



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No. 7593 of 2013

WEB COPY

P.Thomas Vincent,
Headmaster,
C.M.S.Evangelical Middle School,
Maruthakulam, Nanguneri Taluk,
Tirunelveli District.

... Petitioner

Vs.

1.The District Elementary Educational officer,
Tirunelveli, Tirunelveli District.

2.The Additional Assistant Elementary Educational officer,
Samathanapuram, Palayamkottai, Tirunelveli District.

3.The Assistant Director of Local Fund Accounts,
Samathanapuram, Palayamkottai, Tirunelveli District.

4.The Secretary,
C.M.S.Evangelical Middle School,
Maruthakulam, Nanguneri Taluk,
Tirunelveli District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No. 3235/A2/ 2012, dated 18.12.2012 and quash the same and consequently direct the respondents 1 and 2 herein to sanction annual increment from 01.04.2003, pay commission arrears with effect from 01.01.2006 and Special Grade in the cadre of middle school Headmaster with effect from 01.06.2009 and all other consequential benefits.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.K.Guru

Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order passed by the 1st respondent in Na.Ka.No. 3235/ A2/ 2012, dated 18.12.2012 and seeking for consequential direction to the respondents 1 and 2 to sanction annual increment from 01.04.2003, pay commission arrears with effect from 01.01.2006 and Special Grade in the cadre of middle school Headmaster with effect from



01.06.2009 and all other consequential benefits.

2. The case of the petitioner is that on 05.07.1988 he was appointed as a Secondary Grade Teacher in the 4th respondent school with the higher qualification of B.A., B.Ed., and M.A. On 01.06.1989, he was promoted as Headmaster in the said school. By an order, dated 02.06.1998, the 2nd respondent issued an order of recovery on the ground that the petitioner is not entitled to have the P.T. Headmaster scale of pay from 01.06.1989, since he did not have 5 years teaching experience as a Secondary Grade Teacher. Aggrieved against the same, the petitioner filed a writ petition in W.P.No 10853 of 1998 before this Court and interim stay was granted. During the Pendency of the said writ petition, on 01.06.1999, the respondents awarded a Selection Grade in the cadre of P.T. Headmaster. By order dated 22.4.2008 made in W.P.No 10853 of 1998, the Principal Bench of this Court allowed the writ petition as prayed for. Thereafter, the 4th respondent made a representation to the respondents to continue to pay the scale of pay in the cadre of Headmaster including the annual increments, special grade in the cadre of Headmaster with effect from 01.06.2009 and pay commission arrears from 01.01.2006 and annual increments from 01.04.2003 to till date, for which the 2nd respondent forwarded the proposal to the 3rd respondent on 06.06.2009. The 3rd respondent, by a proceedings dated 10.3.2010, sought for particulars from the 2nd respondent to implement the order of the Court and to inform the same to him. Since the respondents have not awarded special grade pay in the cadre of Middle School Headmaster, the petitioner filed a writ petition in W.P(MD)No 5153 of 2012 praying for a Writ of Mandamus directing the respondents to sanction annual increment from 01.04.2003 to pay commission arrears with effect from 01.01.2006 and special grade in the cadre of middle school Headmaster with effect from 01.06.2009 by considering the proposal submitted by 4th respondent dated 5.8.2011 to the petitioner. By order dated 18.4.2012, this Court was pleased to direct the 1st respondent to consider the petitioner's representation, dated 07.01.2011 in the light of the proposal made by 4th respondent's management within a period of four weeks from the date of receipt of a copy of the order. Even thereafter, the respondent has not passed any order. Hence, the petitioner filed a contempt petition in Cont.P(MD)No.501 of 2012 before this Court. Thereafter, the 1st respondent by impugned proceedings dated 18.12.2012, refused to give sanction annual increment from 01.04.2003, to pay commission arrears with effect from 01.01.2006 and special grade in the cadre of middle school Headmaster with effect from 01.06.2009 stating that without 5 years teaching experience, the petitioner was appointed as Headmaster and it is contrary to the Rules. Aggrieved against the same, the above writ petition has been filed.



3.The first respondent filed a counter affidavit, wherein it is specifically stated that as per Rule 15 (6) and the appendix V of the Tamilnadu Private School Regulation Rules, 1974, the Headmaster should have completed five years of experience as a Secondary Grade Teacher and at the time of appointment, the petitioner has one year teaching experience.

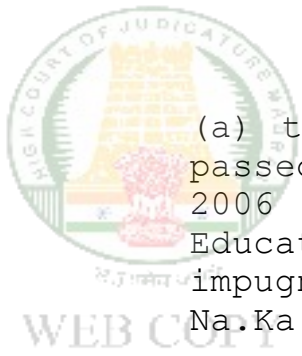
4. Heard Mr.T.Pon Ramkumar, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents.

5.Mr.T.Pon Ramkumar, learned counsel appearing for the petitioner contended that in earlier circumstances, the respondents has passed an order dated 02.06.1998 that without 5 years teaching experience, the petitioner was appointed as Headmaster of school and passed a recovery order. Aggrieved against the same, the petitioner filed a writ petition in W.P.No10853 of 1998 and the same was allowed by order dated 22.04.2008. The relevant paragraph of the order is extracted as follows:-

"Both the learned counsel appearing for the parties submit that the subject matter of the writ petition is covered by a judgement rendered by the Madurai Bench of the Madras High Court in W.P.(Md) Nos 3983 and 3134 of 2006 dated 4.10.2007, wherein it is held as follows."

5. Even earlier the Government had granted one time relief for such appointments and by G.O.Ms.No.97 dated 05.07.2001. This order was came to be noted in W.P.No.2725 of 1998 dated 07.11.2002 wherein the learned judge in paragraph 3 had observed as follows:-

3.The petitioner has challenged the impugned order of the third respondent directing recovery of the amount from the petitioner on the ground that the petitioner though not having the required qualification had worked as Headmistress of a Middle school and who was also paid the salary of the said post for the period for which she had worked. Learned counsel for the petitioner has submitted that subsequently, G.O.Ms.No.97 dated 05.07.2001, issued by the first respondent, has granted total regularization in such matters. Assuming that the above Government Order is not applicable, in any event, the amount which was already paid to the petitioner cannot be recovered. Even assuming that the petitioner was not eligible



(a) this writ petition is allowed, based on the order passed by this Court in W.P.(Md) Nos 3983 and 3134 of 2006 dated 04.10.2007 and the G.O.(3D) No.17, School Education Department, dated 20.01.2011, and the impugned order passed by the 1st respondent in Na.Ka.No.3235/A2/ 2012, dated 18.12.2012 is quashed.

(b) the respondents 1 and 2 are directed to sanction annual increment from 01.04.2003, pay commission arrears with effect from 01.01.2006 and special grade in the cadre of middle school Headmaster with effect from 01.06.2009 and all other consequential benefits. No costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Elementary Educational officer,
Tirunelveli, Tirunelveli District.
- 2.The Additional Assistant Elementary Educational officer,
Samathanapuram, Palayamkottai, Tirunelveli District.
- 3.The Assistant Director of Local Fund Accounts,
Samathanapuram, Palayamkottai, Tirunelveli District.

+1cc to Mr.T.PONRAMKUMAR. Advocate in SR. No.74965
+1cc to Mr. Special Government Pleader in SR. NO.79036
skn
jsi/jm/SAR.1/1.02.2017/5P-6C

W.P. (MD) No.7593 of 2013
01.12.2016