



W.A.(MD) No.1805 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **12.10.2023**

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD) No.1805 of 2023

L.Esakkiraj

... Appellant/Writ Petitioner

-Vs.-

1.The Chief Educational Officer,
Chief Education Office,
Tirunelveli.

2.The District Educational Officer,
District Educational Office,
Tenkasi,
Tirunelveli District.

3.The Headmaster,
Thirumathi Manjammal Government Girls Higher Secondary School,
Tenkasi,
Tirunelveli District.

... Respondents /Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 05.04.2022 made in W.P.(MD)No.4136 of 2015 on the file of this Court.

For Appellant

: Mr.Isaac Mohanlal,
Senior Counsel
For M/s.Isaac Chambers



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W.A.(MD) No.1805 of 2023

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The present intra-Court appeal has been instituted against the order dated 05.04.2022, passed in W.P.(MD) No.4135 of 2015.

2. The appellant, who is the Writ Petitioner, instituted the writ proceedings, questioning the validity of the order passed by the Chief Educational Officer, in proceedings dated 20.06.2014, rejecting his claim for grant of Selection Grade / Special Grade, reckoning the services rendered by the appellant as teacher in the aided school prior to his appointment in the Government Services.

3. The appellant joined the aided school, which is admittedly a private aided school, and the private school had recruited the petitioner under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The school management entered into a contract with the appellant and accordingly, the appellant rendered more than 10 years of service. Thus, the private aided school had granted Selection Grade pay band to the petitioner.



W.A.(MD) No.1805 of 2023

4. The appellant participated in the process of selection for appointment to the post of Physical Education Teacher pursuant to the recruitment notification issued by the Tamil Nadu Teachers Recruitment Board. The appellant was selected and joined as Physical Education Teacher on 24.11.2012. The recruitment notification issued by the Teachers Recruitment Board admittedly contained conditions for selection and appointment. Accepting the recruitment notification issued by the Teachers Recruitment Board, the petitioner participated and was successful. Accordingly, selected and appointed. The appellant completed his period of probation of two years and thereafter, in the year 2015, instituted the writ proceedings seeking the relief to grant Selection Grade Pay band, which was granted by the Chathiram Bharathi Higher Secondary School, Kadayam, Tirunelveli District.

5. Learned Single Judge considered the nature of service rendered by the appellant in the Private Aided School based on the contract between the Private Aided School and the appellant and formed an opinion that while conducting the recruitment by the Teachers Recruitment Board, the conditions and salary payable were all mentioned in the recruitment process, including the notification issued. The



W.A.(MD) No.1805 of 2023

appellant knowing the conditions stipulated in the recruitment notification and accepting the same, participated, got selected and appointed. Thereafter, the appellant cannot turnaround and seek the benefit of Selection Grade band, which he acquired from the Private Aided School Service. Learned Judge further observed that if such a plea of the appellant is accepted, then the flood gate will be opened and whenever, the teachers are shifting from Private Aided Schools to Government Schools, they will claim the benefits extended by the Private Aided Schools, which was not extended in the Government Services, since their appointments were made based on the recruitment notifications and conditions stipulated in the order of appointment.

6. Learned Senior Counsel appearing on behalf of the appellant reiterated that several orders were passed in many Writ Petitions extending the benefit of Selection Grade pay in respect of the services of the teachers in the Private Aided Schools and shifted to Government Schools. The Government also issued G.O.Ms.No.992, Education Department, dated 22.06.1979, extending the Selection Grade pay to the newly recruited teachers into Government Services. A reference was made referring to the earlier Government Orders passed in the year 1967.



W.A.(MD) No.1805 of 2023

At the outset, the learned Senior Counsel appearing on behalf of the appellant contended that several orders are passed in writ proceedings by the learned Single Judges and those benefits in few cases were confirmed by the Division Bench of this Court and therefore, the said benefit is to be extended to the appellant herein.

7. Learned Additional Government Pleader appearing on behalf of the respondents raised an objection by stating that the Government clarified the position in letter dated 28.09.2021 with reference to FR 22 (B), which reads as under:-

“(ii) அடிப்படை விதி FR 22 (B) – ல் கீழ்க்காணுமாறு தெரிவிக்கப்பட்டுள்ளது.

(6) In the case a Government servant already in service in a post is appointed to another post through the Tamil Nadu Public Service Commission by direct recruitment, or when the mode of his appointment to the new post is by direct recruitment, the Government servant concerned should be allowed to draw the minimum of the time scale of pay or as provided in the service rules relating to such appointments and fixation of pay under Fundamental Rule 22 or 22-B is not admissible.

(iii) ஆரசாணை (நிலை) எண்.1580, கல்வித் துறை, நாள். 18.10.1969 இல், வெளியிடப்பட்ட ஆணையானது ஒரே ஊதிய



W.A.(MD) No.1805 of 2023

WEB COPY

விகிதம் மற்றும் ஒரே பணிநிலையில் ஒரு உதவி பெறும் பள்ளியிலிருந்து வேறு உதவிபெறும் பள்ளியில் சேரும் ஆசிரியருக்கு மட்டுமே பொருந்தும்.

(iv) மேலும் தங்களது கோரிக்கை ஒத்த மிற்தொரு நேர்வில் திரு. டி.பெம்பின் அப்பதாதுரை என்பார் சென்னை உயர்நீதிமன்ற மதுரைக் கிளையில் தொடர்ந்த மிற்தொரு வழக்கான W.P.(MD) No. 19817 of 2016 ல் 19.12.2019 நாளிட்ட தீர்ப்பாணையில் பின்வருமாறு ஆணை வழங்கப்பட்டுள்ளது.

“xxx 2. I do not find any rule or regulation by which the petitioner can substantiate such a ground that his past service in an Aided School should be taken into account in a Government Post where he was directly recruited.

3. In the absence of any rule or regulation, the present impugned order cannot be now faulted. Hence, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.”

4. எனவே மேலே தெரிவிக்கப்பட்ட அடிப்படை விதிகள், அரசாணை மற்றும் உயர்நீதிமன்ற ஆணையின்படி, தாங்கள் முன்னதாக நிதி உதவி பெறும் பள்ளியில் பணியாற்றிய போது பெற்ற ஊதியத்தினை கணக்கில் கொண்டு, பின்னர் நேரடி நியமனம் மூலம் ஆசிரியர் தேர்வு வாரியம் தெரிவு செய்யப்பட்டு, அரசு பள்ளியில் பணியில் சேர்ந்த நாள் முதல் தொடர்ந்து வழங்கிடக் கோரும் தங்களது கோரிக்கையினை ஏற்க வழிவகை இல்லை என்பதை தங்களுக்கு தெரிவித்துக் கொள்கிறேன்.”

The original Government Order issued in G.O.Ms.No.1580 School Education Department, dated 18.10.1969 was also taken into consideration, while issuing the above clarification dated 28.09.2021, by the Principal Secretary to Government, School Education Department. It



W.A.(MD) No.1805 of 2023

was clarified that based on the Fundamental Rules, Government Orders and the orders of the High Court, the teachers, who served in Private Aided Schools and freshly appointed to Government Services are not eligible to claim the service benefits in respect of their services rendered in Private Aided Schools.

8. Learned Government Pleader emphasized that many private school teachers are participating in the process of Selection notified by the Teachers Recruitment Board. Many teachers are selected and appointed. Fresh appointments are issued to those teachers recruited through the Board and they are bound by the conditions stipulated in the appointment order and therefore, they cannot turnaround and claim the benefits based on the services rendered by them in Private Aided Schools.

9. In support of the said contentions, the learned Additional Government Pleader relied on the judgment of the Division Bench of this Court dated 15.07.2022 made in W.A.(MD) No.627 of 2022 and the relevant para reads as under:-



W.A.(MD) No.1805 of 2023

WEB COPY

“ 30.The petitioner having participated in the direct recruitment process and got appointment cannot turn around and contend that he was appointed by transfer of service from the post of B.T.Assistant to the post of P.G.Assistant. The continuous usage of the old Service Register of the petitioner, even after being appointed as P.G.Assistant will not confer any right to get pay protection. The fact that there was no break in service also will not convert a direct recruitment into an appointment by transfer of service. Hence, the contentions on the side of the learned counsel for the appellant are not legally sustainable.”

10. Relationship between Employer and Employee is the contract. Service conditions stipulated and agreed by the employees are binding on them. So also, the Fundamental Rules and Service Rules on appointment into Government Services are applicable and binding. In the present case, the order of appointment issued to the appellant dated 24.11.2012 unambiguously stipulates the pay band in which the appellant was appointed and the commencement of probation and other conditions. Order of appointment being a contract and a fresh appointment is made, the appellant is bound by the conditions stipulated in the order of appointment and more so, the appellant has not chosen to challenge the



W.A.(MD) No.1805 of 2023

WEB COPY

said conditions but accepted the conditions and joined into Government Services and only after declaration of probation the writ proceedings are instituted claiming the benefit of Selection Grade for the services rendered by him in a Private Aided School. Conditions stipulated in the order of appointment, dated 24.11.2012, reveals that the appellant was appointed in the time scale of pay of Rs.5200-200 + 2800 Grade Pay. The salary and allowances will be paid from the date of joining. Probation period of two years is contemplated under the relevant Rules. When the appointment conditions are unambiguous and the said appointment order remained unchallenged and the appellant accepted the appointment order and it was implemented, now he cannot turnaround and claim the benefit of services rendered by him in a Private Aided School based on the contract between management of the Private Aided School and the appellant.

11. In the context of the principles, the earlier orders of Division Bench of this Court dated 15.07.2022 passed in W.A.(MD) No. 627 of 2022 is in support of our view and we have no other reason to take a contra opinion since it is based on the principles of service law. Importantly, the Government also clarified the position in letter No.



W.A.(MD) No.1805 of 2023

10155/1153(2)/2021-4 dated 28.09.2021 based on the Fundamental Rules 22 (B) and the order passed by this Court in W.P.(MD) No.19817 of 2016 dated 19.12.2019. Earlier Government Orders are also referred and the clarification reveals that the teachers who rendered service in Private Aided Schools and freshly appointed to Government Services are not entitled to claim any benefit or Selection Grade Pay based on the earlier services rendered by them in Private Aided Schools. Pay protection which has not been extended in the order of appointment cannot be extended by the Court by issuing a direction in writ proceedings. Fixing scale of pay, prescription of educational qualifications, age and other criteria for recruitment / appointment are the prerogative of the employer and the candidates accepting the terms and conditions of the appointment cannot claim any new benefit, which are all otherwise not contemplated in the order of appointment, which is a contract.

12. Learned Senior Counsel for the appellant relied on the judgment of the Division Bench of this Court, dated 07.09.2017, passed W.P.(MD) No.778 of 2016. However, there is no consideration of principles of service law or the relevant fundamental Rules for the purpose of extending the said benefits. In the order of the above Division



W.A.(MD) No.1805 of 2023

Bench, dated 07.07.2019, there was no adjudication of the legal positions. Thus, the same is of no avail to the appellant nor construed as precedent.

13. Thus, we are not inclined to follow the same, but the principles are considered in other judgment in W.A.(MD) No.627 of 2023 passed on 15.07.2022 in case of S.K.Kannan v. The Director of School Education and others. Further, the clarification issued by the Government would be relevant and on account of change of circumstances and the stand taken by the Government with reference to the contractual obligation between the parties in the matter of fresh appointment, we do not find any infirmity in the order passed by the learned Single Judge and stands confirmed. Consequently, the Writ Appeal stands dismissed. No costs.

[S.M.S.J.,] & [V.L.N.J.,]
12.10.2023

NCC :Yes/No
Index :Yes/No
SJ

To
1.The Chief Educational Officer,
Chief Education Office,
Tirunelveli.



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W.A.(MD) No.1805 of 2023

S.M.SUBRAMANIAM, J.
AND
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W.A.(MD) No.1805 of 2023

12.10.2023