

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2017

DELIVERED ON : 14.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.24509 of 2010

D.SELVAROSEBAI

.. Petitioner

Vs.

1 THE DIRECTOR OF ELEMENTARY EDUCATION
DPI COMPOUND, CHENNAI - 8.

2 THE DISTRICT ELEMENTARY EDUCATION OFFICER
NILGIRI DISTRICT.

3 THE ASSISTANT ELEMENTARY EDUCATION OFFICER
COODALUR, NILGIRIS DISTRICT.

4 THE HEADMASTER
PANCHAYAT UNION ELEMENTARY SCHOOL
KUNDRIL KADAVU
NILGRIS DISTRICT.

.. Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records pertaining to the Impugned Order in Na.Ka.No.919/A2/2010, dated 20.08.2010 on the file of the Respondent No.3 and quash the same as illegal and consequently refix the Special Grade Pay 10.06.2008 onwards and refix the salary as per the VI pay commission report.

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For Petitioner : Mr.S.Kumaresan

For Respondents: Mrs.K.Bhuvaneswari
Government Advocate

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order in Na.Ka.No.919/A2/2010, dated 20.08.2010 on the file of the third respondent, to quash the same as illegal and to consequently re-fix the Special Grade Pay 10.06.2008 onwards and re-fix the salary as per the VI Pay Commission report.

2. The facts in brief are as under: According to the petitioner, she joined as Secondary Grade Teacher in St.Francis Elementary School on 3.6.1988 and on completing 10 years of service successfully, she was accorded selection grade status on 3.6.1998. She continued in the said school till she put in her papers on 30.11.2006 on the eve of her getting selected to the Panchayat Union School, Kundrilkadal. The petitioner joined the said post on 7.12.2006 and said post was regularized on the same date.

3. It is the case of the petitioner that for the purpose of declaration of Selection Grade and Special Grade, the service rendered by the secondary grade teachers in various aided institutions can be taken into account. The petitioner applied for declaration of Special Grade vide application dated 25.6.2009. According to the petitioner, she had put in total service of 18 years 5 months and 28 days in the aided school and subsequently joined the government service on 7.12.2006 and, therefore, she became eligible for special grade from 10.6.2008.

4. The petitioner made another representation on 26.9.2009 to the third respondent and vide letter dated 15.9.2009, the petitioner was informed that her pay can be fixed as per G.O.Ms.No.234. Alleging that the same would cause great loss to the petitioner, she sent a representation to the first respondent on 10.8.2010. However, the second respondent vide proceedings dated 20.8.2010 fixed the Special Grade Pay with 3% addition to the existing pay of the petitioner.

5. Calling in question the said proceedings of the second respondent, the present writ petition is filed.

6. The learned counsel for the petitioner contended that the service rendered by the petitioner in aided school should be added for awarding of Selection and Special Grade status for Secondary Grade Teachers and non consideration of the same is arbitrary and unreasonable.

7. The learned Government Advocate appearing on behalf of the respondents reiterated the reasons that weighed with the respondent authorities in passing the impugned order and prayed for dismissal of the writ petition.

8. Heard the learned counsel on either side and perused the documents available on record.

9. It is not in dispute that the petitioner was initially appointed as a Secondary Grade Teacher at St. Francis Xavier Aided Primary School, Pandalur, and she joined duty on 3.6.1988. She admittedly completed ten years of service and was awarded selection grade in the post of Secondary Grade Teacher on 3.6.1998. She was appointed as Secondary Grade Teacher in Panchayat Union Primary School in the same District and she joined government service on 7.12.2006.

10. At this juncture, it is apposite to refer to the relevant portion of G.O.Ms.No.992, Education Department, dated 22.6.1979, which reads as under:

"... The Director of School Education has brought to the notice of the Government that certain Chief Educational Officers had not agreed to take into account the services rendered by School Assistants in various schools prior to their resignation from schools concerned and thus deprived them from the concession of getting selection grade on completion of 10 years of services.

3. The Director of School Education had also stated that the rules obtaining in respect of Panchayat Union School Teachers and Municipal School Teachers do not permit the benefit of past services in the case of teachers who resigned from one management school or from a Panchayat Union school of Municipal School. He has therefore suggested that the relevant rules may be suitably modified to avoid discrimination among the teachers in this regard. The Director of Rural Development and Inspector of Municipalities have also agreed with the suggestion of the Director of School Education.

4. The Government have carefully examined the (sic) and have decided that the relevant Panchayat Union Council Establishment Rules and the relevant Tamil Nadu Municipal Educational Service Rules be amended suitably to ensure the past services rendered by teacher prior to his/her resignation from one management school or from a Panchayat

Union School or from a Municipal School are taken into account for the period of 10 years of service required for grant of grade. Pending issue of amendment to the Panchayat Union Establishment Rules and the Tamil Nadu Municipal Rules, the Government direct that the services rendered by a teacher under all kinds of managements, viz., Government Panchayat Municipal Corporation and aided agencies and also (sic) under the control of Director of Backward Classes and of Harijan and Tribal Welfare prior to his/her resignation, termination, transfer or migration should be counted for the required period of 10 years of service for the purpose of granting selection grade in that post excluding the period of breaks if any."

11. On a perusal of the government order, supra, it is explicitly clear that the service rendered in the aided agencies should also be counted for the required period of ten years of service for the purpose of granting Selection Grade in the post. If the said service is also taken into account, as it should rightly be done, the petitioner is entitled to the benefit of special grade from 10.6.2008, as claimed.

12. It is the say of the respondent authorities that inasmuch as the petitioner had resigned from service in the aided school, he is not entitled to the benefit. However, in the counter affidavit filed in W.P.No.30102 of 2004 (S.Piichainathan v. The Chief Educational Officer, Dindigu and another), the categorically stated that "one Viman was previously appointed as a B.T.Assistant in Government Aided School on 14.12.1983, i.e., prior to the appointment of the petitioner as B.T.Assistant on 24.2.1986, and such service rendered in aided agencies needs to be counted in the light of G.O.Ms.No.992, Education Department, dated 22.6.1979, and, therefore, the order passed by the respondent authorities does not warrant interference".

13. The respondent authorities should not treat equals as unequals. They should not adopt different yardstick in respect of different persons, who are all Secondary Grade Teachers. The Government order makes it clear that it applies to teachers who resigned from aided schools and joined in government service. Therefore, the claim of the petitioner is squarely governed by G.O.Ms.No.992, Education Department, dated 22.6.1979 issued by the government.

14. In the result, the writ petition is allowed and the impugned order in Na.Ka.No.919/A2/2010, dated 20.08.2010 is set aside and the respondent authorities are directed to re-fix the Special Grade Pay 10.06.2008 onwards and re-fix the salary as per the VI Pay Commission report, more so in the light of G.O.Ms.No.992, Education Department, dated 22.6.1979. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs
To

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KUNDRIL KADAVU
NILGRIS DISTRICT.

+1cc to Mr.S.Kumaresan, Advocate Sr.64092

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srg 01/10/2018