

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

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

W.P.No..8919 of 2004
and WP.M.P.No.10433 of 2004

G.Rajendran

.. Petitioner

vs

1.State of Tamil Nadu,
rep. by its Secretary to Government,
School Education Department,
Secretariat,
Chennai - 9.

2.Director of School Education,
Chennai - 6.

3.District Educational Officer,
Kovilpatti,
Tuticorin District.

4.Secretary,
Parvathy High School,
Iluppaiyurani,
Kovilpatti Taluk,
Tuticorin District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records pertaining to the order passed by the first respondent in G.O.(Ms) No.50, Education Science & Technology (D1) Department, dated 20.01.1995 in so far as it denies the salary and other benefits from the initial date of appointment to the post till the sanction date of 01.06.1994 and the consequential order passed by the third respondent in his Proceedings Na.Ka.No.4072/Aa2/2000 dated 05.01.2004 in so far as the petitioner is concerned, and the consequential order passed by the fourth respondent in his Proceedings Na.Ka.No.2/2004 dated 19.01.2004 and quash the same, and direct the respondents to confer all the consequential benefits to the petitioner.

For Petitioner : Mr.Ganesan
for M/s.C.Selvaraju

For Respondents : Mrs.Raniselvam
Addl. Govt. Pleader
for respondents 1 to 3

* * * * *

ORDER

This writ petition has been filed seeking writ of certiorarified mandamus calling for the records pertaining to the order passed by the first respondent in G.O.Ms.No.50, Education Science & Technology (D1) Department, dated 20.01.1995 in so far as it denies the salary and other benefits from the date of initial date of appointment to the post till the sanction date of 01.06.1994 and the consequential order passed by the third respondent in his Proceedings Na.Ka.No.4072/Aa2/2000 dated 05.01.2004 in so far as the petitioner is concerned, and the consequential order passed by the fourth respondent in his Proceedings Na.Ka.No.2/2004 dated 19.01.2004 and quash the same, and direct the respondents to confer all the consequential benefits to the petitioner.

2. The petitioner joined in the fourth respondent school on 01.03.1990 as Junior Assistant. The Government sanctioned one post of Junior Assistant on 01.06.1994 and the petitioner was accommodated in the above sanctioned post. The fourth respondent school paid the petitioner the scale of pay as applicable to the Government servants in the cadre of Junior Assistant and also sanctioned annual increments. After the sanction of post, the fourth respondent decided to fit the petitioner in the minimum scale of pay of Rs.975/-, whereas the petitioner was getting the basic pay of Rs.1125/-, including annual increment. In G.O.Ms.No.18, dated 09.01.1997, the Government passed an order to the effect that the service rendered in the un-aided post can also be counted for pay fixation and pension. In the said Government Order, the Government issued general instructions to the effect that fixation can be done by the Director himself without awaiting orders for each and every case. The benefits given in the aforesaid Government Order were extended to the petitioner, thereby counting the period from 01.03.1990 to 31.05.1994. While so, by the impugned order dated 5.1.2004, the third respondent directed to cancel the increments already given and further directed to re-fix the scale of pay and ordered recovery

by referring to the order passed by the High Court in a batch of writ petitions.

3. According to the petitioner, in the impugned order, it has been stated that the Government has cancelled the benefit in G.O.Ms.No.314, dated 12.11.1999, but the fact remains that the High Court had an occasion to discuss the matter and rendered the decision by observing that so long as orders passed in G.O.Ms.No.341, dated 01.04.1992 and G.O.Ms.No.50 dated 20.01.1995 remain unchallenged, the sanction of earlier increments to the teaching and non-teaching staff by the Management before the grant of aid cannot be taken into consideration. Therefore, the petitioner has filed the present writ petition challenging the clause incorporated in G.O.Ms.No.50, dated 20.01.1995 in so far it states that the salary will be minimum from 01.06.1994 with increments due in future and no arrears will be paid.

4. On 02.04.2004, the writ petition was admitted and rule nisi issued. Interim stay of recovery was also granted in WP.MP.No.10433 of 2004.

5. Respondents have not filed any counter-affidavit.

6. I heard Mr.Ganesan for M/s.C.Selvaraju, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 to 3. I have also perused the materials available on record.

7. The petitioner challenged the impugned order on the following grounds:

(i) When it is pre-requisite condition for considering the recognition of a school and the Management installs post of teaching and non-teaching staff and when they proposed to give pay, it must be given from the date on which posts were installed. Therefore, the order impugned is arbitrary and without any justification.

(ii) As per the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, the teachers employed by the Management shall be paid on par with that of the Government teachers.

(iii) Once there is mandate for payment on a par with that of the Government teachers, it includes increment also and that the petitioner was given annual increments from the date of his appointment.

8. The gist of G.O.Ms.No.50, dated 20.01.1995 is to the effect that the Government, after careful consideration, sanction teaching and non-teaching posts to the schools

indicated in the Annexures I, II & III for assessment of salary grant with effect from 01.06.1994 and that the Director of Elementary Education and Director of School Education were authorised to permit assessment of salary grant for the posts in the schools under their administrative control on regular scales of pay with effect from 01.06.1994 with increments, due in future and no arrears will be payable for the periods prior to 01.06.1994.

9. Referring to G.O.Ms.No.50, dated 20.01.1995, the Director of School Education, accorded permission vide Proceedings dated 01.02.1995 for assessment of staff grant for the posts mentioned qua 4th respondent School on the regular scales of pay with effect from 01.06.1994.

10. On a perusal of the typed set of papers, the Government vide G.O.(Ms) No.18, dated 09.01.1997 passed an order in favour of one Jayaraj granting benefit of counting the past services for the purposes of pay fixation and pension. According to the petitioner, the same was acted upon.

11. The main grievance of the petitioner is that the benefit given by way of G.O.(Ms) No.18, dated 09.01.1997, cannot be taken away by another order passed in the year 1999 without affording an opportunity to the teaching and non-teaching staffs. It is the submission of the learned counsel for the petitioner that the benefit counting the past services rendered by the petitioner, prior to the sanction of grant in aid and sanction of the post, for the purpose of fixation and pension, was conferred upon the petitioner, by virtue of conscious decision taken by the Government and not as a result of any mistake on the part of the officials or any misrepresentation on the part of the petitioner and that therefore, the benefit cannot be withdrawn as a matter of routine, in the usual course, as vested right had been conferred upon the petitioner.

12. From the materials available on record, this Court can see that under G.O.(Ms) No.18, dated 09.01.1997, the Government not only granted permission for counting the past services of one Jayaraj for the purposes of fixation of pay and pension, but also empowered the Director of School Education himself to take action in similar circumstances. Consequently, the teaching and non-teaching staff of recognised private schools, like the petitioner, obtained individual orders from the Director of School Education himself, counting the past services rendered by them prior to 01.06.1994 and/or 01.06.1991 as the case may be, both for the purpose of pay fixation as well as pension.

13. While being so, after about two years, the Government woke up and issued G.O.(Ms) No.314, dated 12.11.1999, cancelling

the earlier G.O.(Ms) No.18, dated 09.01.1997 and stated that the past services would be counted only for the purpose of promotion and not for pay fixation and pension. In pursuance of G.O.(Ms) No.314, individual orders of re-fixation of pay and recovery were ordered by the concerned authorities.

14. It is a constitutional mandate for the State to ensure imparting of Primary and Secondary Education and therefore, it is the duty of the State to sanction grant in aid to institutions which are recognised by the Government. Further, it is the duty of the State to maintain parity of pay between teaching and non-teaching staff of aided/unaided schools and Government schools and that the benefit granted to the petitioner for counting his past services for the purpose of pay fixation and pension, was in tune with the principal of equal pay for equal work.

15. While granting benefit under G.O.(Ms) No.18, dated 09.01.1997, the Government took a conscious decision and therefore, it cannot be changed at their whims and fancies. On a perusal of G.O.(Ms) No.314, dated 12.11.1999, I find that there is no discussion/reasoning in cancelling G.O.(Ms) No.18, dated 09.01.1997. It is also seen that all of a sudden, the Government woke up and cancelled G.O.(Ms) No.18, dated 09.01.1997.

16. As rightly submitted by the learned counsel for the petitioner, once the post is sanctioned, it must reckon back and benefit is to be conferred on the incumbent from the date on which he was appointed. Further, as argued by the learned counsel for the petitioner, whenever any post is sanctioned, it must date back to the date on which the incumbent was appointed to the post, because while considering the permission and/or recognition for a school, there are some mandatory requirement for compliance, without which, no recognition and/or permission will be granted.

17. While considering the permission for opening a school, the Government imposes so many conditions, including the teaching and non-teaching cadre strength. No recognition and/or permission will be granted unless required teachers and non-teaching staff are appointed by the Management. Therefore, when it is pre-requisite condition for considering the recognition and/or permission and the Management installs post of teaching and non-teaching staff and when they propose to give pay, it must be given from the date on which posts were installed. That is the reason why, the Government has passed G.O.(Ms) No.18, dated 09.01.1997, granting the benefit of counting the past services for the purpose of pay fixation and pension and the same was acted upon and based on which, lot of teaching and

non-teaching staff benefited. Further, when the Government has not stated any financial implication, how they could arrive at a conclusion withdrawing the counting of past services for the purpose of pay fixation and pension.

18. Since there is no specific denial from the side of the respondents to put forth their case and no record showing that the order impugned has been passed by giving an ample opportunity to the concerned individual and also proper application of mind, this Court is of the view that denial of pay from the date of appointment and freezing of annual increment is without any justification. Therefore, the clause incorporated in G.O.(Ms) No.50 qua denial of arrears prior to 01.06.1994 and the consequential order directing to cancel the increments already given and re-fix the scale of pay and also order of recovery are liable to be quashed.

19. In the result:

(a) this writ petition is allowed and the impugned order passed by the 1st respondent in G.O.(Ms)No.50, Education Science and Technology (D1) Department, dated 20.01.1995 and the consequential order passed by the 3rd respondent in his Proceedings Na.Ka.No.4072/Aa2/2000 dated 05.01.2004 and the consequential order passed by the 4th respondent in his Proceedings Na.Ka.No.2/2004 dated 19.01.2004 are quashed;

(b) the respondents are directed to confer all the consequential benefits to the petitioner;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, WP.MP.No.10433 of 2004 is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government,
School Education Department,
Secretariat,
Chennai - 9.

2.The Director of School Education,
Chennai - 6.

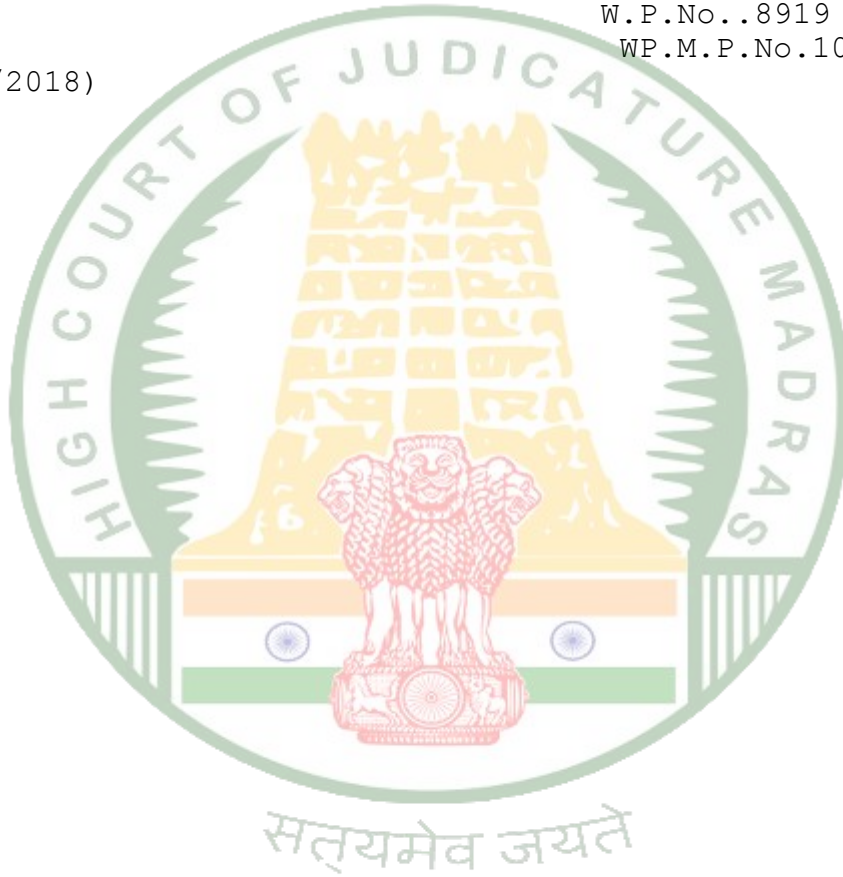
3.The District Educational Officer,
Kovilpatti,
Tuticorin District.

+1cc to Mr.Ganesan for C.S.Associates, Advocate, S.R.No.49816

+1cc to the Government Pleader, S.R.No.49872

W.P.No..8919 of 2004 and
WP.M.P.No.10433 of 2004

RRK(05/03/2018)



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