

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.198 of 2014
and MP No.1 of 2014

1. The Director of School Education,
Chennai 6.
2. The District Educational Officer,
Sivagangai,
Sivagangai District. Appellants

versus

1. D.Mahamooda Beeve
2. The Correspondent,
Melapallivasal,
Girls Higher Secondary School,
Ilayangudi,
Sivagangai District. Respondents

Appeal filed against the order passed by this Court dated 28.03.2013 passed in W.P.No. 11401 of 2003.

WP.NO.11401/2003:

Issue a Writ of certiorarified mandamus or any other appropriate Writ or order or Direction, in the nature or Writ, calling for the records relating pertaining to the order passed by the second respondent in his proceedings Na.Ka.No.478/Aa1/97, dated 29.04.1997, as confirmed by the first respondent in his proceedings Mu.Mu.No.43313/D4/98, dated 16.11.1999, and the consequential order of the second respondent in Mu.Mu.No.1954/A1/97, dated 16.05.2000 and quash the same and direct the respondents to sanction to the petitioner the scale of pay applicable to the post of Special Grade Headmaster of Middle School and the corresponding revision in pension.

For Appellants : Mr.K.Karthikeyan
Government Advocate

For Respondents : Mr.P.Ganesan
for M/s.C.S.Associates for R1

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 28.03.2013 made in WP No.11401 of 2003. The Writ Petition was filed by the 1st respondent seeking issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the second appellant in his proceedings in Na.Ka.No.478/Aa1/97 dated 29.04.1997 and confirmed by the 1st respondent in his proceedings Mu.Mu.No.43313/D4/98 dated 16.11.1999 and the consequential order of the 2nd respondent dated 16.05.2000 quash the same and to sanction the scale of pay to the petitioner/ 1st respondent herein applicable to the post of Special Grade Headmaster of Middle School along with the corresponding revision in pension.

2. The 1st respondent was appointed as a Secondary Grade Teacher on 21.07.1960 in the Malapallivasal Middle School, Ilayangudi. She was promoted as Headmistress of Middle School on 06.12.1960, she was reverted as Secondary Grade Teacher on 11.09.1965 and again promoted as Headmistress on 18.06.1968, in which post she continued till 14.07.1969. The 1st respondent was again reverted as a Secondary Grade Teacher on 15.07.1969 and was promoted as Headmistress on 01.06.1971. The School came to be upgraded as High School on 09.06.1985 at the time of upgradation, the scale of pay for the post of Middle School Headmasters and BT Assistants in High School were identical.

3. The 1st respondent who was working as a Middle School Headmistress continued as a BT Assistant in the High School. When the recommendations of the Fifth Tamil Nadu Pay Commission were implemented, the Middle School Headmasters were given a higher scale of pay than that of BT Assistants. Inasmuch as the petitioner appellant was working as a Middle School Headmistress and she was forced to continue in the post of BT Assistant, in view of the upgradation of the School, the respondent had given a representation for sanction of scale of pay in the cadre of Middle School Headmaster. The said request was accepted and the respondent was given a Scale of pay in the cadre of Middle School Headmasters viz. Special Grade at Rs.2200/-

4. The 2nd respondent by his proceedings dated 29.04.1997, observed that the respondent is not eligible to get Special Grade Pay as a Middle School Headmistress as she was working in the cadre of BT Assistant and refixed her pay. As against the said order, the 1st respondent had filed an appeal before the 1st appellant. Even during the pendency of the Appeal, the respondent had filed WP No.4824 of 1998, but the same came to be dismissed with the direction to the 1st respondent to dispose of the Appeal as early as possible. Thereafter, the 1st appellant by an order dated 16.11.1999 rejected the claim of the 1st respondent and the 2nd appellant passed the consequential order of recovery dated 16.05.2000. It is these orders of the 1st appellant, rejecting the claim of the 1st respondent and the order of the 2nd appellant directing recovery that were challenged in the Writ Petition.

5. The Writ Petition was resisted by the appellant contending that on the upgradation of the School, the 1st respondent continued to work as a BT Assistant in the upgraded High School and therefore, she cannot claim pay of Headmistress of the Middle School. The learned Single Judge, who heard the Writ Petition relying upon the judgment of this Court in WP No.8421 of 1998, wherein, a similar case of a Middle School Headmaster was considered and this Court while setting aside the orders re-fixing the pay and directing recovery and directed to refund of the amount withheld from the 1st respondent in the said Writ Petition.

6. Finding that the issue in present Writ Petition viz. WP No.11401 of 2003 was squarely covered by the judgment in WP No.8421 of 1998, the learned Single Judge allowed the Writ Petition granting the prayer sought for with the direction to the authorities to settle the retirement benefits of the respondent within a period of six weeks from the date of receipt of a copy of the order.

7. Aggrieved the respondents 1 and 2 in the Writ Petition have come forward with this Appeal.

8. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants and Mr.P.Ganesan, learned counsel appearing for M/s. C.S.Associates, for the 1st respondent.

9. At the hearing of the appeal Mr.P.Ganesan, learned counsel appearing for the 1st respondent had submitted that the order dated 17.06.2006 made in WP No.8421 of 1998 has not been appealed against and has also been implemented by the Authorities.

10. The judgment in WP No.8421 of 1998, this Court had observed that the pay protection given to such Middle School Headmistress, who was forced to take up the Post of BT Assistant in view of the upgradation of the Schools by the Government letter dated 15.06.1988 and G.O.Ms.No.1178, Education Department, dated 22.12.1993 has also been extended to teachers of aided School by G.O.Ms. No.908 Education (Science Technology) dated 01.12.1995. It is based on the said Government Orders this Court had found that the petitioner therein who is similarly placed persons is entitled to pay protection. We, therefore, see no warrant to interfere with the judgment of the learned Single Judge that is impugned in the Writ Appeal.

11. The Writ Appeal is therefore dismissed. Granting eight (8) weeks time to the Authorities to comply with the direction, issued by the learned Single Judge in the order dated 28.03.2013. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Director of School Education,
Chennai 6.

2. The District Educational Officer,
Sivagangai,
Sivagangai District.

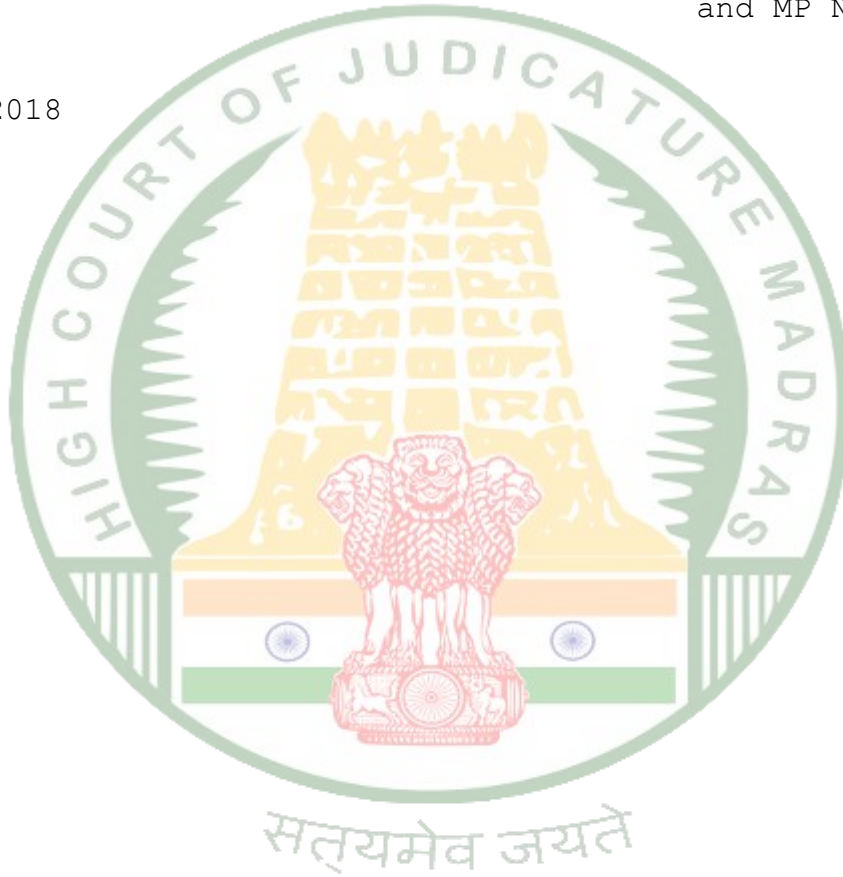
3. The Correspondent,
Melapallivasal,
Girls Higher Secondary School,
Ilayangudi,
Sivagangai District.

+1cc to Government Pleader sr.no.46189

+1cc to M/s.C.S.Associates, Advocate sr.no.46092

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nr 02/08/2018



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