



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.452 of 2016

A.Rose Pauline

... Petitioner

-Vs-

1.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

2.The Assistant Elementary Educational Officer,
Kalaiyarkovil, Sivagangai District.

3.The Headmaster,
Panchayat Union Primary School,
Kadambankulam, Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent vide his proceedings in Na.Ka.No.871/A1/2015, dated 07.12.2015 and quash the same and consequently, direct the respondents to refix the petitioner's salary on the basis of the petitioner's last pay drawn in R.C.Primary School, C.K.Mangalam, Ramanathapuram District as well as in the light of the proceedings of the AEEO Sivagangai in Na.Ka.No.3033/A1/2013, dated 25.05.2013, within a time fixed by this Court.

For Petitioner : Mr.A.L.Kannan

For R1 and R2 : Mr.M.Karuppasamy,
Government Advocate.

ORDER

The order of the second respondent dated 0712.2015 is sought to be quashed in the present Writ Petition. Further direction is sought for to direct the respondents to refix the petitioner's salary on the basis of the petitioner's last pay drawn in R.C.Primary School, C.K.Mangalam, Ramanathapuram District as well as in the light of the proceedings of the AEEO Sivagangai in Na.Ka.No.3033/A1/2013, dated 25.05.2013, within a time fixed by this Court.



2. According to the petitioner, she was appointed as Secondary Grade Assistant in R.C.Primary School, C.K.Mangalam, Ramanathapuram District in the year 1999. In the year 2009, she got selected in the third respondent School. Before selection, she applied to the AEE0, Thiruvadanai and obtained permission to relieve her from the aided School. Accordingly, the AEE0, Thiruvadanani, has relieved the petitioner and the petitioner has joined in the third Respondent School. The said request was also accepted by the School authority. She was relieved on 28.07.2009 and she joined in the third respondent School on 29.07.2009 without any break. The petitioner was allowed to be a subscriber of old provident fund account and continued in the old pension scheme. The second respondent, by the proceedings dated 25.06.2013, has taken into account the past service rendered by the petitioner in the aided School from 01.09.1999 to 28.07.2009 and the petitioner was awarded selection grade in the post of Secondary Grade Teacher. However, the second respondent did not take into account the salary received by the petitioner in the private school. The petitioner's last drawn salary in aided school was Rs.14,160/-, whereas, now, she is receiving only Rs.12,260/-, after periodical increments and allowances. In the case of D.Narayanasamy, similarly placed Secondary Grade Teacher like that of the petitioner herein, his salary was fixed in Government School taking into account the past service rendered by him in a private aided school. The petitioner gave representation to the respondents 1 and 2 to fix her salary, taking into account the salary received by her in the private aided School. She has mentioned the case of D.Narayanasamy as well as one Velmurugan, who are paid salary, taking into account their past service rendered in the aided school and taking into consideration of the last drawn salary received by them in the aided School. Since no order has been passed on the representation, the petitioner has filed W.P.(MD)No.18806 of 2015, to direct the respondents to refix the petitioner's salary, wherein this Court, by the order dated 14.10.2015, has directed the respondents to consider the representation of the petitioner.

3. The second respondent, by the impugned order dated 07.12.2015, has rejected the claim of the petitioner on the ground that there is no provision for fixing the salary, taking into account the service rendered in the private school and to pay last drawn salary received in the aided school. Challenging the said impugned order, the petitioner has come out with the present Writ Petition.

4. The learned counsel appearing for the petitioner contended that the petitioner sought permission to be relieved from the private aided school to join in the third respondent School. The AEE0, Thiruvadanani, has permitted the petitioner to be relieved and the School management also relieved the petitioner on 28.07.2009. The second respondent, after taking into account the



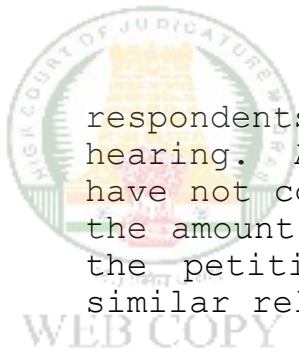
past service rendered by the petitioner, ordered for payment of Provident Fund, Pension and has also granted Selection Grade. Having done so, the impugned order of the second respondent, rejecting the claim of the petitioner to take into account the last drawn salary by the petitioner, is arbitrary and invalid, when similarly placed persons were granted scale of pay, taking into account the salary received by them in the previous school. The petitioner is also entitled for receiving salary, taking into account the last drawn salary received by her in the aided school at the time when she was relived. The learned counsel appearing for the petitioner has relied on the order of this Court dated 16.08.2017, made in W.P.No.31114 of 2013 and the proceedings issued by the AEE0, Kunnoor, dated 11.03.2013.

5.The first respondent has filed counter affidavit. The learned Government Advocate appearing for the respondents 1 and 2 submitted that as per the Government Order, the past service rendered by a teacher in a private school will be taken into account only for granting pensionary benefits and for payment of Provident Fund, Pension, granting Selection Grade and Special Grade. When a teacher is appointed in a new School, scale of pay will be fixed only at the entry level. As far as the said D.Narayanasamy's case is concerned, his salary was wrongly fixed and already administrative order was passed for recovery of excess amount and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and perused the materials available on record carefully.

7.From the materials on record, it is seen that the petitioner, who was working as Secondary Grade Teacher in a private School from 01.09.1999 to 28.07.2009, got appointment in the year 2009 in the third respondent School. The AEE0, Thiruvadanai, on the application of the petitioner, has permitted the petitioner to relive on 28.07.2009. The petitioner has joined in the third respondent School on the next date ie., 29.07.2009. The past service of the petitioner is taken into account for pensionary benefits, payment of Provident Fund, as well as for granting Selection Grade. When the past service is taken into account for the above benefits, the impugned order of the second respondent, rejecting the request of the petitioner to take into account the last drawn salary in the previous School for fixing of scale of pay in the third respondent School, is erroneous. The learned Government Advocate appearing for the respondents 1 and 2 stated that the salary of the said D.Narayanasamy was wrongly fixed and orders were passed for recovery of the excess amount. On the other hand, the learned counsel appearing for the petitioner has produced the copy of the order dated 16.08.2017 made in W.P.No.31114 of 2013, which was filed by the said Narayanasamy, challenging the order of

<https://hseverecourt.gov.in/hseverecourt/> in this Court has remanded the matter to the



respondents to pass orders on merits, after affording opportunity of hearing. After various orders passed by this Court, the respondents have not conducted any enquiry and not passed any orders, recovering the amount from the said Narayanasamy and the same is applicable to the petitioner also. The petitioner is also entitled for the similar relief.

8.In view of the order dated 16.08.2017 passed in W.P.No.31114 of 2013, the impugned order of the second respondent dated 07.12.2015, is set aside. This Writ Petition is allowed, directing the respondents 1 and 2 to refix the petitioner's salary, on the basis of the her last pay drawn in R.C.Primary School, C.K.Mangalam, Ramanathapuram District as well as in the light of the proceedings of the AEEO Sivagangai, in Na.Ka.No.3033/A1/2013, dated 25.05.2013. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Myr

To

1.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

2.The Assistant Elementary Educational Officer,
Kalaiyarkovil, Sivagangai District.

3.The Headmaster,
Panchayat Union Primary School,
Kadambankulam, Sivagangai District.

+1 CC to M/s.AL.KANNAN, Advocate (SR-102103[F] dated 28/11/2019)

+1 CC to M/s.SPL GP (SR-102413[F] dated 28/11/2019)

W.P. (MD) No.452 of 2016
27.11.2019

JMN (31.12.2019) 4P : 6C