



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.6783 of 2011 &

MP (MD) Nos.2 & 3 of 2011

L.Gurunathan

... Petitioner

Vs.

1.The Director of School Education,
Office of the Director of School Education,
Chennai-6.

2.The District Educational officer,
Tenkasi, Tirunelveli District.

3.The Manager,
C.M.M.L. High School,
Vadamalapuram - 627 755,
Mullikulam Via, Sivagiri Taluk,
Tirunelveli District.

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to proceedings O.Mu. No 114394 / D2 / E3/09 dated 21.12.2009 of the 1st respondent herein and consequential letter O.Mu No 2061/A1/2009 dated 3.2.2010 of the 2nd respondent herein and consequential letter Na.ka No 58/2008 dated 17.6.2011 of the 3rd respondent herein and quash the same and consequently direct the respondents herein to count the matriculation service rendered by the petitioner for the period 27.10.1980 to 23.7.1992 for pay fixation and pensionary benefits with all attendant benefits.

For Petitioner : Mr.T.Pon Ramkumar

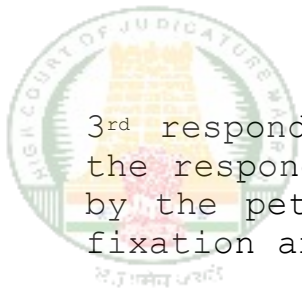
For Respondents : Mr.Aairam K.Selvakumar

Govt. Advocate for R1 and R3

No appearance for R3

ORDER

This writ petition has been filed by the petitioner for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to proceedings O.Mu. No 114394 / D2 / E3/09 dated 21.12.2009 of the 1st respondent herein and consequential letter O.Mu No 2061/A1/2009 dated 3.2.2010 of the 2nd respondent herein and consequential letter Na.ka No 58/2008 dated 17.6.2011 of the

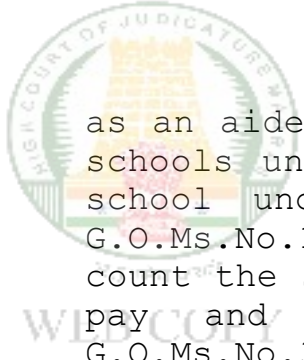


3rd respondent herein and quash the same and consequently direct the respondents herein to count the matriculation service rendered by the petitioner for the period 27.10.1980 to 23.7.1992 for pay fixation and pensionary benefits with all attendened benefits.

2. The case of the petitioner is that on 27.10.1980 petitioner was appointed as Secondary Grade Teacher in St.Marris Matriculation Higher Secondary School, Sembium, Chennai -11. On 01.06.1982 petitioner was promoted as Teaching Assistant in Middle Section in the aforesaid school. On 22.07.92 the petitioner resigned the said job and joined as B.T. Assistant in the 3rd respondent school. Since the petitioner has worked 10 years continuously without any break and proper Service Register was maintained in the St.Marris Matriculation Higher Secondary School, Sembium, Chennai -11 and based on the G.O.Ms.No 143 dated 30.1.1987, the 2nd respondent herein by proceedings dated 04.03.1996 awarded selection Grade with effect from 23.07.1992 by calculating the service rendered by the petitioner in St.Marris Matriculation Higher Secondary School, Sembium, Chennai -11. It is the further case of the petitioner that though Selection Grade was awarded as early as from 23.07.1992 the 2nd respondent has not awarded the Special Grade. In the year 2008, an objection was raised in the Audit inspection by the Zonal Audit office, School Education, Madurai that service rendered by the petitioner in the Matriculation School should not be taken into account for pay fixation and Selection Grade was wrongly given to the petitioner and hence, the excess payment should be refunded. Aggrieved against the order of recovery in Audit inspection, on 22.06.2009 the petitioner has made an appeal. Without issuing any notice or afford opportunities, the 1st respondent by proceedings in O.Mu. No 114394 / D2 / E3/09 dated 21.12.2009 informed to the 2nd respondent herein that the service rendered by the petitioner in the matriculation Service could not be count for Pay fixation and pensionary benefits and confirm the quarry raised in the audit objections and further directed the 2nd respondent to recover the excess amount. The 2nd respondent, by letter in O.Mu No 2061/A1/2009, dated 03.02.2010 directed the 3rd respondent school to act as per the order of the 1st respondent herein. The 3rd respondent herein by letter in Na.ka No 58/2008, dated 17.6.2011, directed the petitioner to repay the excess amount immediately. Aggrieved against the same the writ petition has been filed.

3. When the matter was taken up for hearing on 28.06.2011, this Court admitted the main writ petition and granted order of interim stay.

4. A counter affidavit has been filed by the respondents 1 and 2 wherein it is stated that the G.O.Ms.No 143, Education Department, dated 30.01.1987 passed in respect of one individual, namely Rev.Fr.Stanislaus M.Fernandez, who was originally appointed



as an aided school and transferred for some time to matriculation schools under the same management and again transferred to aided school under the same management. As a special case as per G.O.Ms.No.143, Education Department, dated 30.01.1987 permitted to count the services rendered in the matriculation school to fix the pay and pensionary benefits of service. Further as per G.O.Ms.No.314, School Education, dated 12.11.1999 the service rendered under the self finance period in the recognized school shall not be counted for pay fixation and pensionary benefits. The then District Educational officer has mistakenly given the Selection Grade and the same was rightly raised quarry by the Audit Department and accordingly, the recovery order was passed and same is valid.

5. Heard Mr.T.Pon Ramkumar, learned Counsel for the Petitioner as well as Mr.Aairam K.Selvakumar, learned Government Advocate appearing for the respondents 1 and 2.

6. The learned counsel for the petitioner would contend that initially the petitioner was appointed as Secondary Grade Teacher in St.Marris Matriculation Higher Secondary School, Sembium, Chennai -11 and subsequently promoted as Teaching Assistant. On 22.07.1992, the petitioner resigned the said job and joined as B.T. Assistant in the 3rd respondent school without any break of service. Based on the G.O.Ms.No.143, Education Department, dated 30.01.1987, the 2nd respondent has awarded Selection Grade pay by calculating the service rendered by the petitioner in St.Marris Matriculation Higher Secondary School, Sembium, Chennai -11. Admittedly the impugned order was passed without issuing any notice. In support of his contention the leaned counsel for the petitioner relied upon Judgments reported in **1995 (Sup) (1) SCC 18** (Sahib Ram vs. State of Haryana and others) and reported in **2009 (3) SCC 475** (Syed Abdu Qabir and others vs. State of Bihar and others).

7. After considering the entire law, the Hon'ble Supreme Court formulated certain guidelines in its decision in **State of Punjab and others -Vs- Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC 334** at paragraph 12, which reads as follows.

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of the their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employees would be impermissible in law.



Class-III and Class-IV service (or Group 'C' and Group 'D' service)

ii) Recovery from the retired employees, or employees who are due to retire within one year of the order of recovery.

iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

v) in any other case, where the Court arrives at the conclusion that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far out weigh the equitable balance of the employer's right to recover.

8. The case of the petitioner is covered by clause (iii) paragraph 12 of the decision of the Hon'ble Supreme Court. Insofar as the contention of the respondents that as per G.O.Ms.No.314, School Education, dated 12.11.1999, the service rendered under the self finance period in the recognized school shall not be counted for pay fixation and pensionary benefits, the learned counsel for petitioner placed a unreported judgement of the Principal Bench of this Court made in W.P.No.7627 of 2006 dated 01.04.2013, wherein, paragraphs 17 to 20, it has held that the matriculation service also can be taken into account for pay fixation and pensionary benefits. The relevant paragraphs 17 to 19 of the judgement read as follows:-

"17. it is an admitted fact that Rev.Fr.Stanislaus M.Fernandez, Headmaster of an naided school was considered eligible to count his service rendered in an aided school and subsequently, he served in an aided school, however, both services were counted for the purpose of granting pension. Since the petitioner is similarly placed person who worked earlier in a recognized unaided school and subsequently observed to an aided school, the respondents cannot say that G.O.Ms No 143 dated 30.1.1987 is applicable only to a particular individual, Rev.Fr.Stanislaus M.Fernandez, and not petitioner, a similarly placed person, as it would be against the concept of equality under Article 14 if the Constitution.

<https://hcservices.ecourts.gov.in/hcservices/>

18. As decided by the Honble Supreme Court in the decisions referred to above, treating Rev.Fr.Stanislaus



M.Fernandez, would not create a different reasonable class, so far as it relates to the said person in providing pension. On the facts and circumstances, I am of the view that the said G.O.Ms.No 143 of 1987 would not create a reasonable classifications to deny the right of granting pension to the petitioner, a similarly placed person. The G.O.Ms No 143 dated 30.1.1987 has not created any reasonable classification between the petitioner and the said Headmaster, who got the benefit under the Government Order. The petitioner is also entitled to the benefit, as that of Rev.Fr.Stanislaus M.Fernandez, , since there is no reasonable classification and class legislation, would be violate Article 14 of the Constitution. In the writ petition there is no legislative enactment, violating the concept of equality, however the Government Order is a Subordinate legislation, whereby the petitioner, a similarly placed person shall not be denied the benefit, that was given to another similarly placed person.

19. considering the facts and circumstance, I am of a view that both the petitioner and Rev.Fr.Stanislaus M.Fernandez, are similarly placed persons and therefore, the petitioner is also entitled to seek similar relief as that of Rev.Fr.Stanislaus M.Fernandez,, then Head Master of the Don Bosco Higher Secondary School, as discussed above in this order and therefore, it is just and reasonable to allow this writ petition."

9. The learned counsel for petitioner contended that the validity of G.O.Ms.No.314, School Education, dated 12.11.1999, were challenged before this Court in W.P(MD)Nos.10758 and 10759 of 2008 by two teachers from Kanyakumari District. Though the said writ petitions were dismissed, the orders were set aside in W.A (MD)Nos.291 and 292 and G.O.Ms.No.314, School Education, dated 12.11.1999, was struck down. The relevant portion of the judgement of the Hon'ble Division Bench extracted below:-

"5.Considering the above said facts and circumstances of the case, the impugned G.O. which has been issued earlier G.O.No. 18 dated 9.1.1997 issued for the benefit of a teacher who approached the Government, and subsequently not extended the same in respect of the case of the appellants is unreasonable and violative of Article 14 of the Constitution of India. Apart from that no reasons were stated for incorporating the said unreasonable clauses into the impugned G.O. Therefore clauses 1 to 3 of the impugned G.O. are struck down and in view of the striking of the said clauses, the applicants are entitled for the benefits as per

18 Department of Education, Science and Technology (D2) dated 9.1.1997 and G.O.Ms.No 143 Educational (V2) Department, dated 3.1.1987. Accordingly



the writ appeals are allowed. Connected Miscellaneous petitions are closed. No costs"

10. In the result based on the judgements of the Hon'ble Supreme Court and this Court referred above, I am inclined to pass the following order:-

(a) the writ petition is allowed and the impugned order passed by the 1st respondent in O.Mu. No 114394/D2/E3/09, dated 21.12.2009, and consequential letter in O.Mu No 2061/A1/2009 dated 03.02.2010 of the 2nd respondent and the letter in Na.ka.No.58/2008, dated 17.6.2011, of the 3rd respondent are set aside.

(b) The respondents herein are directed to count the Matriculation service rendered by the petitioner for the period from 27.10.1980 to 23.07.1992 for pay fixation and pensionary benefits with all benefits.

(c) The said exercise shall be done within eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

skn

To

1.The Director of School Education,
Office of the Director of School Education,
Chennai-6.

2.The District Educational officer,
Tenkasi, Tirunelveli District.

3.The Manager,
C.M.M.L. High School,
Vadamalapuram - 627 755,
Mullikulam Via, Sivagiri Taluk,
Tirunelveli District.

+1cc to Spl.Government Pleader Sr.No. 59142

+1cc to Mr.T.Pon Ramkumar Advocate Sr.No. 59352

JAM/01.11.16/PV/SAR 1/6p-6c