



W.P.No.16303 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.16303 of 2020

S.Kuzhali

...Petitioner

-Vs-

1.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.

2.The Director of Elementary Education,
DPI Campus, College Road, Chennai – 600 006.

3.The Chief Educational Officer,
Thiruvarur District, Thiruvarur.

4.The District Educational Officer,
Thiruvarur Educational District,
Thiruvarur.

5.The Block Educational Officer
Mannargudi Block,
Thiruvarur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, call for the records relating to the impugned order issued by the first respondent in Na.Ka.No.025807/C3/E1/2020 dated 05.08.2020 and to quash the same and consequently directing the respondents to pass orders for



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granting pay protection to the petitioner in the post of Secondary Grade Teacher as on 17.12.2012 based on the Selection Grade Scale of pay reached by the petitioner in the Government Aided post as per the services rendered from 29.11.2001 to 17.12.2012 with all consequential and other attendant benefits including payment of arrears of salary along with interest, within a time frame to be fixed by this Court and to pass such further orders.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.T.M.Rajangam,
Government Advocate

ORDER

This writ petition is filed seeking to quash the impugned order issued by the first respondent in Na.Ka.No.025807/C3/E1/2020 dated 05.08.2020 and consequently directing the respondents to pass orders for granting pay protection to the petitioner in the post of Secondary Grade Teacher as on 17.12.2012 based on the Selection Grade Scale of pay reached by the petitioner in the Government Aided post as per the services rendered from 29.11.2001 to 17.12.2012 with all consequential and other attendant benefits, including payment of arrears of salary along with interest.

2. The case of the petitioner is that the petitioner is as follows:



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2.1 The petitioner was initially appointed as Secondary Grade Teacher on 29.11.2001 in a Government Aided School viz., Manba-ul-ula Aided Primary School, Koothanallur, Mannargudi Block, Thiruvarur District and her appointment was duly approved by the department. Accordingly, she was appointed in the Government Aided School and her appointment was approved by the department with an assessment of salary grant. Her appointment was made with basic scale of pay of Rs.4,500/-. On completion of 10 years of service, she was sanctioned with Selection Grade scale in the post of Secondary Grade Teacher in the year 2011. Based on the permission from the department, she has participated in the selection to the post of Secondary Grade Teacher in Elementary Education Service conducted by Teacher Recruitment Board (TRB). Accordingly, she was selected to the post of Secondary Grade Teacher through TRB and appointed as Secondary Grade Teacher in Panchayat Union Middle School, Mannargudi, Mannargudi Block, Thiruvarur District on 17.12.2012 FN. Subsequently, the PUMC, Mannargudi has been upgraded as High School and she has been absorbed as B.T.Assistant (English) in the same school and presently working under the control of Director of School Education.

2.2 The petitioner was relieved from the Government Aided post on 17.12.2012 FN and joined the post of Secondary Grade Teacher in PUMS on



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the same day on 17.12.2012 FN. At the time of her appointment, instead of fixing the salary with pay protection by taking into consideration the Selection Grade scale of pay reached by her in the post of Secondary Grade Teacher, she was fixed in the basic scale for the post of Secondary Grade Teacher as Rs.5200+2800 GP (Grade Pay)+750 PP (Personal Pay). Whereas she drawing the scale of pay of Rs.14490+2800 GP+750 PP in the revised scale of pay in the post of Secondary Grade Teacher in the Government Aided post.

2.3 As per Fundamental Rules and various Government Orders, she is entitled for pay protection on appointment in the post of Secondary Grade Teacher in Elementary Education on 17.12.2012 by considering the services rendered by her in the Government Aided post from 29.11.2001 to 17.12.2012. She had joined the Elementary Education service without any break in service on the same day when she got relieved from the Government Aided post.

2.4 She submitted representation to the respondents seeking to provide pay protection by continuing the pay scale already availed by her in the Government Aided post, since she joined the Elementary Education services



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without any break in service, whereas her claim for fixation of pay in the pose of Secondary Grade Teacher has not been considered on the premises that the services rendered by her in Government Aided post cannot be taken into consideration for fixation of pay.

2.5 As per the orders of Government, the Service Register is maintained for the post of Secondary Grade in Government Aided post has to be necessarily followed in the Government service. However, at the time of digitalization of the service details, the old SR details have not been taken into consideration. The old SR alone is carrying the leave details which include Earned Leave etc. However, the SR for the post of Government Aided post has not been followed by the department without any rhyme or reason in spite of Government orders.

2.6 In this regard, similarly placed persons have been given the benefit of consideration of services rendered in the Government Aided post for grant of Selection Grade in Government service on appointment. One Thiru.S.Ilamperuvazhuthi initially appointed as Secondary Grade Teacher in Government Aided post in 2000, got an appointment in Government service in 2009 as Secondary Grade Teacher, thereafter was promoted as



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B.T.Assistant in 2012. As per the proceedings of AEEO, Thali, Krishnagiri District, he was granted with Selection Grade scale of pay by taking into consideration of services rendered in Government Aided post. Similarly, one Thiru.D.Narayanasamy, B.T.Assistant was given the benefit of fixation of pay in Elementary Education with pay protection based on the services already rendered by him in Government Aided post.

2.7 She had submitted representation to the 2nd Respondent / Director of Elementary Education seeking to consider her claim for pay protection in the post of Secondary Grade Teacher on appointment in Elementary Education in 2012. The fact remains that subsequently she was promoted as B.T.Assistant on 17.08.2015. In view of the wrong fixation of pay, she is suffering more than Rs.25,000/- loss of pay every month. The petitioner was constrained to file Writ Petition before this Court in W.P.No.2208 of 2020 to direct the respondents to pass orders for revision of scale of pay in the post of Secondary Grade Teacher in the Elementary Education Service on 17.12.2012 with pay protection based on the Selection Grade scale of pay reached by the petitioner in the Government Aided post as per the services rendered from 29.11.2001 to 17.12.2012 with all consequential and attendant benefits.



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WEB COPY 2.8 This Court passed orders in the Writ Petition on 30.01.2020 by referring to the fact that the other similarly placed persons have been given the benefit of pay protection based on the service rendered in the Government Aided post before appointing the teaching post in Government School and accordingly issued directions to the respondents to pass orders on the claim of the petitioner in accordance with law within a period of 6 weeks from the date of receipt of the order copy.

2.9 After a long period, the 1st respondent issued the impugned proceedings dated 05.08.2020 relating to the claim of the petitioner by stating that the similar Writ Petition filed by one Suthandiradevi in W.P.(MD) No.8817 of 2014 was dismissed on 26.07.2019 and further she is not entitled for pay protection as per FR 22(b). The impugned order has been issued by the 1st respondent without appreciating the fact that the order passed in the Writ Petition filed by one Suthandiradevi based on different sets of facts cannot be applied against the petitioner and further the petitioner is entitled for pay protection since she was working in Government Aided post and reached Selection Grade, subsequently appointed in Government School and thereby entitled for pay protection as it was ordered for similarly placed



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persons. Hence, the present writ petition is filed.

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3. Learned counsel appearing for the petitioner submitted that the applicability of FR 22(b) cannot be put against the petitioner since she was working in the post of Secondary Grade Teacher in Government Aided Post and subsequently appointed in the Government School in the same post of Secondary Grade Teacher after reaching the Selection Grade scale of pay in the earlier post.

4. Learned counsel contended that as per the proceedings of the Assistant Elementary Educational Officer vide proceedings Na.Ka.No.349/A2/2012 dated 16.04.2013, a similar person like the petitioner was permitted to join the R.P. Middle School at Bodi, Meenakshipuram, wherein it was treated as continuity in service and the same service register was followed to the newly appointed post.

5. Learned counsel for the petitioner drew the attention of this Court to the proceedings of the Joint Director of Elementary Educational (Administration) vide Na.Ka.No.2658/M-3/2011 dated 13.09.2011, wherein it is stated that “If a Government servant is transferred from one post to



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another post it is treated as continuity in service / without break of service, the same service register originally started shall be continued to the new post”, and the relevant portion is extracted hereunder:

"அரசுப் பணியாளர் ஒரு பணியிலிருந்து பணிமுறிவின்றி மற்றொரு பணிக்கு நியமிக்கப்பட்டால், முதலில் தொடங்கப்பட்ட பணிப்பதிவேட்டையே புதிய பணிக்குத் தொடரலாம்.

மேலும் சென்னை தொடக்கக் கல்வி இயக்கக் பொதுத் தகவல் அலுவலரின் கடிதம் ஓ.மு.எண்.28802/எம்3/10, நாள் 20.10.2010ல் "முந்தைய பணிப்பதிவேடு மட்டும் பயன்படுத்திக் கொள்ளலாம்".

மனுதாரர் கோரிய தகவல்கள் ஏற்கனவே அன்னாருக்கு வழங்கப்பட்டு விட்டது என்றும், மேற்கண்ட கடித நகல்களை இத்துடன் இணைக்கப்பட்டுள்ளது என்றும் மனுதாரருக்கு தெரிவிக்கப்படுகிறது.

துணை இயக்குநர் (நிர்வாகம்)"

6. Learned counsel also relied on the judgment of the Division Bench of this Court in *W.A(MD)No.1035 of 2017 (The State of Tamil Nadu, Rep by its Secretary, Department of Finance (Pension), Fort St. George, Chennai – 600 009 and others Vs. R.Arockiamary and another)* and he prays this Court to allow the above writ petition.

7. A counter affidavit was filed on behalf of the third respondent dated 05.12.2020 and the relevant paragraph is extracted hereunder:

"20. Regarding the averments in ground 'g' of the affidavit of the petitioner, it is submitted that the request of the petitioner cannot be considered for the following



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reasons:-

(i) *that the petitioner had worked in Aided Private School governed by TamilNadu Recognition of Private School Regulation Act in which here is no provision for getting new appointment in government service by way of transfer or promotion.*

(ii) *that the appointment of the petitioner is a fresh one as per the terms and conditions of recruitment made by Tamil Nadu Teachers Recruitment Board which provides minimum in the Pay scale of 5200-20200 Grade Pay 2800+750 pp*

(iii) *illustration under rule 22.B. of TamilNadu Fundamental rules did not permit any pay protection and the petitioner is entitled only for minimum in the Time scale of pay as per the above provisions.*

(iv) *as the observations made by this Hon'ble High Court, in WP (MD)No.8817/2014 26.7.2019, the petitioner cannot claim pay protection as a matter of right."*

8. Heard both sides and perused the materials placed on record.

9. In the case on hand, the petitioner is working in Government Aided post and subsequently she joined as Secondary Grade Teacher in Panchayat Union Middle School, Mannargudi. Hence, as per the proceedings of the Joint Director of Elementary Education dated 13.09.2011, there is no break in service and as per the judgment of the Division Bench of this Court in *W.A(MD)No.1035 of 2017 (The State of Tamil Nadu, Rep by its Secretary, Department of Finance (Pension), Fort St. George, Chennai – 600 009 and others Vs. R.Arockiamary and*



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another), wherein this Court held as follows:

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“4.The Writ Petitioner was working in an aided School till 01.12.2006. On 06.12.2006, she joined the Panchayat Union Primary School at Sadayampatti Panchayat, Vaiyampatti Union, Trichy District, consequent to an order, dated 02.12.2006. Since there was a break in service from 02.12.2006 till 05.12.2006 for a period of four days, the third respondent passed the order impugned dated 09.09.2015 in the Writ Petition refusing to admit her in the Teachers Provident Fund Account, which she was earlier having, when she was working in an aided School till 01.12.2006 in Provident Fund Account in TPF No.337143.

15.There is no dispute over the fact that the Writ Petitioner was employed as Secondary Grade Teacher in RC Amalarackini Middle School, Kulithalai, Karur District on and from 21.11.2001 till 01.12.2006. She was under the old pension scheme with TPF No.337143. She was then appointed in Panchayat Union School by order dated 02.12.2006. She joined on 06.12.2006. The alleged break in service from 02.12.2006 till 05.12.2006 was held against her and therefore, she was placed under the Contributory Pension Scheme.

17.The learned Counsel for first respondent had emphatically stated that the Writ Petitioner was actually present from 02.12.2006 till 05.12.2006 in the School premises, but since the training programme was being undertaken, there was no possibility of her joining service and immediately, on conclusion on 06.12.2006, as observed by the learned Single Judge, consequent to proceedings issued by the Additional Assistant Elementary Educational Officer, dated 06.12.2006, the Writ Petitioner had joined duty on 06.12.2006.

18.We are of the considered view that the Writ Petitioner cannot be penalised for the training programme being conducted. It was a circumstance which made it impossible for her to join, as all the Teachers including the Headmaster/ Headmistress would be involved in the training. This training had been conducted across the State. Therefore, we hold that the learned Single Judge had



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correctly allowed the Writ Petition.”

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10. In view of the aforementioned proceedings of the Joint Director of Elementary Educational (Administration) vide Na.Ka.No.2658/M-3/2011 dated 13.09.2011 and the ratio laid down by the Division Bench of this Court, the impugned order passed by the first respondent in Na.Ka.No.025807/C3/E1/2020 dated 05.08.2020 is liable to be quashed and the same is accordingly quashed.

The respondents are directed to grant benefits including payment of arrears of salary along with interest to be given within a period of eight weeks from the date of receipt of a copy of this order.

In the result, the writ petition stands allowed with the above observations and direction. No costs.

04.11.2024

cda

Index : Yes/No

Speaking/Non Speaking order

To

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J.SATHYA NARAYANA PRASAD, J.

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