

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM

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

W.P.No.2390 of 2004

D.Balrajmani

.. Petitioner

Vs.

1. The Director of Elementary Education  
Chennai - 6.
2. The District Elementary Educational Officer  
Tirunelveli.
3. The Assistant Elementary Educational Officer  
Charanmahadevi  
Tirunelveli District.
4. The Additional Assistant Elementary  
Educational Officer  
Kalakkadu, Tirunelveli District.
5. CMS Evangelical Schools  
rep. By its Correspondent  
Idayankulam Circle  
Pulavankudiyiruppu  
Thiruviruthanpulli P.O.  
Via. Cheranmahadevi  
Tirunelveli District.

.. Respondents

Prayer :

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.1141/A1/2002, dated 31.10.2003, and to quash the same insofar as denial of fixation of scale of pay from 1.6.1988 to 28.2.1990 and to direct the respondents to pay the salary for the above said period and consequently Selection Grade from 1.3.1995 and confer all consequential benefits.

For Petitioner : Mr.P.Ganesan  
for Mr.S.Mani

For Respondents : Mr.R.Govindasamy  
Spl. Government Pleader  
for respondents 1 to 4

#### ORDER

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.1141/A1/2002, dated 31.10.2003, and to quash the same insofar as denial of fixation of scale of pay from 1.6.1988 to 28.2.1990 and to direct the respondents to pay the salary for the above said period and consequently Selection Grade from 1.3.1995 and confer all consequential benefits.

2. The facts in a nutshell are as under: According to the petitioner, the fifth respondent management, on being satisfied with his educational qualification, appointed him as Headmaster of Elementary School, opened newly at Pattankadu on 18.6.1980. Though the school was recognized, the post was not sanctioned.

3. It is the case of the petitioner that before 1.6.1988, there was no separate post of Headmaster of Elementary School and it was only allowance post and substantial post was only Secondary Grade Teacher. It is averred that only based on the V Pay Commission recommendations that separate status was given to the post of Headmaster of Elementary School with separate scale of pay.

4. It is stated that one post of Secondary Grade Teacher was sanctioned on 1.3.1985. The fifth respondent management requested to pay Headmaster allowance, which was denied by the department stating that the petitioner did not possess five years experience as Secondary Grade Teacher. It is the case of the petitioner that from the date of sanction of the post, he is entitled to get allowance attached to the post of Headmaster of Elementary School.

5. It is the case of the petitioner that since he was holding the post of Headmaster of Elementary School from 18.6.1980, he is eligible for allowance from 18.6.1980 till 31.5.1988 and thereafter time scale applicable to the post of Headmaster of Elementary School from 1.6.1988. The petitioner also claims regularization of his services from 18.6.1980 for the purpose of seniority, selection grade, special grade and pension.

6. According to the petitioner, as per the orders of the government all the persons who were holding the post of Headmaster of Elementary School as on 1.6.1988 are entitled to have their entire period of service counted for selection grade and special grade in the cadre of Headmaster of Elementary School.

7. It is the say of the petitioner that even at the time of appointment in the fifth respondent management on regular basis, he had experience of 7 months and 8 days and thereafter, based on continuous employment from 18.6.1980, the five years experience, which is sought had been completed on 9.11.1984 and, therefore, insistence of five years of experience is unwarranted.

8. Aggrieved by the non payment of allowance applicable to the post of Headmaster of Elementary School from 18.6.1980 to 31.5.1988 and consequential fixation of scale of pay at Rs.1400/- from 1.6.1988 and sanction of selection grade, annual increments and other benefits, the petitioner filed W.P.No.3079 of 1996, which was disposed of by this Court, by order dated 15.4.2002, directing the respondent authorities to pass orders within a period of four weeks. Thereafter, contempt petition was filed and ultimately, the respondent authorities, by order dated 31.10.2003, re-fixed the scale of pay in the cadre of Headmaster of Elementary School from 1.3.1990 instead of 1.6.1988 and also consequently selection grade was fixed from 1.3.2000 instead of 1.6.1988.

9. Assailing the said order dated 31.10.2003, the present writ petition is filed for the relief stated supra.

10. The learned counsel appearing on behalf of the petitioner vehemently contended that inasmuch as the petitioner had completed five years of service in the cadre of Secondary Grade Teacher even as on 9.11.1984, the respondent authorities should not insist on five years experience for regularizing the services of the petitioner as Headmaster of Elementary School.

11. Citing G.O.Ms.No.314, School Education Department, dated 12.11.1999, the learned counsel for the petitioner further submitted that the services rendered by a teacher in a recognized school without aid can be taken into account for giving promotion.

12. The learned Special Government Pleader while refuting the contention of the learned counsel for the petitioner that there was no separate post of Headmaster of Elementary School prior to 1.6.1988, justified the stand of the respondent authorities in passing the impugned order and prayed for

dismissal of the writ petition.

13. I heard Mr.P.Ganesan, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 4 and perused the entire records.

14. In the case on hand, it is beyond any cavil that the petitioner was appointed as Secondary Grade Teacher on 18.6.1980 without a sanctioned post and was absorbed as Secondary Grade Teacher in the newly allotted Secondary Grade Teacher post with effect from 1.3.1985. Nothing has been placed on record to dispute the plea of the petitioner that even prior to his appointment he had experience of 7 months and 8 days.

15. A Division Bench of this Court in W.A. (MD) Nos.291 and 292 of 2008, by judgment and order dated 26.6.2008 (Gabriel Jeletin and another v. Government of Tamil Nadu and others) had regularized the services rendered in the non sanctioned post, considering the fact that similarly placed persons had been granted such benefit. Assailing the said order, it appears that SLP had been filed by the department and the same was dismissed by the Supreme Court.

16. It is a matter of record that the Government had implemented the said order by passing a government order in G.O. (1D) No.125, School Education (VE) Department, dated 13.4.2010. The learned Special Government Pleader is not in a position to dispute the proposition laid down in the said decision.

17. In respect of similarly placed person, viz., S.M.N.Kalima, taking note of the fact that the school was not given aid during 1979-80 even though it is a recognized school during that period, the Government held that he may be allowed to count the service during 1979-80 for the purpose of fixation of pay as Headmaster as on 2.6.1980.

18. Under identical circumstances, in respect of one S.Palraj Swaminathan, similar benefits were conferred vide order dated 1.3.1984 of the respondent authorities.

19. Even in respect of one Jayaraj, vide order dated 9.1.1997, the government regularised the services in the non sanctioned post and directed fixation of pay for the said period and all other benefits.

20. The learned Special Government Pleader is not in a position to demonstrate as to how the petitioner is differently placed than the persons, referred supra. The non payment of benefits to the petitioner, who is similarly placed, would tantamount to gross discrimination and this Court is not in a

position to subscribe to the view taken by the respondent authorities in denying benefits to the petitioner.

21. For the foregoing reasons, the following order is passed:

- i. the writ petition is allowed and the impugned order in Na.Ka.No.1141/A1/2002, dated 31.10.2003 passed by the third respondent is set aside;
- ii. the respondent authorities are directed to fix the scale of pay from 01.06.1988 to 28.02.1990 and pay the salary for the said period and thereafter pay the salary in the Selection Grade from 01.03.1995 with all service and monetary benefits;
- iii. 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.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Director of Elementary Education,  
Chennai - 6.
2. The District Elementary Educational Officer,  
Tirunelveli.
3. The Assistant Elementary Educational Officer,  
Charanmahadevi,  
Tirunelveli District.
4. The Additional Assistant Elementary,  
Educational Officer,  
Kalakkadu, Tirunelveli District.

+1cc to M/S.CS Associates, Advocate, S.R.No.90996

W.P.No.2390 of 2004

CS/06/07/18