

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.32117 of 2016

G.Sundara Kangeyan

... Petitioner

vs.

1.The Government of Tamil Nadu,
Rep. by Secretary to Government,
School Education Department,
Fort St. George, Chennai- 600 009.

2.The Director of School Education,
College Road, Chennai-6. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the first respondent to pass orders on the petitioner's representation dated 21.3.2016 regarding protection of higher pay in the lower post of Headmaster, Higher Secondary School for a fixation in the post of District Educational Officer, by applying Rule 4(3) of Tamil Nadu Private School Regulation Act and by applying Note Under Rule 7 of Tamil Nadu Revised Pay Scale Rules, 1998.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.S.Ramesh,
Addl. Govt. Pleader

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the first respondent to pass orders on his representation dated 21.3.2016 regarding protection of higher pay in the lower post of Headmaster, Higher Secondary School for a fixation in the post of District Educational Officer, by applying Rule 4(3) of Tamil Nadu Private

School Regulation Act and by applying Note Under Rule 7 of Tamil Nadu Revised Pay Scale Rules, 1998.

3. The case of the petitioner, in brief, is as follows:-

(a) The petitioner was initially appointed as B.T. Assistant on 23.9.1962 at District Board High School, Naickenpatti, Chengalpattu District. Later, he was promoted as Headmaster on 21.10.1985 at Chunampet, Chengalpattu District and then as Headmaster on 9.9.1996 at Anumandai, Villupuram District and he retired from service on 31.10.1997.

(b) The teachers working in the District Board Schools were absorbed as Government Servants along with School Assistants working in the Government Schools with effect from 1.4.1970. The teachers originally appointed in the District Board Schools and then absorbed in Government service are called as 'B' wing teachers and the teachers originally appointed in Government Schools are called as 'A' wing teachers. The dispute between 'A' and 'B' wing teachers with regard to seniority went upto the Supreme Court and ultimately, the Hon'ble Supreme Court held that for fixing the seniority between 'A' and 'B' wing teachers, the date of absorption should be taken as 1.4.1970. Thereafter, the Director of School Education has redrawn the seniority list by proceedings dated 3.12.2004. The Government issued orders by granting notional promotion to the senior 'B' wing teachers to the post of District Educational Officer as well as Chief Educational Officer and pensionary benefits are also given for the notional promotion. As per the Government orders the petitioner was given promotion as District Educational Officer notionally with effect from 24.2.1995 and Chief Educational Officer from 20.11.1996.

(c) The Government of Tamil Nadu introduced scale of pay for sixth time in G.O.Ms.No.162 dated 13.04.1998 and has granted scale of pay to the Tamil Nadu State Government employees on par with Central Government employees with effect from 1.1.1996. The Headmaster, High/Higher Secondary School have not been given Central Government Scale of pay as that of other employees. Therefore, the Government of Tamil Nadu by the G.O.Ms.No.720, dated 17.12.1998 has granted Rs.500/600 to the Headmaster, High/Higher Secondary School respectively so as to enable them to make the loss good, in the revision of scale of pay which is granted with effect from 1.1.1996. In the above said Government Order, it is directed that the G.O.Ms.No.720 dated 17.12.1998 shall take effect from 1.9.1998. By the subsequent Government Order issued in G.O.Ms.No.163, dated 27.04.2009, the Government of Tamil Nadu has directed that the Headmaster, High/Higher Secondary School who retired between the period 1.1.1996 and 31.8.1998 are entitled for Personal Pay of Rs.500/600.

(d) The petitioner was holding the post of Headmaster, High School as on 01.01.1996 and Headmaster, Higher Secondary School as on 09.09.1996 and retired on 31.10.1997, the Personal Pay of Rs.500/600 is given notional effect from 1.1.1996 and 9.9.1996 respectively and the same was added for the pensionary benefits as well. As per the above said Government Order, the petitioner was given notional promotion to the post of District Educational Officer with effect from 24.02.1995 and from 20.11.1996 in the post of Chief Educational Officer. In view of notional promotion, a pay fixation has to be done in the promoted post of District Educational Officer from 25.02.1995 in the pre-revised scale and then in the revised scale from 1.1.1996 and Chief Educational Officer from 20.11.1996. The petitioner completed 10 years of service in the post of Headmaster, High School for which, the scale of pay is Rs.8000-13500 from 1.1.1996. Personal Pay Rs.500/- is given in the above said scale. The scale of pay for the post of Higher Secondary School Headmaster is same. Therefore, Rs.600/- is given from 09.09.1996 in the scale of pay of Rs.8000-13500. The Director of School Education by the proceedings dated 8.4.2015 has fixed his pay in the post of Headmaster, Higher Secondary School as per the actual promotion and thereafter, his pay is fixed in the Annexure to the above said proceedings, in the post of District Educational Officer and Chief Educational Officer notionally. In the said order, the Director of School Education has stated that the pay which is fixed in the promoted post notionally does not make any difference to the pay which has already been fixed in the post of Headmaster, Higher Secondary School and therefore the petitioner can be allowed to draw the pay which has already been fixed and thus, he has not been given any benefit at all even though he was given notional promotion to the post of Chief Educational Officer for which the scale of pay is Rs.10000-325-15600. The reason for lower fixation in the post of District Educational Officer as well as Chief Educational Officer is that his personal pay of Rs.600/- is not taken into account as the date of notional promotion falls before 1.1.1996 in the post of District Educational Officer i.e. notional promotion is given from 28.02.1995 on which the personal pay of Rs.600/- could not be added as he was promoted notionally to the post of District Educational Officer.

(e) The pay fixation done in the promotional post should not be lower than the pay fixed in the lower post. The pay in the promotional post to be fixed so as to grant benefits to the employee particularly when promotion is given as per the order of the Court. In this case, the personal pay of Rs.500/600 granted to the petitioner as on 01.01.1996 and 09.09.1996 in the lower post i.e. substantive post is not taken into account for the pay fixed in the promotional post i.e. in the officiating post. Had the petitioner been continued in the substantive post

i.e. Headmaster, Government Higher Secondary School, his pay would be Rs.11850/- + Rs.600/- = Rs.12,450/- as on 09.09.1996, but for his notional promotion, his pay is fixed as on 09.09.1996 at Rs.11,300/- in the officiating post i.e. District Educational Officer. Therefore, the pay in the substantive post has to be protected by applying Rule 4(3) of the Tamil Nadu Revised Pay Scale Rules. In this regard, the petitioner made a representation dated 21.3.2016 to the respondents 1 and 2 requesting them to apply the said rule. Since the same was not considered so far, left with no other alternative, the petitioner has come up with the present writ petition for the relief set out earlier.

4. I have heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who has taken notice on behalf of the respondents.

5. Considering the facts and circumstances of the case and considering the submissions made on either side, this Court directs the petitioner to send a fresh representation along with a copy of this order to the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the same, regarding protection of higher pay in the lower post of Headmaster, Higher Secondary School for a fixation in the post of District Educational Officer, and pass appropriate orders, on merits and in accordance with law and also as per Rule 4(3) of Tamil Nadu Private School Regulation Act and by applying Note Under Rule 7 of Tamil Nadu Revised Pay Scale Rules, 1998, within a period of four weeks thereafter. It is made clear that this Court has not expressed any opinion with regard to the claim projected by the petitioner and it is for the first respondent to consider the claim of the petitioner strictly on merits and in accordance with law. The writ petition is disposed of accordingly. No costs.

sbi

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-II)

/TRUE COPY/

Sub-Assistant Registrar

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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai- 600 009.

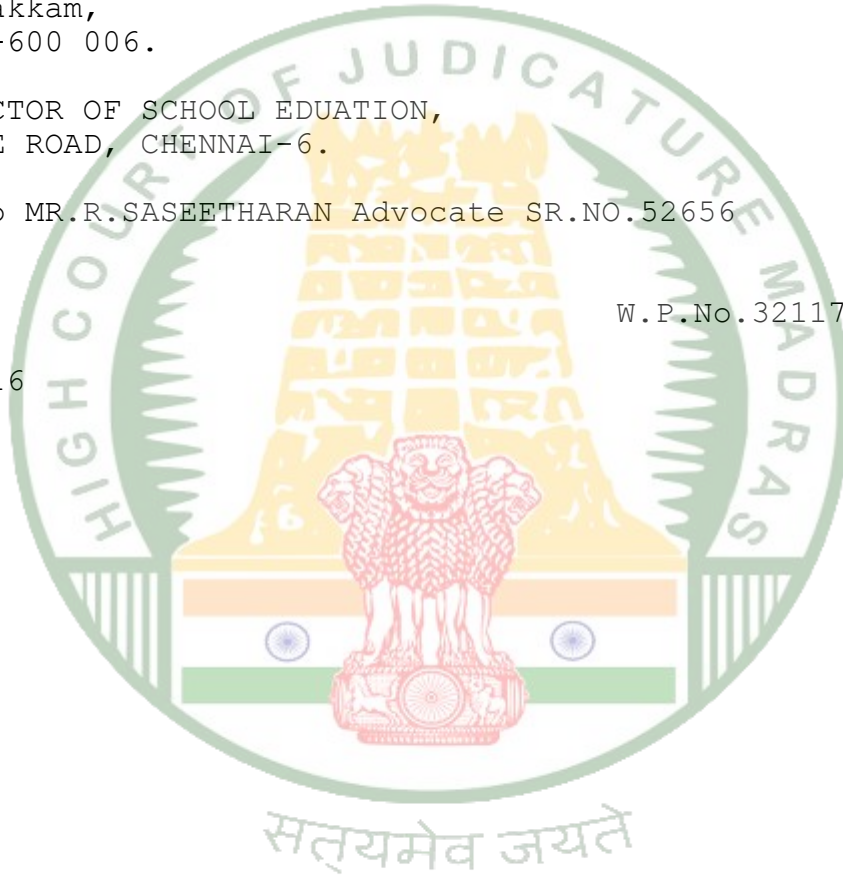
2. The State Council of Educational
Research & Training,
College Road, Subba Road Avenue,
Nungambakkam,
Chennai-600 006.

3. THE DIRECTOR OF SCHOOL EDUCATION,
COLLEGE ROAD, CHENNAI-6.

+1CC to MR.R.SASEETHARAN Advocate SR.NO.52656

W.P.No.32117 of 2016

GJ [CO]
MK:19/10/2016



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