 2130, 2133,
2134, 2135, 2140, 2143, 2144,
2145, 2149, 2154, 2218, 2226,
7388, 7409, 7411, 7413, 7414,
7417, 7569, 7392, 7395, 7406 &
8115/2026

Mrs. S. Dakshayini Reddy, SC, for
Ms. S.Suneetha in WP
No.14081/2025

Mr. P. Ganesan in WP
Nos.19434, 19481, 40287 &
49783/2025

Mr. R. Saseetharan in WP
Nos.34841, 36548, 36558,
38123, 41926, 44365, 44553,
44846, 44855, 45339, 47210,
49179, 50159, 50198,
50238/2025 & 296 & 2973/2026

Mr. R.Nixon in WP
No.37480/2025



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Mr. Richardson Wilson in WP
No.47351/2025

Mr. K.Chandra in WP 6981/26

Mr.A.S.Kaizer in WP 7592 &
7603/2026

For Respondents : Mr.P.S.Raman, AG, assisted by
Mrs. Mythreye Chandru, Spl.
G.P. For State of Tamil Nadu
(Finance Dept.) in all the WPs

Mr. R. Neelakandan, AAG,
assisted by Mr. Prabhakar GA,
for State of Tamil Nadu
(Education Dept.) in all the WPs

Mr. T.Ravikumar for AGoT in WP
Nos. W.P. Nos. 35241 & 36548,
36558/2025, 738, 812, 751, 757,
761, 784, 787, 789, 795, 796,
797, 798, 800, 805, 811, 748,
2122, 2156, 2161, 2168, 2213,
2216, 2232, 2234, 2167, 2130,
2133, 2134, 2135, 2140, 2143,
2144, 2145, 2149, 2154, 2218 &
2226/2026

Mr. P.Mano Rajan for AGoT in
WP Nos.14081, 19434, 19481,
36818, 36891, 36896, 37356,
37412, 37424, 38123, 40287,
40358, 41687, 41696, 41701,
40407, 41707, 41713, 40608,
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40673, 40676, 40680, 40987,
40993, 41926, 41932, 42396,



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43224, 43189, 43197, 43198,
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43205, 43206, 43208, 44496,
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44507, 44509, 44511, 44512,
44514, 44516, 44503, 45686,
45707, 45724, 45696, 46011,
46776, 46786, 46794, 46804,
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47886, 47889, 47863, 47914,
47871, 47877, 47882, 47890,
47899, 47904, 48330, 48339,
48364, 48374, 48386, 48396,
49028, 49036, 49042, 49084,
49051, 49058, 49047, 49084,
49088, 49045, 49062, 49076 &
49783/2025

Mr.V.Vijayshankar for AGoT in
WP Nos.36104, 36129, 36108,
36123, 36701, 36709, 37356,
37480, 38116, 212, 250, 260,
221, 223, 220, 226, 231, 232,
234, 243 & 268/2026

Mr. ANR.Jaya Prathap for AGoT
in WP Nos.33090, 45621, 45628,
45652, 45647, 45658, 45605,
45611, 45618, 45620, 45633,
45639, 45643, & 33541/2025

Mrs.Vardhini Karthik for AGoT in



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WP Nos.11197/2025, 4458, 4469, 4476, 4481, 4482, 4486, 4488, 4490, 4492, 4495, 4500, 4503, 4509, 4607, 4613, 4622, 4626, 3781 & 3788/2026

Mr. S.Prabakaran, GA for RR-1 & 3 to R6 in W.P.Nos. 4458, 4469, 4476, 4481, 4482, 4486, 4488, 4490, 4492, 4495, 4500, 4503, 4509, 4607, 4613, 4622, 4626/2026

Mr. L.Muralikrishna for R-4 in W.P. Nos.5433 & 5438/2026, for R-7 in W.P. Nos.5996, 6001, 6006, 6008, 6009 & 6010/2026 and for R-8 in W.P. No.4029/2026, for R7 in W.P. Nos. 7388, 7409, 7411, 7413, 7414, 7417, 7569, 7392, 7395, 7406/2026, for R-5 in WP No.6981/20926

COMMON ORDER

The writ petitions, which were listed on different dates, were heard, separately, but as the issue involved in all the writ petitions being common, relating to the impugned order in and by which direction was issued for refixation of selection grade scales of pay and consequential recovery orders passed, they are being disposed of by this common order.



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2. The order impugned in these writ petitions relates to re-fixation of the selection grade scales of pay and the consequential recovery orders passed by the respondents to recover the erroneous grant of higher selection grade scale of pay granted to the petitioners, while implementing the recommendations of the 6th Pay Commission issued vide G.O. Ms. No.234 and G.O. Ms. No.23, without notice to the petitioners, which is assailed before this Court through the present petitions.

3. The brief facts leading to the filing of the above batch of writ petitions are as under :-

Pursuant to the recommendations made of the 6th Central Pay Commission in respect of Central Government staff members, the same was adopted by the State of Tamil Nadu leading to the issuance of G.O. Ms. No.234, Finance (Pay Cell) Dept., dated 1.6.2009, on the basis of the recommendations issued by the Official Committee on revision of scales of pay and allowances in respect of State Government employees and Teachers with monetary effect from 01.01.2007. However, as certain issues were pointed out in the fixation of the pay scales in the aforesaid G.O. Ms. No.234, the State Government appointed One Man



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Commission to look into the issues and, thereafter, based on the report submitted by the One Man Commission, revised pay scales were fixed.

4. In respect of teachers, the Teacher Associations/Pensioners Associations/Individuals/Retired Teachers sought for clarification on the fixation of pay in the Selection Grade/Special Grade posts consequent on the revision of Ordinary Grade scales of pay of the various categories of posts, which led to the issuance of G.O. Ms. No.23, Finance (Pay Cell) Department, dated 12.01.2011, which has since been implemented in which the pay scales were modified as under :-

S.No.	Name of the Post	Present scale of pay + Grade Pay (Rs.)	Modified scale of pay + Grade Pay (Rs.)
1	B.T. Assistant (Graduate Teacher)	9300-34800 + 4400	9300-34800 + 4600
2	P.G. Assistant (Post Graduate Teacher)	9300-34800 + 4400	9300-34800 + 4800
3	Primary School Head Master	9300-34800 + 4300	9300-34800 + 4500
4	Middle School Head Master	9300-34800 + 4500	9300-34800 + 4700
5	Higher Sec. School Head Master / District Educational Officer	15600-39100 + 5400	15600-39100 + 5700

5. The effect of the said pay scale was that it would revise the scales of pay of the teaching categories aforesaid notionally with effect from 1.1.2006 with monetary benefit from 1.1.2011.



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6. In spite of the above modification in pay scales, since there subsisted a discrepancy in the grade pay between P.G. Assistant, who was provided the pay scale and grade pay of Rs.9300-34800 + GP 4800 and High School Head Master, who was provided with pay scale and grade pay of Rs.9300-34800 + GP 4600, G.O. Ms. No.58 dated 25.2.2011 was issued fixing the Grade Pay of High School Head Master at Rs.4800 in line with the grade pay fixed for P.G. Assistant with notional fixation on 1.1.2006 and monetary benefit from 1.1.2011.

7. Thereafter, once again representation was made by the various teacher associations seeking clarification with regard to fixation of pay in Selection Grade/Special Grade posts consequent to the revision of ordinary grade scales of pay with regard to the categories afore-stated and considering the first and second level promotional posts of the teachers, Letter No.14483/CMPC/2011-1 dated 05.01.2012 came to be issued in which the selection grade/special grade scales of pay as indicated in Annexure-I therein was provided subject to the conditions stipulated in para-4 (i) of the Government letter in Letter No.63305/Pay Cell/2010-2, Finance Department dated 8.11.2010 and the revised selection grade/special grade scales of pay of teachers consequent on the revision of their Ordinary Grade scales of pay was revised as under :-

S.No.	Name of the Post	Ordinary Grade Scale of Pay + Grade Pay	Selection Grade scale of pay + Grade Pay	Special Grade Scale of pay + Grade Pay
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		(Rs.)	(Rs.)	(Rs.)
1	B.T. Assistant (Graduate Teacher)	9300-34800 + 4600	9300-34800 + 4800 *	15600-39100 + 5700
2	P.G. Assistant (Post Graduate Teacher)	9300-34800 + 4800	15600-39100 + 5700	15600-39100 + 6600
3	Primary School Head Master	9300-34800 + 4500	15600-39100 + 5400	15600-39100 + 5700
4	Middle School Head Master	9300-34800 + 4700	15600-39100 + 5700	15600-39100 + 6600
5	Higher Sec. School Head Master / District Educational Officer	9300-34800 + 4800	15600-39100 + 5700	15600-39100 + 6600

(* Restricted to the first level promotion post, viz., Headmaster, High School)

8. In the aforesaid letter, there was a further stipulation that the above Selection Grade/Special Grade scales of pay would be applicable only in respect of teachers, who were awarded selection grade/special grade prior to 1.1.2006 and teachers who have opted for the revised scale of pay on a subsequent date between 1.1.2006 and 31.5.2009, i.e., from the date of their award of Selection Grade/Special Grade. Further, the above selection grade/special grade scales of pay was to take notional effect from 1.1.2006 or from the date of exercising revised option as the case may be and with monetary benefit from 1.1.2011.

9. However, for more than a decade from the date of grant of the said monetary benefit there was no action and only when certain clarifications were



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sought for from the Government based on certain audit queries vide communication of the Administrative Officer dated 21.11.2023, Letter No.11100 dated 15.12.2023 came to be issued, wherein it was clarified as under :-

“மேற்காண் ஆணைகளின்படி தொடக்கக் கல்வித் துறையில் உள்ள தொடக்கப்பள்ளித் தலைமையாசிரியர்கள் பணிமூப்புத் தன்மையால் பட்டதாரி/ நடுநிலைப் பள்ளித் தலைமையாசிரியராக பதவி உயர்வு பெற இயலாதவர்களுக்கு தேர்வுநிலை சிறப்புநிலையில் தர ஊதியம் முறையே ரூ.15600-39100 ரூ.15600-39100.த.ஊ 5700 த.ஊ. 5400 மற்றும் ஊதியம் நிர்ணயம் செய்யப்பட்டு, பின்னர் பி.ஏ.பி.எஸ்சி.பிலிட் இளங்கலை பட்டத்துடன் பி.எட். பட்டய கல்வித் தகுதியும் பெற்று பட்டதாரி / நடுநிலைப் பள்ளித் தலைமையாசிரியராக பதவி உயர்வு பெற்றுள்ளதால், அட்டவணையில் தெரிவித்தவாறு அ.க.எண்.63305/ஊ.பி.20101. நிதித் துறை, நாள் சிறப்புநிலையில் முறையே 08.11.2010-இன் பத்தி 4(i)-இன்படி தேர்வுநிலை அப்பணியிடத்தின் முதல் மற்றும் இரண்டாம் நிலை பதவி உயர்வு பணியிடங்களின் சாதாரண நிலை ஊதிய விகிதத்திற்கு மட்டுப்படுத்தப்பட்டு நிர்ணயம் செய்யப்பட வேண்டும் என தங்களுக்கு தெரிவித்துக் கொள்ளப் பணிக்கப்பட்டுள்ளேன்.”

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“As per the above orders, the Primary School Principals in the Primary Education Department who are unable to get promotion as Graduate/Middle School Principals due to seniority will be given the grade pay of Rs. 5400 for the selection grade/special grade pay of Rs. 15600-39100 + GP 5400 and 15600-39100 + GP 5700 and they later qualified themselves in B.A. B.Sc. B.Litt., B.Ed. with Bachelor's degree and obtained the promotion, as Graduate Teacher/Middle School Head Master, as shown in the Schedule to the Letter No.63305/UP/2010-1, Finance Dept., dated 8.11.2010, in para 4 (i), selection grade/special grade level shall be limited to the normal pay scale of the first and second promotion posts.”

10. Based on the aforesaid clarification issued by the Government in respect of the audit query raised, the present recovery orders have come to be passed in respect of the petitioners herein by the respective district authority calling upon the petitioners to pay the amount quantified as erroneous excess payment made on the ground of grant of selection grade scale of pay, which is put in issue in the present writ petitions.

11. In the backdrop of the aforesaid factual scenario relating to the grant of selection grade/special grade scales of pay, the brief facts of the case of the petitioners touches on the fact that they were appointed as Secondary Grade



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Teachers (for short 'SGT') and on completion of 10 years of service, the petitioners were granted the selection grade scale of pay in the post of SGT, as is in vogue in the earlier pay commission scale and, thereafter, the petitioners were made Primary School Headmaster (for short 'HM-PS'), which carried the very same scale of pay as that of SGT and, therefore, after completion of another 10 years of service from the date of their grant of selection grade in the post of SGT, the petitioners were granted selection grade, once again in the post of HM-PS. Thereafter, the petitioners were promoted as Headmaster Middle School (for short 'HM-MS') and their pay was fixed on the basis of the pay, which they were drawing in the post of HM-PS. Thereafter, consequent to certain audit queries with regard to fixation of the pay of the petitioners in the selection grade scale of HM-PS, either for the purpose of computing the terminal benefits payable to them at the time of retirement or during the routine audit where the pay fixation between the senior and junior was found to have been not done properly, the impugned Government Letter had come to be issued by the Education Department as to the manner in which the selection grade scale of pay ought to have been fixed and based on the said impugned Government Letter, recovery orders have come to be passed against the respective petitioners calling upon them to deposit the alleged excess portion of the pay received by them due to



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wrong fixation of pay and aggrieved by the said impugned order as also the consequential recovery order, the present batch of writ petitions have come to be filed.

12. Learned senior counsel and the other learned counsel appearing for the respective petitioners submitted that the impugned letter dated 15.12.2023, which has been issued after more than a decade and a half from the date of grant of selection grade scale of pay to the petitioners, had taken away the benefit which was given to HM-PS vide the Government Letter dated 5.1.2012 by introducing a new scale of pay by directing re-fixation in the lower scale of pay upon the subsequent promotion of the petitioners as HM-MS, most of whom have since retired from service, is grossly erroneous and against the principles of natural justice and the delay in issuing the said communication is fatal to the impugned order.

13. It is the further submission of the learned senior counsel that it is settled principle that an amendment or change, more particularly with reference to the scales of pay cannot be given retrospective effect as it cannot take away a right, which was vested and acquired by the Government servants. Reliance is



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placed on the decision of the Apex Court in ***Sree Sankaracharya University of Sanskrit & Ors. – Vs – Dr.Manu & Anr. (2023 SCC OnLine SC 640)***, more particularly para-56, wherein the Supreme Court has held that any clarification, which is given subsequently through which a vested and acquired right is sought to be taken away is only an amendment and the clarification/amendment so introduced cannot have retrospective operation so as to take away the benefits enjoyed by the individuals and the benefits already granted cannot be withdrawn.

14. It is the further submission of the learned counsel that a benefit, which was given vide the Government Letter dated 5.1.2012, that too on the basis of the recommendations made on the basis of the Pay Commission recommendations cannot be withdrawn by the impugned Government Letter dated 15.12.2023. It is the further submission of the learned counsel that the benefit was granted vide the Government Letter dated 5.1.2012 by the Finance Department, based on the Pay Commission's recommendations cannot be unilaterally and without the concurrence of the Finance Department, be taken away by the Education Department by reworking the scales of pay through



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issuance of the impugned letter dated 15.12.2023, which is impermissible and
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perverse.

15. It is the further submission of the learned counsel that it is the settled legal position that the benefit, which was granted vide an earlier Government letter cannot be taken away by a subsequent Government letter and the withdrawal of the earlier Government Letter cannot non-suit the petitioners, who are entitled to the benefits as per the Government Order, that was existing then. In the present case, the Government Letter dated 5.1.2012 was in force on the date when the benefit was given to the petitioners and the said letter having not been rescinded, the present Government Letter dated 15.12.2023 cannot take away a right, which was given to the petitioners by a previous Government Letter, moreso when the said letter dated 5.1.2012 was issued by a different department, viz., Finance Department, it cannot be set at naught by the School Education Department.

16. It is the further submission of the learned counsel that FR 22-B clearly stipulates that where a Government servant is promoted or appointed to a higher post after 1.1.2006 and also in cases where a Government servant has



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moved to Selection Grade or Special Grade after 1.1.2006 and opted for revised scale of pay on a subsequent date after 1.1.2006 in whose cases their Selection Grade or Special Grade of the lower post carries identical or higher pay band and or grade pay, the Government servant shall be allowed to continue in the same identical or higher pay band and grade pay applicable to the Selection Grade or Special Grade of the lower post, as per the clarifications issued in Government Letter No.45113/Finance (PC) Dept., dated 17.08.2009 with one increment benefit either from the date of promotion or from the date of accrual of next increment in the lower post based on the option exercised by the Government Servant.

17. In the light of FR 22-B, it is the submission of the learned counsel that when FR 22-B in clear and in unambiguous term has spelt out the manner in which the scale of pay of a Government Servant has to be fixed upon the movement of the Government servant to Selection Grade/Special Grade scale of pay prior to his/her promotion, the benefit granted by the said rule, which has been confirmed vide the Government Letter dated 17.08.2009, which has since amended FR 22-B, the said benefit granted cannot be taken away by a Government Letter issued subsequently based on directions issued in an earlier



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Government Letter, which was very well available before the respondents, when the benefit was granted vide the Government Letter dated 5.1.2012. Therefore, the present order directing refixation and consequential recovery is grossly erroneous and perverse.

18. It is the further submission of the learned counsel that the pay of the petitioners were fixed by the pay fixing authority for moving the petitioners to selection grade scale of pay of Rs.15600-391000 + GP 5400 of HM-PS, who were, thereafter, further promoted to the post of HM-MS upon their obtainment of B.Ed. qualification and to the post of B.T. Assistant with one increment benefit. Therefore, the benefit granted in the selection grade scale of pay in the post of HM-PS cannot be brought down on the basis of the promotion of the petitioners to the post of HM-MS.

19. It is the submission of the learned counsel that the pay fixation of the petitioners is as per the Government Letter dated 5.1.2012 and applying FR 22-B and no excess pay was paid to the petitioners in violation of any Rule or Government Order, which was in force at the relevant point of time and, therefore there cannot be any recovery. Further, it is the submission of the



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learned counsel that what was already received by the petitioner as scale of pay cannot be brought down in a promoted post, which is precisely what FR 22-B (11) (1) spells out which safeguards the interests of the Government Servants who were receiving higher scale of pay even prior to promotion, though the promotion post carried a scale of pay, which was already reached by the Government Servant in the lower post. Therefore, when FR 22-B has been properly applied to the Government Letter dated 5.1.2012 and the petitioners have been fixed their scale of pay upon moving to the Selection Grade post and also on their further promotion to the promotional post of HM-MS, through the impugned Government Letter dated 15.12.2023, the respondents cannot alter the scale of pay and further direct recovery or refixation of pay, which has already been received by the petitioners, moreso, when FR 22-B does not contemplate such degradation of already conferred benefit.

20. It is the further submission of the learned counsel that the Government, in its wisdom had issued the letter dated 5.1.2012 by deciding the next hierarchy for the post of HM-PS is B.T. Assistant and HM-MS for which the necessary qualification is a degree in B.Ed., while for the post of HM-PS, degree is not required and only Diploma in Teacher Education is sufficient. It is the further



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submission of the learned counsel that the post of B.T. Assistant and HM-MS are higher post, which requires additional qualifications and cannot be given to HM-PS merely on the basis of seniority and in this regard Rule 36 of the State and Subordinate Service Rules is pressed into service wherein it is clearly spelt that promotion means appointment given on seniority.

21. It is therefore the submission of the learned counsel that only realising the position of HM-PS vis-a-vis B.T. Assistant and HM-MS, the Government, more particularly with reference to the Selection Grade/Special Grade scales of pay, while issuing the Letter dated 5.1.2012 has not restricted the Selection Grade Scale of Pay of HM-PS to the level of B.T. Assistant and HM-MS, which would be evident from the Selection Grade/Special Grade scales of pay that has been provided for, for HM-PS.

22. It is further submission of the learned counsel that restriction applies only to the post of B.T. Assistant working in High School, which finds at S. No.1 of Annexure I attached to the Government letter dated 8.11.2010 and it is not applicable to the post of HM-PS, which finds place at S. No.3, as the Government, in its wisdom, had not prescribed any such restriction and Government has



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granted the benefit of S. No.15 of Annexure I of Government Letter dated 8.11.2010 to persons holding the post of HM-PS, in the said scale of pay like the petitioners. In this regard, it is highlighted by the learned counsel that the said benefit has been given to all HM-PS, who moved to Selection Grade prior to 1.1.2006 as well as to those who moved to Selection Grade for the period between 01.01.2006 and 31.5.2009 and it has not been extended any further to other persons, which clearly shows the intent of issuing the said orders on 5.1.2012, which is only to safeguard the interests of persons like the petitioners.

23. It is therefore submitted by the learned counsel that the said benefit is given from 1.1.2006 or from the date of exercise of option notionally with monetary benefit from 1.1.2011 and all the petitioners herein moved to Selection Grade in the post of HM-PS in the above two spells and they were granted the Selection Grade Scale of Pay in the Pay Band Rs.15600 – 39100 + GP 5400 on the basis of the Government Letter dated 5.1.2012. Further, for more than a decade and a half, the petitioners have been allowed to draw their pay and that their pay has also been fixed in the revised scale of pay of Rs.15600-39100 + GP 5400 from 1.1.2006 or from the date of option notionally and, therefore, the benefit, which



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has been extended to them cannot be recovered through the impugned Government Letter.

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24. It is the further submission of the learned counsel that even the proceedings of the Accountant General dated 16.4.2019 with reference to W.P. No.2973/2026, wherein the fixation of Grade Pay of HM-PS at Rs.5400/- has been held to be correct, yet the retirement benefits of the petitioners have not been paid to the petitioners in full citing the impugned Government Letter dated 15.12.2023 by giving it retrospective application, which is grossly perverse, as the approval of the Accountant General makes it clear that the pay fixation given to the petitioners is correct as per the then existing Government Letter dated 5.1.2012 and no excess payment has been made to the petitioners.

25. It is the further submission of the learned counsel that the respondents cannot claim recovery based on the consent expressed by the petitioners, as the consent was based on pressure and duress, as the livelihood of the petitioners depends on the pension being released to them monthly as they are not in equal bargaining power against the mighty State and are mere retired government employees, who cannot face the wrath of the State. Therefore, the



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consent, if at all expressed by the petitioners, cannot be put against them, as has been held in a catena of decisions by the Courts.

26. In support of the aforesaid submissions, learned counsel for the petitioners placed reliance on the following decisions, in addition to the decisions referred above :-

- 1) *State of Punjab – Vs – Rafiq Masih (2015 (4) SCC 334;*
- 2) *Jagdish Prasad – Vs – State of Bihar & Ors. (2024 SCC OnLine SC 1909;*
- 3) *Sree Sankaracharya University of Sanskrit & Ors. – Vs – Dr. Manu & Anr. (2023 SCC OnLine SC 640);*
- 4) *P.Subramani – Vs – Govt. of Tamil Nadu & Anr. (2001 (3) LW 385);*
- 5) *D.Balasubramaniam & Ors. – Vs – The Govt. of Tamil Nadu & Ors. (1991 (2) LW 76); and*
- 6) *P.Subramanian – Vs – Govt. of Tamil Nadu & Ors. (2010 (3) MLJ 934)*

27. Per contra, learned Advocate General appearing for the State submitted that the grant of the benefit of selection grade is only where there is no opportunity for promotion. However, in the case of the petitioners, who were HM-PS on the date when selection grade scale of pay was granted, there was next avenue of promotion to the post of HM-MS/B.T. Assistants, if they fulfill

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certain qualifications. The benefit of selection grade is only where there are no promotional avenues, but in the case of the petitioners, they were having promotional avenues and they have also been promoted. Therefore, the provision of selection grade is only for the purpose of motivating persons, who do not have promotional avenue by providing extra pay so that they would not feel the effect of stagnation in service.

28. It is the further submission of the learned Advocate General that have, since the grant of selection grade, opted for promotion to the higher scale and have since been promoted as B.T. Assistants/HM-MS. If the pay scale, as provided in the selection grade is made available to them, it would lead to an anomalous situation where one set of B.T. Assistants from one stream would be drawing a higher scale of pay than the B.T. Assistants, from another stream, which would be violative of right to equality and also equal pay for equal work.

29. It is the further submission of the learned Advocate General that the concept of Selection Grade and Special Grade was formally restored vide G.O. Ms. No.309, finance (PC) Department dated 1.4.1990 with retrospective effect from 1.6.1988 and this order to reintroduce the benefit of next pay scales for



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employees who stagnated in the same post for 10 and 20 years and this restoration meant that HM-PS could have their pay moved to a higher scale, but the said Government Order introduced a fundamental 'restrictive principle.

30. It is the further submission of the learned Advocate General that any inadvertent error committed by the respondents under a mistaken application of the provisions of the Government Order/Letter cannot be taken aid of by the petitioners to claim that no recovery can be made when as per the provisions of the Pay Commission recommendations and the Government Orders issued, when the petitioners are not entitled for the pay, the bona fide wrong fixation cannot be the basis to refuse order of recovery. To substantiate the aforesaid contention, learned Advocate General placed reliance on the decision of the Apex Court in ***Chandi Prasad Uniyal & Ors. – Vs – State of Uttarakhand & Ors. (C.A. No.5899/2021 – Dated 17.08.2012)***, wherein the Apex Court, in clear terms had laid down that merely because it is established that there was no misrepresentation or fraud on the part of the recipients to receive excess pay, the amount paid could not be recovered. It is therefore the submission of the learned Advocate General that everything boils down to the facts of the particular case and where the mistake is bona fide and where the entitlement of



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the petitioners are not established, but it runs to the contra, necessarily, the recovery ordered cannot be held to be perverse as the petitioners are not entitled to the higher pay, even in the absence of any fraud or misrepresentation.

31. It is the further submission of the learned Advocate General that the delay in making the recovery cannot be put against the State, as the whole error that had crept it had come out as a result of certain audit queries and during processing of certain pension papers by the Accountant General office and on pointing out the error in the application of the Government Order, the impugned Government Letter had come to be issued to correct the said error and the said delay is not attributable to any authority or for that matter the State, but it is purely an error unconnected with the administrative activity, but on an erroneous application of the provision of the Government Orders and, therefore, the said delay cannot be put against the respondents, moreso, when public money is involved, which has been paid to the petitioners in the form of higher remuneration to which they are legally not entitled to.

32. It is the further submission of the learned Advocate General that in certain cases, the petitioners have been paid higher pay under the analogy of



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junior getting more pay than the senior. However, the said grant itself is erroneous for the reason that it could be applied only when the junior and senior are in the same cadre. However, when the junior and senior are in two different cadres, the plea of junior getting more pay than the senior would not be applicable so as to give the benefit of higher pay to the senior, as the pay is governed cadre-based and not merely on the basis of date of entry into service, as each cadre is governed by a particular pay scale. Therefore, any amount granted on the mistaken application of junior getting more pay than the senior could very well be recovered from the respective persons.

33. It is the further submission of the learned Advocate General that at the end of the day, the entitlement of the petitioners have to be tested against the interest of the public, as the exchequer, as the custodian of the public funds, is entrusted with the task of safeguarding the interests of the public and see to it that the public money is properly utilised and, therefore, when there is no fraud or collision and the act is due to inadvertence at the hands of the authorities and when the petitioners are not entitled to the fixation of pay as aforesaid, then it is well within the powers of the respondents to seek for recovery of the said sums, which have been paid in excess to the petitioners to which they are not entitled



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and, therefore, the impugned order cannot be said to be erroneous and recoveries could very well be made, as has been held in a catena of decisions. It is also placed before this Court by the learned Advocate General that approximately 4252 teachers have been granted erroneous pay fixation resulting in an estimated financial burden of Rs.1,000 Crore to the exchequer.

34. The respective learned senior panel counsel and learned panel counsel appearing for the Accountant General adopted the submissions advanced by the learned Advocate General and submitted that the erroneous fixation of pay has to be refixed based on the audit query, which alone would prevent the anomalous situation.

35. In support of the aforesaid submissions, on behalf of the respondents reliance was placed on the following decisions :-

- i) *Chandi Prasad Uniyal & Ors. – Vs – State of Uttrakhand & Ors. (2012 (8) SCC 417);*
- ii) *Union of India & Ors. – Vs – Phanwar Lal Mundan (2013 (12) SCC 433);*
- iii) *High Court of Punjab & Haryana & Ors. – VS – Jagdev Singh (2016 (14) SCC 267);*
- iv) *Sasikala Devi P – Vs – State of Kerala & Anr. (2023 SCC OnLine SC 513); and*



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v) *Godrej Properties Ltd. – Vs – Accountant General (A&E) & Ors. (W.P. 29304, 29373 & 29374/2019 – Madras High Court)*

36. This Court gave its careful consideration to the erudite submissions advanced by the learned senior counsel and other learned counsel appearing on either side and also perused the relevant Government Orders, the Government Letters, the Pay Commission Recommendations and the letters through which the relevant pay scales were fixed and also the decisions relied upon on behalf of the respective parties.

37. The present batch of cases centres around four different types of teachers, who were initially appointed as SGT and later as HM-PS and, thereafter, they have been promoted. The writ petitions can be conveniently grouped into four categories, as under :-

- i) *Petitioners who are still in service;*
- ii) *Petitioners, who have retired and from whom recoveries have already been effected;*
- iii) *Petitioners, who have retired and from whom recoveries are yet to be made; and*



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iv) Petitioners against whom only proposals for recovery has been issued and against which further proceedings has been stayed.

38. The case revolves around the members employed as teaching faculty under the Education Department and more especially it relates to therefixation of pay in the Selection Grade Scale that has been granted to them in post of HM-PS prior to their being promoted as B.T. Assistant/HM-MS upon they getting themselves qualified for such promotion by obtaining the relevant degrees.

39. Therefore, it becomes imperative for this Court to look at the structure of the posts in the School Education Department along with the promotional aspects, which would throw light on the manner in which promotions are granted to the teachers.

40. The posts of HM-MS, Graduate Teachers (B.T. Assistants), HM-PS and Secondary Grade Teacher are governed by the Special Rules for the Tamil Nadu Elementary Education Subordinate Service. Rule 2 relates to appointment to the



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various classes and categories and the appointment with regard to the aforesaid posts, as found in Rule 2 are as hereunder :-

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Class		Category		Method of Appointment
I	1.	Block Educational Officer	(i)	By direct recruitment through Teachers Recruitment Board
			(ii)	By promotion from category 2 of class 1 of the service: Provided that fifty percent of the substantive vacancies shall be filled by direct recruitment.
	2.	Headmaster/Headmistress of Middle School	(i)	By promotion from class II and category 1 of class III of the service in combined seniority.
			(ii)	If no qualified and suitable candidate is available for appointment by the method specified in item (i) above, the vacancy shall be filled by direct recruitment.
II	1.	Graduate Teacher (Tamil)	(i)	By promotion from eligible person in category 1 of class III of the service. If no eligible person is available for promotion in category 1 of class III of the service, the vacancy shall be filled up by promotion from eligible person in category 2 of class III
			(or)	By transfer of qualified personnel from any other unit
			(ii)	(or)
			(iii)	If no qualified and suitable candidate is available for appointment by any of the methods specified in item (i) and (ii) above, then by direct recruitment
	2.	Graduate Teacher (Other than Tamil)	(i)	By promotion from eligible person in category 1 of class III of the service. If no eligible person is available for promotion in category 1 of class III of the service, the vacancy shall be filled up by promotion from eligible person in category 2 of class III
			(or)	By transfer of qualified personnel from any other unit
			(ii)	(or)
			(iii)	If no qualified and suitable candidate is



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				<i>available for appointment by any of the methods specified in item (i) and (ii) above, then by direct recruitment</i>
	3.	<i>Graduate Teacher (Subjects)</i>	(i) (ii) (iii)	<i>By promotion from eligible person in category 1 of class III of the service. If no eligible person is available for promotion in category 1 of class III of the service, the vacancy shall be filled up by promotion from eligible person in category 2 of class III</i> <i>(or)</i> <i>By transfer of qualified personnel from any other unit</i> <i>(or)</i> <i>If no qualified and suitable candidate is available for appointment by any of the methods specified in item (i) and (ii) above, then by direct recruitment</i>
III	1.	<i>Headmaster/Headmistress of Primary Schools</i>		<i>By promotion from category 2 of Class III</i>
	2.	<i>Secondary Grade Teacher</i>		<i>By direct recruitment</i>
IV		<i>Physical Education Teacher</i>		<i>By direct recruitment</i>
V		<i>Pre-Vocational Instructor</i>		<i>By direct recruitment</i>

41. From the above, it is amply evident that for promotion to the post of HM-MS, which is in Class I of Category 2, the same is to be filled up by promotion from Class II, viz., Graduate Teacher and Category 1 of Class III, viz., HM-PS in combined seniority and insofar as Graduate Assistant (which is B.T. Assistant otherwise said), which is in Class II of category 1, 2 and 3, it is to be filled up by way of promotion of persons from Category I of Class III, viz., HM-PS and if no eligible person is available, then it is to be filled up by promotion from persons in Category (2) of Class III, viz., Secondary Grade Teacher. In respect of HM-PS, it is



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to be filled up by way of promotion from Category (2) of Class III, viz., Secondary Grade Teacher.

42. That said with regard to the hierarchy of the posts and the promotional avenues open for the various categories of teachers, the appointment of the teachers, who are governed by the present cases, dates back to the late 1980's and who were then appointed as SGT. Almost all the petitioners, who were SGT, were the recipient of Selection Grade scale of pay upon completion of 10 years of service. The pay scale as was in vogue, when Selection Grade pay was given to the petitioners of SGT, who had completed 10 years, was guided by the 5th Pay Commission recommendations wherein the petitioners were in the pay scale of Rs.5300-150-8300. Thereafter, the petitioners were promoted from the post of SGT in Class III Category 2 to the post of HM-PS, which is in Category 1 of the very same Class III. It is to be pointed out that both the post of HM-PS and SGT carries the same scale of pay, which is not disputed by the parties, though the method of appointment as is spelt in the Special Rules shows the movement from SGT to HM-PS as promotion from Category 2 of Class III.



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43. It is the settled position of law that for the purpose of considering a movement as promotion, the said movement should be associated with higher duties and responsibilities and should carry a higher scale of pay. However, in the case of movement from SGT to HM-PS, the movement, though is shown as promotion in the Special Rules, however, the scale of pay being one and the same for HM-PS and SGT, though HM-PS carried some additional duties and responsibilities, the said movement of SGT to HM-PS cannot in *stricto sensu* be characterised as promotion, but would have to be construed as a change in nomenclature of the post on the basis of seniority.

44. Only in that backdrop, when Selection Grade was given in the post of SGT, thereafter, upon movement of the petitioners to the post of HM-PS, after completion of 10 years from the time they received the selection grade scale of pay in the post of SGT, further selection grade scale of pay in the post of HM-PS was given to them.

45. It is a well known fact that Selection Grade scale of pay is granted to a Government servant on putting in 10 years of service when no promotion is granted to the said employee on account of the employee stagnating in the said



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post for a period of 10 years. Thereafter, on completion of further period of 10 years, if no promotion is granted to the said Government servant, the Government servant is entitled to be moved to the Special Grade scale of pay. However, if promotion is granted to a Government servant during the 10 year period, the Government servant would not be entitled to the special pay either through selection grade or special grade, as the case may be.

46. It is to be pointed out even at the first instance that only due to an employee stagnating in a post without promotion a period exceeding 10 years, selection grade scale of pay is given. The grant of selection grade scale of pay cannot be clubbed with the promotional avenue available to an employee to climb up the ladder in the organisational hierarchy. Further, grant of selection grade would also not affect the promotion of an employee at a later point of time beyond 10 years in case the employee had received the selection grade scale of pay. Therefore, it could safely be construed that a stagnated employee is assured a benefit of increase in scale of pay so that the employee gets motivated to work better even if no promotion has been given to the said employee for a period of 10 years. Therefore, merely because promotional avenue exists would not bar an employee from receiving selection grade/special grade scale of pay



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upon completion of 10/20 years of service, if no promotion has been given to an employee for a continuous period of 10 years of service.

47. In the case of the petitioners, as stated above, the petitioners, having not been granted any promotion, were given the selection grade pay upon completion of 10 years of service in the post of SGT and, thereafter, they were moved to the post of HM-PS. However, after a period of 10 years from the date on which they were granted selection grade scale of pay in the post of SGT, they were granted selection grade scale of pay in the post of HM-PS, which could only mean that the movement of the petitioners from SGT to HM-PS cannot be characterised as promotion, which is further strengthened by the fact that the scale of pay of SGT and HM-PS are one and the same, which fact is not in dispute and is also borne out by records.

48. Upon movement of the petitioners to the post of HM-PS somewhere in the year 2006 and grant of selection grade scale of pay in the post of HM-PS in the year 2008, subsequently, the petitioners were promoted to the post of HM-MS. The appointment to the post of HM-MS is by promotion from Class II and Category 1 of Class III, viz., from the post of Graduate Teachers and HM-PS.



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50. The movement of the petitioners from the post of HM-PS to the post of HM-MS was in the fag end of 2008, but their movement to the selection grade scale of pay was in the post of HM-PS which was in the earlier part of 2008, much before their promotion to the post of HM-MS. The recommendations of the 6th Pay Commission was put in motion by issuance of G.O. Ms. No.234 Finance (Pay Cell) Dept., dated 01.06.2009, with certain modifications, and the new scales of pay were notified for implementation in which the scale of pay of the Government servants were notionally fixed on 1.1.2006, but entitlement of monetary benefits was from 1.1.2007. In the above scenario, the various Government Orders in G.O. Ms. No.23, Finance (Pay Cell) Department, dated 12.01.2011 and G.O. Ms. No.58 dated 25.2.2011 with regard to fixation of pay of the teachers had come to be issued.

51. The manner in which the teachers would move to the selection grade/special grade scales of pay on completion of 10/20 years of service is prescribed under G.O. Ms. No.23 and Letter No.14483/CMPC/2011-1 dated 5.1.2012, which has already been extracted supra. From a careful perusal of both the aforesaid Government Order and the Government Letter, it is evident that



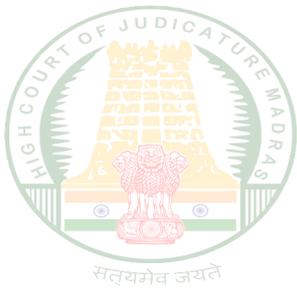
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what was left out in G.O. Ms. No.23, was, in fact, fixed in Letter No.14483, wherein the Ordinary Grade, Selection Grade and Special Grade scales of pay along with the applicable Grade Pay were spelt out.

52. In Letter No.14483, more particularly in para-4, the promotional avenues for B.T. Assistant, High School Headmaster and P.G. Assistant have been highlighted along with the respective scales of pay and for better clarity the same is quoted hereunder :-

*“4. the first level and second level promotion post for the post of B.T. Assistant (Rs.9300—34800 + Grade Pay Rs.4600) is Head Master High School (Rs.9300—34800 + Grade Pay Rs.4800) and Head Master Higher Secondary School (if **qualified**) / District Educational Officer (Rs.15600—39100 + Grade Pay Rs.5700), for Head Master High School (Rs.9300—34800 + Grade Pay Rs.4800) is P.G. Assistant (Rs.9300—34800 + Grade Pay Rs.4800) / Head Master Higher Secondary School (if **qualified**) / District Educational Officer (Rs.15600—39100 + Grade Pay of Rs.5700). In respect of P.G. Assistant (Rs.9300—34800 + Grade Pay Rs.4800) first and second level promotion posts are Head Master Higher Secondary School (Rs.15600—39100 + Grade Pay Rs.5700) and Chief Educational Officer (Rs.15600—39100 + Grade Pay of Rs.6600).”*



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53. As could be evidenced from the above, while the first level and second level promotion for B.T. Assistant is Headmaster High School and Headmaster Higher Secondary School (if qualified)/District Educational Officer, for Headmaster High School it is P.G. Assistant/Headmaster Higher Secondary School (if qualified)/District Educational Officer. In respect of P.G. Assistant the first and second level promotion posts are Headmaster Higher Secondary School and Chief Educational Officer.

54. From the above, it could be safely concluded that while B.T. Assistant and HM-HS are analogous posts, equally, P.G. Assistant and Headmaster Higher Secondary School are analogous posts, which would also be evident from the scales of pay the posts carry as is portrayed in para-4 quoted above. Therefore, by no means, a movement from B.T. Assistant to the post of HM-MS or P.G. Assistant to the post of Headmaster Higher Secondary School could be termed to be a promotion as there is no difference in the scales of pay. Carrying of equal scales pay by both the posts would reveal the equality of the said posts. Therefore, by no means a movement from one post to the other carrying equal scales of pay could be said to be a promotion.



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55. Only in that backdrop, the movement of SGT to HM-PS, as already stated above, cannot be said to be promotion, which alone had led to the payment of selection grade scale of pay in the post of HM-PS to the petitioners.

56. The selection grade scale of pay has been provided to the petitioners on the basis of Letter No.14483, dated 5.1.2012, however, the entire scenario as evidenced in the present case has cropped up based on the last portion of para-4 of the aforesaid letter, wherein, it has been provided thus :-

“4. The Primary School Head Masters (Rs.9300—34800 + Grade Pay Rs.4500) and Middle School Head Masters (Rs.9300—34800 + Grade Pay Rs.4700) those who have acquired B.A./ B.Sc./ B Lit. plus B.Ed. qualification alone are eligible for promotion as B.T. Assistant in Middle School and Head Master Middle School by virtue of their seniority. Considering the first and second level promotional posts of the Teachers, they are entitled for the revised Selection Grade / Special Grade scales of pay as indicated in Annexure—I subject to the conditions stipulated in para—4(i) of the Government letter third cited.”

57. It has been held in Letter No.14483, that the selection grade/special grade scale of pay that is to be awarded is to be on the basis of the conditions stipulated in para-4 of the Government letter No.63305/Pay Cell/2010-5, Finance



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Department, dated 30.11.2010. Therefore, for appreciating the same, the relevant Government Letter No.63305 requires to be adverted to, which runs as under :-

4) The above issue has been examined by Government in detail in the light of the orders issued in para-4 of Government Order second cited and the consequential revision made to the various categories in the Ordinary Grade scales of pay based on the One Man Commission recommendations and subsequent Government Orders. Accordingly, I am directed to issue the following guidelines for fixation of pay in the revised Selection Grade/Special Grade posts:

i) The revised Selection Grade / Special Grade scales of pay in the case of employees awarded Selection Grade / Special Grade prior to 1-1-2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of One Man Commission/further order of Government thereon shall be fixed as per the scales of pay indicated in the Annexure I to this letter following the same methodology of fixation of pay in the Selection Grade / Special Grade scales of pay of employees as was done in pre-2006 scales of pay as indicated in Appendix-II of G.O.Ms. No, 162, Finance (PC) Department, dated: 13-4-98 subject to the same condition stipulated therein that if the revised Selection Grade/Special Grade scales of pay indicated in the Annexure-1 happens to be higher than the first level/second level promotion posts, then in such cases only the revised Selection



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Grade/Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

ii) The above revised Selection Grade / Special Grade scales of pay indicated in the Annexure-I to this letter shall be confined only to the employees who were awarded Selection Grade/Special Grade prior to 1-1-2006 and in the case of employees who have exercised their option to come over to the revised scales of pay on the date of their award of Selection Grade / Special Grade between 1-1-2006 and 31-5-2009, (prior to the issue of G.O. Ms. No. 234, Finance (Pay Cell) Department, dated: 1-6-2009.)

58. Sub-clause (i) of Para-4 of the Government Letter prescribes that where the Selection Grade/Special Grade scales of pay in the case of employees awarded Selection Grade/Special Grade prior to 1.1.2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of the One Man Commission/further order of the Government, it shall be fixed as per the scales of pay indicated in Annexure –I to the aforesaid letter following the methodology of fixation of pay done in pre-2006 scales of pay as indicated in Appendix-II of G.O. Ms. No.162, Finance (PC) Department dated 13.4.1998 by revising the Selection Grade/Special Grade scales of pay and if such pay indicated in the Annexure-I happens to be higher than the first level/second level



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promotion posts, in such cases, the revised Selection Grade/Special Grade scales of pay should be restricted to the level of the first and second level promotional posts.

59. The above sub-clause (i) of Para 4 of the aforesaid letter, therefore, clearly reveals that where Selection Grade/Special Grade is granted prior to 1.1.2006 or option is exercised for fixing the Selection Grade/Special Grade scale of pay in respect of persons for whom the Selection Grade/Special Grade scale of pay falls between 1.1.2006 and 31.5.2009, then the fixation of pay has to be made only in the revised Selection Grade/Special Grade scale of pay by restricting it to the level of the first level and second level promotional posts. However, where such option is exercised by persons to receive the Selection Grade/Special Grade scales of pay that fall between 1.1.2006 and 31.5.2009 on the date when it enures to their benefit, then the scales of pay indicated in Annexure-I to the aforesaid letter would be fixed.

60. In the present case, there is no quarrel with the fact that all the petitioners have exercised their option to have their scales of pay revised on and from the date when they reached the Selection Grade/Special Grade scales of pay



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and such being the case, necessarily, sub-clause (i) of Para-4 of the aforesaid letter stands triggered and that the Selection Grade/Special Grade pay of the respective persons have to be fixed on the basis of Annexure-I to the aforesaid letter, by restricting their pay to the level of their first level and second level promotional posts.

61. Annexure-I to the aforesaid letter, which is necessary for fixing the pay of the petitioners in the selection grade/special grade scales of pay, being of much importance, the same is quoted hereunder :-

ANNEXURE 1
REVISED SELECTION GRADE AND SPECIAL GRADE SCALE OF PAY

Sl.No.	Ordinary Grade Rs.	Selection Grade Rs.	Special Grade Rs.
1)	4800-1000+1300	4800-10000+1650	5200-20200+1800
2)	4800-10000+1400	5200-20200+1800	5200-20200+1900
3)	4800-10000+1650	5200-20200+1900	5200-20200+2000
4)	5200-20200+1800	5200-20200+1900	5200-20200+2000
5)	5200-20200+1900	5200-20200+2400	5200-20200+2600
6)	5200-20200+2000	5200-20200+2400	5200-20200+2600
7)	5200-20200+2200	5200-20200+2600	5200-20200+2800
8)	5200-20200+2400	9300-34800+4200	9300-3400+4400
9)	5200-20200+2600	9300-34800+4200	9300-3400+4400
10)	5200-20200+2800	9300-34800+4300	9300-3400+4500
11)	9300-34800+4200	9300-34800+4400	9300-3400+4600
12)	9300-34800+4300	9300-34800+4600	15600-39100+5400



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13)	9300-34800+4400	9300-34800+4600	15600-39100+5400
14)	9300-34800+4450	9300-34800+4600	15600-39100+5400
15)	9300-34800+4500	15600-39100+5400	15600-39100+5700
16)	9300-34800+4600	15600-39100+5400	15600-39100+5700
17)	9300-34800+4700	15600-39100+5700	15600-39100+6600
18)	15600-39100+5400	15600-39100+6000	15600-39100+6600
19)	15600-39100+5700	15600-39100+6600	15600-39100+7600

Note: The above selection Grade/Special Grade scales of pay indicated above takes notional effect from 1-1-2006 with monetary benefit from 1-1-2007 and is applicable only to employees awarded Selection Grade/ Special Grade prior to 1-1-2006 and employees who have opted for revised scale of pay on a subsequent date after 1-1-2006 i.e., on date of Selection Grade / Special Grade and in whose cases their Ordinary Grade scales of pay have been revised further based on the recommendations of One Man Commission / further Government Orders.

62. From the above tabular statement, it could be seen that the Ordinary Grade scale of pay of the petitioners prior to their moving to the selection grade is Rs.9300-34800 + GP 4500 and the selection grade scale of pay is Rs.15600-39100 + GP 5400. However, as per sub-clause (i) of Para-4 of the aforesaid letter, it would be evident that the revised scale of pay in the selection grade/special grade, if higher than the first level/second level promotional posts, then in such cases, the revised Selection Grade/Special Grade scales of pay should be restricted to the first level and second level promotional posts, meaning thereby



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that it should be fixed at the first level promotional post of B.T. Assistant in the Ordinary Grade scale of pay, viz., Rs.9300-34800 + 4700 GP.

63. However, if no option had been exercised by the Government Servant, then the selection grade/special grade scale of pay as indicated in Annexure-I to the aforesaid letter would be payable in respect of the Government Servant, who retired prior to 1.1.2006 and in the case of Government Servants, who have exercised their option to come over to the revised scales of pay, it would be effective on the date of the award of Selection Grade/Special Grade between 1.1.2006 and 31.5.2009.

64. Therefore, for the purpose of getting the benefit of the better pay scale, be it the selection grade/special grade scale of pay under the revised pay scale, it is left to the choice of the Government servant, more particularly, who are the recipients of the selection grade/special grade scale of pay prior to 1.1.2006 and between 1.1.2006 and 31.5.2009 to exercise their option and the exercise of their option determines the position in which they would be fit in, in the revised scale of pay. Therefore, to the extent that the petitioners herein are the recipients of the selection grade scale of pay in the post of HM-PS prior to



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1.1.2006 and between 1.1.2006 and 31.5.2009, the exercise of the option to have the selection grade pay fixed on the date when the petitioners reach the selection grade scale of pay puts them in the position of having their pay determined and fixed at the first level promotional post with reference to the selection grade scale of pay. That is why, there is a clear reference to sub-clause (i) of Para-4 of the Letter No.63305/Pay Cell/2010-5, Finance Department dated 30.11.2010 in the letter No.14483 dated 5.1.2012.

65. Though the Pay Commission recommendations with regard to fixation of pay scales are guided by the Government Letters, however, what is material to be noted here is the fact that the scales of pay, as fixed in the various Government Orders/Letters is guided by the Fundamental Rules applicable to the Government Servants, more particularly, FR 22-B and the Rulings appended thereto of which Ruling (11) (1) to which attention of this Court is drawn on behalf of the petitioners, reads as under :-

*(11) *(1) In cases where a Government servant who has already been moved to Selection Grade or Special Grade of the lower post prior to 1.1.2006 is promoted or appointed to a higher post after 1.1.2006 and also in cases where a Government servant has moved to Selection Grade or Special Grade after 1.1.2006 and opted for revised scale of pay on a*



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subsequent date after 1.1.2006 in whose cases their Selection Grade or Special Grade of the lower post carries identical or higher pay band and or grade pay, the Government servant shall be allowed to continue in the same identical or higher pay band and grade pay applicable to Selection grade or Special grade of the lower post as per the clarifications issued in Government Letter No.45113/Finance (PC) department, dated 17.08.2009 with one increment benefit either from the date of promotion or appointment or from the date of accrual of next increment in the lower post, based on the option exercised by the Government Servant.

66. From the aforesaid Rule, which subsists even as on date and has neither been rescinded nor replaced with the condition stipulated in para-4 (i) of G.O. Ms. No.63305, it is clear that where a Government Servant, who has already moved to Selection Grade/Special Grade of the lower post prior to 1.1.2006 is promoted or appointed to a higher post after 1.1.2006 and also in cases where a Government Servant has moved to Selection Grade/Special Grade after 1.1.2006 and opted for revised scale of pay on a subsequent date after 1.1.2006 in whose cases their Selection Grade/Special Grade of the lower post carries identical or higher pay band and/or Grade Pay, the Government Servant shall be allowed to continue in the same identical or higher pay band and grade pay applicable to the Selection Grade/Special Grade of the lower post as per the clarifications issued in



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Government Letter No.45113/Finance (PC) Dept., dated 17.08.2009 with one increment benefit either from the date of promotion or from the date of accrual of next increment in the lower post, based on the option exercised by the Government Servant.

67. It is to be pointed out that it is well settled proposition that the Fundamental Rule, which is a statutory rule has a march over the Government Orders. Furthermore, without the Fundamental Rule having been amended in accordance with law, the Rule 11 (1) as was in vogue would have to be followed inspite of the fact that the Government Letter No.63305 provides a particular course to be followed in fixation of pay in the selection grade/special grade scales of pay.

68. Though a Note has been appended to FR 22-B to the effect that fixation of pay shall take notional effect from 1.1.2006 with monetary benefit from 1.1.2007 and all the conditions issued from time to time regarding notional effect and monetary benefit for fixation of pay shall be adhered to, however, it is to be pointed out that what is provided for in FR 22-B cannot be diluted unless the main provision is amended and, therefore, the manner of fixation of pay



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which is provided for under FR 22-B cannot be diluted by means of another Government Order, unless amendment is made to the said provision.

69. In the present case, there is a clear prescription in the Fundamental Rule that the Government servant shall be continued in the same identical or higher pay band and grade pay applicable to the selection grade/special grade of the lower post in respect of persons, who have been moved to selection grade/special grade prior to 1.1.2006 and those who have opted for revised scales of pay in the selection grade/special grade on a subsequent date after 1.1.2006 and on their promotion they are permitted to retain the said scale and without the said Rule being amended in the manner known to law, the Government Letter in G.O. Ms. No.63305 which is based on the recommendations of the One Man Commission relating to revision of scales of pay, cannot be pressed into service, as it would run counter to the main FR 22-B and the Fundamental Rule will have a march over the Government Letter.

70. It is also to be pointed out that the scale of pay has been sanctioned and paid to the petitioners from the year 2008 till the date of their retirement. It is not the case of the respondents that based on any fraud or misrepresentation



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by the petitioners the revised selection grade scale of pay has been paid to the petitioners. The abovesaid fact could be evident from the communication of the Director of Elementary Education pertaining to an audit query in which the said authority has clearly stated that the fixation of pay has been properly made and that Selection Grade scale of pay has been rightly fixed for the petitioners.

71. Therefore, from the year 2008 till the date of their retirement, somewhere in the year 2024 and thereafter, for more than a decade and a half, the petitioners have been the recipient of the scale of pay, which was paid by the respondents based on the fixation made by the respective authority. Such being the case, when the receipt of the said amount was not on account of fraud or misrepresentation by the petitioners nor could it be said to be due to fraud or collusion on the part of the respondents, the unilateral action of the respondents to order recovery is grossly unjustified, moreso, when FR 22-B runs counter to the said fixation.

72. Further, it is also to be pointed out, though not relevant at this point of time, that pursuant to the impugned order, when the respondents took the decision to recover the amount from the petitioners, it is incumbent on the part



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of the respondents to have put the petitioners on notice and called upon them, by granting opportunity, to justify their case for receipt of the said selection grade scale of pay, which has been given to them, by pointing out the audit objection. However, once the audit objection was made, the impugned order had come to be passed and it is sought to be enforced by issuing the orders of recovery against the petitioners, which act, is nothing but a glaring violation of principles of natural justice. When any order of recovery is directed against the petitioners, principles of natural justice warrants an opportunity of hearing be granted to the aggrieved persons before passing any orders. However, without granting any opportunity to the petitioners, orders have been passed directing the petitioners to remit the sum quantified as the amount of recovery, which act is perverse, arbitrary and illegal and cannot be allowed to sustain.

73. Though the payment of a higher scale of pay to the petitioners was neither due to any fraud or misrepresentation on the part of the petitioners nor due to any fraud or collusion on the part of the officials of the respondents, but it is an inadvertent act that had taken place in the fixation of pay, which was paid to the petitioners, it would not be in the interest of the individuals, who have all put in more than three decades of service and have retired from service and the



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amounts received by them would have been utilised in the course of their livelihood during the respective period, calling upon the petitioners to repay the amount so computed, as excess payment made to them, that too after their retirement will definitely work great hardship, as the retiral benefits received by them would be very much necessary for their survival at this distant point of time.

74. True it is that the amount, which has been paid to the petitioners is from public money, but the respondents ought to have been diligent enough while interpreting their Government Orders and wrong interpretation by the officials of the respondents leading to payment of alleged higher emoluments to the petitioners cannot be put against them to claim recovery, that too after the retirement of the petitioners from service, as that will work great hardship to the petitioners, who are, by now, pensioners, in leading their retired life. Further, FR 22-B stares writ large against the respondents from refixing the pay of the petitioners or effecting recovery by refixing their pay. Therefore, ordering recovery at this stage of their career would not be justifiable, moreso, when the petitioners cannot be mulcted with any responsibility in fixing their scale of pay.



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75. Further, one other aspect that also requires to be pointed out here is the fact that neither FR-22B nor the Government Letter No.45113/Finance (PC) Dept., dated 17.08.2009, which have been noted above have been considered by the Government while passing G.O. Ms. No.63305. When G.O. Ms. No.63305 has curtailed certain benefit, which had already been granted to the Government Servants upon their moving to Selection Grade/Special Grade prior to 1.1.2006 and also for movement to Selection Grade/Special Grade on a subsequent date after 1.1.2006 till 31.5.2009 for retaining the higher pay band and grade pay in the Selection Grade/Special Grade of the lower post, when the benefit is sought to be restricted through G.O. Ms. No.63305, the respondents ought to have amended FR 22-B and failure to amend FR 22-B would impact the application of G.O.Ms. No.63305 and permit FR 22-B to lean in favour of the petitioners, as they would be entitled to retain the higher pay band and Grade pay applicable to the lower post upon their movement to the Selection Grade/Special Grade in the lower post.

76. Though one ancillary contention has been addressed by the petitioners that the Government Orders passed in the light of the Pay Commission recommendations by the Finance Department cannot be modified by the



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Education Department by refuting the benefit of Selection Grade/Special Grade to the employees, however, in view of the findings aforesaid that the Fundamental Rules would prevail over the Government letters/orders, the said contention does not require to be addressed by this Court, but to merely state that what is provided by the Finance Department through the Government Orders, enforcement of the said Government Orders is always with the Education Department and in the course of enforcement of the said Government Orders, if orders are passed by the School Education Department to restrict certain benefits, it cannot be said that the Government Orders of the School Education Department transgresses the orders passed by the Finance Department so long as the said Government Orders/Letters are in consonance with the Act and the Rules.

77. One aspect which also leans very much in favour of the petitioners is the fact that the petitioners have been recipient of selection grade scale of pay in the post of HM-PS in the year 2008 or thereabouts. They have received the said pay for more than 15 years and that the pay fixation has been made by the District Education Officer. Further, to the audit query raised in respect of certain individuals with regard to the fixation of pay in the Selection Grade scale of pay



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upon promotion of the said persons as BT Assistants/HM-MS, the Director of Primary Education, vide his communication dated 21.11.2019, has stated the manner in which the pay of the petitioners have been fixed. The said audit query has also been made only after a decade from the date of grant of Selection Grade scale of pay. Such being the case, the erroneous fixation of Selection Grade cannot be put against the petitioners.

78. Though it is the stand of the learned Advocate General that there would be financial implication to the tune of Rs.1000 Crores on the exchequer if the said error is allowed to continue, it is to be pointed out that the amounts have already been paid to the petitioners of which some amounts have also been recovered. There is no payment, which is due to be made to the petitioners barring the payment of pension. For fixing the appropriate pension based on the aforesaid reasoning, it is incumbent on the part of the State to amend FR 22-B and upon amending FR 22-B, the respondents would be within their power to re-fix the salary of the persons, who are in service and also the pension of the retired persons, though they would not be entitled to recover any amount from the petitioners. Therefore, the contention that there would be huge financial burden on the exchequer if the anomaly is allowed to continue is merely a



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figment of imagination on the part of the respondents, except for the above payments, which could very well be corrected by the respondents in the manner known to law.

79. The petitioners have also prayed consequential relief of grant of Selection Grade scale of pay in the post of HM-MS, on the premise that the petitioners have put in more than 10 years service in the post of HM-MS/B.T. Assistant, as they were granted promotion to the post of HM-MS during 2008-2009 and, therefore, on completion of 10 years in the post of HM-MS in the year 2019-2020, without there being any further promotion they would be entitled for selection grade scale of pay in the post of HM-MS.

80. The said prayer of the petitioners definitely needs to be considered affirmatively in the light of their date of promotion to the post of HM-MS, as has been held above that a Government servant is entitled to move to selection grade scale of pay on completion of 10 years in a particular post and if the respective petitioners have put in 10 years of continuous service in the post of HM-MS without there being any subsequent promotion, then definitely, as per the rules, the respective petitioners would be entitled for forward movement to



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selection grade in the post of HM-MS and would be entitled to receive the selection grade scale of pay in the post of HM-MS/B.T. Assistant.

81. It is to be noted that if such benefit of selection grade is to be granted, definitely that would have financial implication on the State and definitely when the same is to be provided to the petitioners, the State, to save the exchequer from erroneous payment, needs to appropriately amend FR 22-B, which would re-fix the pay of the Government servants in employment and also the pension of the retired employees and based on such re-fixation, the appropriate selection grade scale of pay could be provided to the petitioners. Therefore, it is for the respondents/State to take appropriate action to amend FR 22-B so that erroneous payment could be curbed.

82. One other issue, that has been put through in some of the petitions before this Court relate to pay fixation, where higher scale of pay has been granted on the premise of '*junior drawing more pay than the senior*'.

83. It is to be pointed out that pay could be fixed in respect of a senior only where his/her junior draws more pay than the said senior. For fixing the



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pay of the senior over and above or on par with the junior, both the junior and senior should be in the same cadre post and if the junior and senior are in different cadre posts, then necessarily the concept of *junior drawing more pay than the senior for fixing the pay of the senior on par with the junior would not arise*. The respective cadre of the junior and senior decides the pay of the junior and senior and different cadres of the junior and senior would not lead to any anomaly in the fixation of pay and any difference in pay between the senior and the junior does not require any moderation, as the posts are in different cadres and pay scales of the different cadres are different and, therefore, no higher fixation for the senior could be granted. Therefore, following the well structured and time tested formula, the pay has to be fixed in the case of junior and senior and in case where the pay is erroneously fixed, it has to be refixed, but the amounts, if any, paid to the individuals/respective petitioners cannot be recovered, as it was not due to any fault of the petitioners. If at all the respondents seek to curtail the monetary benefit that is being paid to such persons, the respondents, at best, could refix the amount of pay by correcting the pay scale that the respective petitioners would be entitled to receive and no amount can be recovered from the petitioners, as such error was not on account of the petitioners. Therefore, any order of recovery passed against the



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petitioners on the aforesaid ground also cannot be sustained. However, orders could be passed for fixing the scale of pay, which the respective petitioners would be entitled to receive in accordance with law/Fundamental Rules so as to enable the respective petitioners to draw the appropriate revised pension, which could be done only in accordance with law.

84. Since audit queries are pending with regard to the selection grade pay granted to the petitioners, who have since retired from service, their pension have been computed and paid on a lower scale of pay, though as on the said date, the petitioners were paid a higher pay and without there being any modification of the scale of pay on the basis of the rules, which were in vogue then, the computation of pension on a different scale of pay than the one received by the petitioners, who have since retired is wholly erroneous and, therefore, necessarily, the pension of the aforesaid retired petitioners have also to be computed on the basis of the scale of pay that was receivable by them at that point of time and pension has to be calculated on the said scale of pay and arrears ought to be paid to them, till such time, FR 22-B is amended and the scale of pay of the petitioners is revisited. Therefore, necessarily a direction needs to be given to the office of the Accountant General to compute the pension on the



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scale of pay which the petitioners were drawing on the date of their retirement, if not computed on the said scale, and pay the arrears of pension on the higher scale to the petitioners, if not already paid. However, subsequent to amendment of FR 22-B and re-fixation of proper scales of pay, the pension could be recomputed on the re-fixed scale of pay and the retired Government servants could be paid the appropriate pension.

85. In the result, all the writ petitions are disposed of with the following directions:-

- i) *The impugned order directing the fixation of the selection grade/special grade scale of pay at the first promotional level and 2nd promotional level is set aside to the extent that there shall be no recovery of amount, which has already been paid, from the petitioners ;*
- ii) *Insofar as the petitioners, who have retired from service is concerned, no amount shall be recovered on the basis of the impugned order from the retiral*



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W.P. Nos.12275/2024, etc.

- benefits/pensionary benefits of the petitioners with regard to the amount already paid;*
- iii) *Insofar as the petitioners, who are still in service, no amount shall be recovered on the basis of the impugned order from the salary of the petitioners with regard to the amount already paid;*
- iv) *In case any amount has already been recovered from any of the petitioners towards excess payment made in the selection grade scale, the same shall not be refunded to the petitioners and the respondents shall re-fix the selection grade scale of pay of the said petitioners after amendment to FR 22-B and, thereafter, upon computation, if any amount is due and payable to any of petitioners, the same shall be paid by the respondents forthwith;*
- v) *Until FR 22-B is amended so as to include the directions given in G.O. Ms. No.63305/Pay Cell/2010-1 dated 8.11.2010, more particularly para 4 (i) of the said Government Order, no action shall be taken by*



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- the respondents to refix the scale of pay of the petitioners and similarly placed persons;*
- vi) *Subject to amendment, if any, that may be made to FR 22-B, with reference to G.O. Ms. No.63305/Pay Cell/2020-1 dated 8.11.2020, the respondents are at liberty to revise the salary of the persons who are in service by refixing their scales of pay in the selection grade as also the pensionary benefits of the pensioners by refixing their scales of pay in selection grade in line with the amendments that may be made to FR 22-B for computing the admissible pension payable based on para 4 (i) of G.O. Ms. No.63305/Pay Cell/2010-1 dated 8.11.2010, which shall be applicable only prospectively and not retrospectively;*
- vii) *Pursuant to the amendment, if any, made to FR 22-B, upon refixation of the scales of pay of the petitioners, and computing the revised pay that the petitioners who are in service would be entitled to and the revised monthly pension that the retired petitioners would be*



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entitled to, it is made clear that the petitioners would also be entitled for selection grade benefit in the post of HM-MS upon completion of 10 years of service in the said post;

- viii) The grant of selection grade scale of pay in the post of HM-MS shall be fixed after amendment to FR 22-B and after refixing the selection grade scale of pay of the petitioners in the erstwhile post of HM-PS and monetary benefit, if any payable, shall be computed and paid to petitioners from the date when they become eligible for such selection grade scale of pay, including arrears of pay.*
- ix) The Accountant General is directed to compute the pension in the scale of pay which the petitioners were drawing on the date of their retirement, if not computed in the said scale, and pay the arrears of pension on the said higher scale to the retired petitioners, if not already paid;*



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- x) *Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.*

02.03.2026

Index : Yes / No

GLN

Note to Registry :

Registry is directed to incorporate all the cause title along with the prayer in the drafted order while issuing order copy to the parties.



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To

1. The Principal Secretary to Government
School Education Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.
2. The Director of School Education
Perasiriyar Anbazhagan Kalvi Valagam
College Road, Chennai 600 006.
3. The Director of Elementary Education
Perasiriyar Anbazhagan Kalvi Valagam
College Road, Chennai 600 006.
4. The District Educational Officer (Elementary)
Thanjavur District, Thanjavur.
5. The Block Development Officer
Kumbakonam Block
Thanjavur District.
6. The Secretary
Finance Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.



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W.P. Nos.12275/2024, etc.

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.12275 OF 2024, ETC.**

**Pronounced on
02.03.2026**