



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. (MD) No.95 of 2015

and

M.P. (MD) No.1 of 2015

WEB COPY

1. The Joint Director of Elementary Education,
Chennai-600 006.
 2. The District Elementary Educational Officer,
Tirunelveli.
- .. Appellants

Vs.

1. A.S.Abdul Khadar
 2. The Manager,
Masood Thaika Middle School,
Kadayanallur Tenkasi Taluk,
Tirunelveli District.
- .. Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order made in W.P.(MD)No.3513/2007, dated 15.06.2012 on the file of this Court.

Prayer in WP(MD). 3513/ 2007 :

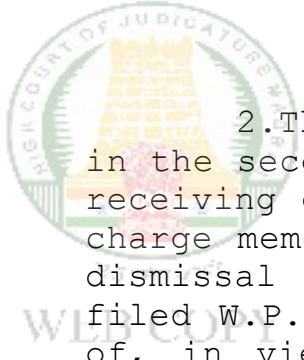
Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondnet in his proceedigns Na.Ka.No. 14457/A1/2007 dated 12/04/2005 and quash the same as illegal and cnsequentially to direct the 2nd respndnet to award selection grade in the post of Tamil pandit.

For Appellants : Mr.T.S.Mohamed Mohideen
Additional Government Pleader
For Respondent No.1 : Mr.Mohamed Imran
For M/S. Ajmal Associates
For Respondent No.2 : Mr.T.Pon Ramkumar

JUDGMENT

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

This writ appeal is directed against the order dated 15.06.2012 made in W.P.(MD)No.3513 of 2007 filed by the first respondent herein.



2. The first respondent herein was appointed as Tamil Pandit in the second respondent school on 01.06.1993. The said school is receiving grant in aid from the Government. He was issued with a charge memo. He was dismissed from service also. Challenging the dismissal order dated 23.04.1997, the first respondent herein filed W.P.No.15043 of 1997. The said writ petition was disposed of, in view of the compromise that was arrived at between the first respondent herein and the school management. The writ petition was disposed of on 07.03.2003. The first respondent herein was reinstated and he continued to work. He then submitted a representation to the District Elementary Educational Officer for awarding him selection grade on completion of 10 years. Since it was not considered, he moved this Court for consideration of his request for being awarded selection grade.

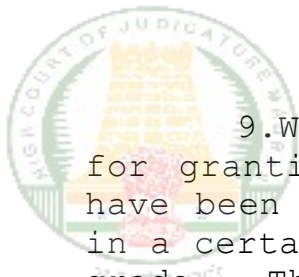
4. Pursuant to the direction given in the said writ petition, the District Elementary Educational Officer, Tirunelveli passed the order dated 12.04.2005 stating that the first respondent is not entitled to conferment of selection grade. Aggrieved by this order of non-conferment of selection grade. The first respondent herein filed W.P.(MD)No.3513 of 2007. The said writ petition came to be allowed by the learned single Judge by an order dated 15.06.2012. Hence the intra Court appeal at the instance of the Education Department.

5. Heard the learned counsel for the parties.

6. The learned counsel for the writ petitioner/first respondent herein would contend that the writ petitioner had joined service on 01.06.1993. He was removed from service on 23.04.1997. He challenged the order of dismissal from service. The said dismissal order was set aside in W.P.No.15043 of 1997. This was on account of the compromise effected between the writ petitioner and the school management. While allowing the writ petition, it was stated that the writ petitioner could be reinstated with effect from 16.06.2003 without back-wages but with continuity of service.

7. The contention of the writ petitioner that found favour with the learned single judge was that since continuity of service was ordered, the writ petitioner should be deemed to have been in service from 01.06.1993 and therefore on completion of 10 years therefrom, he was entitled to selection grade.

8. The stand of the department is that the writ petitioner was without employment from 23.04.1997 to 15.06.2003. During this period of non-employment, he did not earn any wages also. Therefore, the said period cannot be reckoned for computing the service for the grant of selection grade.



9. We are in agreement with the stand of the department that for granting selection grade, 10 years of actual service should have been put in. In other words, only a candidate who worked in a certain grade for 10 years can claim the benefit of selection grade. This selection grade is awarded to relieve the employees from stagnation.

10. In this case, the writ petitioner was given continuity of service, so that he can claim pensionary benefits. If there is break in service, then pensionary benefits would be affected. What should be counted for computing the period of 10 years for the grant of selection grade is actual service and not notional service. Therefore, we have no hesitation in holding that the learned Judge erred in not making the distinction between actual service and notional service.

10. Therefore, the order dated 15.06.2012 in W.P.(MD)No.3513 of 2007 is set aside. The writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

The Manager,
Masood Thaika Middle School,
Kadayanallur Tenkasi Taluk,
Tirunelveli District.

+1cc to Mr.T.Pon Ramkumar, Advocate SR.No.70475

+1cc to The Spl.Government Pleader Sr.No.71356

RMI/GNS

VB/KK/SAR2/07/09/0217/3P/4C

JUDGMENT MADE IN
W.A. (MD) No.95 of 2015
04.08.2017