

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.07.2019

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.32645 of 2018

&

W.M.P.No.37856 of 2018

G.Rufus David

...Petitioner

vs.

- 1.The Secretary to State Government,
Department of School Education,
Fort St.George, Chennai - 09.
- 2.The Chief Educational Officer,
Niligiri District,
Additional Collector's Office Complex,
Finger Post, Udagamandalam,
The Nilgiris - 643 101.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus after calling for the records of the second respondent pertaining to his proceedings in Na.Ka.No.5953/A4/2018 and quash the order dated 15.11.2018 and consequently direct the respondents to re-fix the pay of the petitioner as per the directions issued in G.O.Ms.No.367, Education, Science and Technology Department dated 30.03.1984.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.K.Karthikeyan, G.A.

ORDER

The petitioner was appointed as Secondary Grade Assistant at C.S.I. Higher Secondary School, Ketti, The Nilgiris in an existing vacancy. The school was a fully aided school and his appointment was duly approved by the Competent Authority. At the time of his appointment, he was placed in the pay scale of 1200-2040. From 01.07.1994 to 02.01.1999, the petitioner had worked in various aided schools without any break. In 2009, the pay

scales were revised on the basis of recommendations of 6th Pay Commission and the petitioner was receiving Rs.16,650/- as salary in the pay scale of 9,300-34,800 with the grade pay of 4,300/-.

2. In 2008, the petitioner was selected by the Tamil Nadu Teachers' Recruitment Board for appointment as B.T. Assistant, by proceedings of the Joint Director of School Education, dated 29.12.2008. He was posted as BT Assistant at the Government High School, Aravenu, Nilgiris District. At the time of his appointment, his salary was fixed in the pay scale of Rs.5,500-9,000. This was a pre-revised scale before implementation of 6th Pay Commission. However, on implementation of 6th Pay Commission, the pay scale was revised and he was placed in the Grade Pay of 4,600/-, by not taking into consideration the 14 ½ years of service by the petitioner in various aided schools earlier.

3. The petitioner therefore submitted a representation on 16.07.2009 requesting that his pay scale must be revised on par with the pay scale which he was receiving while he was working in the aided schools. In response to the representation, a letter was issued on 27.07.2009, stating that proof for his earlier service should be submitted. Thereafter, repeatedly the petitioner has been sending representations and his last pay drawn certificate was also issued on 22.02.2010 by the school, in which he was working at that point of time. Subsequently, the service record along with the last pay drawn certificate was also produced before the Head Master, Government High School, Aravenu, Nilgiris District, reiterating his request for re-fixation of his pay scale. In the meanwhile, the petitioner was transferred to Government High School, Milithane in Nilgiris. There also the petitioner submitted reminders on 07.11.2013 and 12.02.2014.

4. Since, no response was forthcoming from the Authorities concerned, the petitioner was constrained to approach this Court in W.P.No.18738 of 2018. This Court considering the claim of the petitioner, disposed of the writ petition on 24.07.2018, issuing direction as under;

"In such premises, after hearing the counsel for the petitioner as well as for the respondents, this Court disposes of this Writ Petition with the direction to the second respondent to dispose of the representation of the petitioner dated 01.04.2013 to revise his salary in the light of the directions given in G.O.Ms.No.367, Education, Science and Technology Department dated 30.03.1984 but in accordance with law, if there is no other legal impediment on the same, within a period of

six weeks from the date of receipt of a copy of this order. But, this Order of this Court shall not be treated as a mandate of this Court on the merit of the representation in any manner."

5. In pursuance of the direction of this Court as above, the second respondent issued a communication dated 15.11.2018 rejecting the request of the petitioner, without considering his request in terms of G.O.Ms.No.367, Education, Science and Technology Department dated 30.03.1984. According to the impugned order, since the petitioner was appointed in the Government Aided School on his own wish and volition, he was not eligible for re-fixation of pay. The said rejection order is put to challenge in the writ petition.

6. Shri. Siva Kumar, the learned counsel appearing for the petitioner would submit that the reason as given in the rejection order appears to be quite strange and unreasonable that any teacher, who worked in aided school, would always like to migrate to Government School and such conduct on the part of any teacher cannot be the basis for denial of proper pay scale to the teacher concerned. In this case, as anyone could do, the petitioner was appointed as Government Teacher and therefore, he joined the Government service. Earlier to that, for 14½ years, the petitioner served in Government Aided Schools continuously without any break. Therefore, in all fairness, the respondents ought to have considered that service and ought to have taken that into account while fixing the pay scale of the petitioner on par with his counter parts. Unfortunately, the respondents have come up with specious reasoning for denying the benefits to the petitioner for proper pay scales.

7. Notice was ordered in the writ petition and on behalf of the respondents Mr. K. Karthikeyan, learned Government Advocate entered appearance.

8. Mr. K. Karthikeyan, the learned Government Advocate would submit that since the petitioner has migrated to Government service on his own wish, his past services cannot be counted for the purpose of fixation of his pay scale. According to the learned Government Advocate, the past service of the petitioner could be included only for pensionary benefits and could not be included for the purpose of fixation of his pay. In effect, what is stated in the impugned order is what is reflected in the entire counter affidavit.

9. This Court, after considering the arguments of both sides, is unable to appreciate the stand of the respondents that the petitioner is not entitled to fixation of proper pay scale on par with other similarly placed teachers only because of the fact that he had, on his own wish, went to Government service,

after rendering 14½ years of continuous service in aided schools. This Court is unable to comprehend such objection being raised, that too, seriously by the Government. Any teacher, who worked in aided school, would always like to migrate to Government service for betterment of their service benefits and career. Such option exercised by the petitioner cannot be put against him and on that basis, the denial of pay scale on par with other similarly placed teachers, would be grossly discriminatory and would cause grave injustice to the interest of the petitioner. In fact the improper fixation of pay scale, without taking into account the past service of the petitioner in the aided schools, would amount to violation of equality clause enshrined in Article 14 of the Constitution of India.

10. In fact while rejecting the claim of the petitioner, the Authorities have not taken into consideration the contents of G.O.Ms.No.367, Educational, Science and Technology Department dated 30.03.1984. According to the said Government Order, the appointment of Higher Grade teacher in upgraded post of Secondary Grade Teacher, is also entitled to fixation of pay under FR 22(B) and the benefit of the orders referred to in paragraph (1) of the Government Order would also be extended to these appointments as well. Unfortunately, it appears that the Authority has not applied his mind properly with reference to the contents of the said Government Order and has simply denied only on specious reasoning that the petitioner has migrated to Government Service on his own wish. This Court is unable to find such reasoning has any meaning at all with relation to the claim of the petitioner herein. On the whole, it appears that the basis of the rejection is wholly unjustified, not acceptable and the same has to be rejected outright.

11. Therefore, this Court is of the view that the petitioner is entitled to proper fixation of pay on the basis of his last pay drawn, before his appointment in Government service.

12. In the above said circumstances, the impugned order passed by the second respondent/Chief Educational Officer, in his proceedings in Na.Ka.No.5953/A4/2018 dated 15.11.2018 is hereby set aside and there shall be consequential direction to the respondents to fix the pay of the petitioner, after taking note of his last pay drawn before his migration to the Government service, in terms of G.O.Ms.No.367, Education, Science and Technology Department dated 30.03.1984 and pay arrears of differential pay to the petitioner on such re-fixation.

13. The first and second respondents are directed to pass appropriate orders in compliance with the above direction within a period of four weeks from the date of receipt of copy of this order.

14.In the result, the writ petition is allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

mrm/msk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to State Government,
Department of School Education,
Fort St.George, Chennai - 09.

2.The Chief Educational Officer,
Niligiri District,
Additional Collector's Office Complex,
Finger Post, Udagamandalam,
The Nilgiris - 643 101.

+1cc to Mr.R.Sivakumar, Advocate, SR.No.61154

+1cc to the Govt.Pleader, Vide Sr.No.60746

W.P.No. 32645 of 2018

Kak(16/09/2019)

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