

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21-09-2020

Judgment Delivered on: 16-10-2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Appeal No.3868 of 2019
and
C.M.P.No.24323 of 2019
--

1. The Secretary to State Government
Department of School Education
Fort St. George
Chennai - 600 009
2. The Chief Educational Officer
Nilgiris District
Additional Collector's Office Complex
Finger Post, Udagamandalam
The Nilgiris - 643 101 .. Appellants/Respondents

Versus

G. Rufus David .. Respondent/Petitioner

Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 16.07.2019 passed by the learned Single Judge in WP No. 32645 of 2018 on the file of this Court.

Prayer in W.P.No.32645/2018:

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 Appellants : Mrs.Narmadha Sampath
Additional Advocate General
assisted by Mr.A.Rajaperumal
Additional Government Pleader

For Respondent : Mr.R.Sivakumar

JUDGMENT

R. SUBBIAH, J

This appeal is filed by the State as against the order dated 16.07.2019 passed by the learned Single Judge in W.P. No. 32645 of 2018.

2. The said Writ Petition was filed by the respondent herein to set aside the proceedings dated 15.11.2018 of the second appellant herein and for a consequential direction to the appellants to re-fix his pay as per G.O.Ms.No.367, Education, Science and Technology Department, dated 30.03.1984. The learned Single Judge allowed the Writ Petition by setting aside the proceedings dated 15.11.2018 of the second appellant herein, with a direction to the appellants to pass appropriate orders by taking note of the last pay of the respondent 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 him on such re-fixation.

3. For the purpose of disposal of this Writ Appeal, the facts, as pleaded by the respondent in the writ petition filed before the learned Single Judge, are to be examined.

4. According to the respondent/writ petitioner, he was appointed as Secondary Grade Assistant on 28.06.1994 and posted at C.S.I. Higher Secondary School, Ketty, The Nilgiris District. Such appointment of the respondent/writ petitioner was approved by the District Educational Officer, Coonoor. At the time of appointment of the respondent, his scale of pay was fixed at Rs.1200-30-1560-40-2040. From 01.07.1994 to 02.01.2009, the respondent worked at various aided schools without any break. In the year 2006, upon completion of 10 years of service, the respondent/writ petitioner was also conferred with Selection Grade in the post of Secondary Grade Teacher. During the year 2009, while giving effect to the benefits of the VI Pay Commission fixation, the scale of pay of the respondent/writ petitioner was revised as Rs.16,650/- in Pay Band-2 in the scale of Rs.9300-34800 with a Grade Pay of Rs.4,300/- with retrospective effect from January 2006. According to the respondent, as on 02.01.2009, the respondent/writ petitioner was working as Selection Grade Secondary Grade teacher without any break.

5. When the respondent/writ petitioner was working as Secondary Grade Teacher, during December 2008, the Tamil Nadu Teachers Recruitment Board issued a Notification calling for applications for appointment to the post of B.T. Assistant. In response, the respondent/writ petitioner applied for such post and got selected. On such selection, by proceedings dated 29.12.2008 of the Joint Director of School Education, the scale of pay of the respondent was fixed at Rs.5500-175-9000 in the pre-revised scale, which was by way of recommendation of the VI Pay Commission implementation, as per which, the respondent/writ petitioner was paid Rs.14,630/- as Basic Pay with applicable Grade Pay, which was lower than the one he was drawing before his migration. Further, on such appointment, the respondent/writ petitioner was relieved from the Aided School on 02.01.2009, which was also duly approved by the District Educational Officer, Gudalur. On the next day, i.e. on 03.01.2009, the respondent/writ petitioner joined the new post of B.T. Assistant, and thus, there was no break in service. According to the respondent/writ petitioner, his appointment to the post of B.T. Assistant was neither by way of promotion, nor by way of direct recruitment. As per Rule 3 (1) (IV) of The Special Rules for Tamil Nadu School Education, the appointment of the respondent/writ petitioner shall be considered to be an appointment by way of transfer of service from a class which carries identical scale of pay.

6. It is contended that the Government issued G.O.Ms.No.992, Education Department, dated 22.06.1979, ordering that the service rendered by a Teacher in a School either under the Corporation or Aided Agencies and also in Schools under the control of Director of Backward Classes, Director of Harijan and Tribal Welfare prior to his/her resignation, termination, transfer or migration, shall be counted for reckoning the required period of 10 years of service for the purpose of grant of Selection Grade in that post, excluding the period of break in service, if any. Reference was also made to G.O. Ms.No.367, Education Department, dated 30.08.1984, wherein it has been specifically directed that the benefit of the Fundamental Rules in F.R.22-B (for short, 'F.R'), shall be applicable to the staff employed in the Recognised Schools under the management of aided agencies and local bodies. Therefore, it is contended that the respondent/writ petitioner is eligible for pay protection, as contemplated under F.R.22-B. By stating as above, the respondent/writ petitioner submitted a representation on 16.07.2009 to The Headmaster of Government High School, Aravenu, seeking to revise his scale of pay on par with the scale of pay which he was receiving while he was working at the Aided School. By way of reply, a communication dated 27.07.2009 was sent calling upon the respondent-writ petitioner to produce the Service Records pertaining to the period of service rendered in the Aided School. After repeated demands made by the respondent-

writ petitioner, the School where he worked, had issued the Service Records and last drawn pay certificate on 22.02.2010. Immediately, the respondent-writ petitioner forwarded the same to the Headmaster of the School and reiterated his request for re-fixation of his scale of pay. However, there was no response and the respondent/writ petitioner was therefore constrained to send representations, dated 01.04.2013, 07.11.2013 and 12.02.2014. Thereafter, the respondent/writ petitioner filed W.P.No.18738 of 2015 before this Court and it was disposed of on 24.07.2018 with a direction to the appellants to consider his representations and pass orders thereon within a period of six weeks. Pursuant to such direction issued by this Court, the second appellant passed the order dated 15.11.2018, rejecting the claim of the respondent/writ petitioner for re-fixing his scale of pay by stating that since the respondent/writ petitioner joined the post of B.T.Assistant on his own wish, he is not eligible for re-fixation of his scale of pay. Aggrieved by the aforesaid order dated 15.11.2018, the present Writ Petition No.32645 of 2018 was filed before the learned Single Judge by the respondent herein (writ petitioner).

7. Repudiating the averments made in the affidavit filed in support of the writ petition, the appellants herein have filed a counter affidavit stating that the scale of pay of the respondent cannot be re-fixed by taking into account the services rendered by him in the Aided School, inasmuch as the respondent/writ petitioner got appointed to the post of B.T. Assistant in Government service on his own wish. If at all, the service benefits rendered by the respondent/writ petitioner in the Aided School, can be taken into account only for the purpose of conferring pensionary benefits. It was further stated that G.O.Ms.No.367, Education Department, dated 30.08.1984 relied on by the respondent/writ petitioner is not applicable to his case. Therefore, the appellants prayed for dismissal of the Writ Petition.

8. The learned Single Judge, after hearing the learned counsel for both sides, allowed the writ petition on 16.07.2019 with the following observations:-

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."

9. Mrs.Narmada Sampath, learned Additional Advocate General appearing for the appellants contended that the respondent/writ petitioner was appointed as Secondary Grade Assistant in an aided Higher Secondary School in the year 1994. Having appointed in an aided school as a Teacher, the service of the respondent/writ petitioner is governed by the Tamil Nadu Recognised Private School (Regulation) Rules, 1974. Subsequently, the respondent/writ petitioner was selected by the Teachers Recruitment Board as B.T. Assistant and posted in the Government School during the year 2008. The service of the respondent/writ petitioner, on his appointment as B.T. Assistant, is governed by the Tamil Nadu Educational Subordinate Service Special Rules as per G.O.Ms.No.753, School Education Department, dated 15.07.1985. Thus, the service rendered by the respondent in an Aided School and his subsequent service as B.T. Assistant in a Government School, are governed by two different service Rules and therefore, the claim of the respondent/writ petitioner for pay protection is untenable. It is further stated that G.O.Ms.No.367, Education, Science and Technology Department, dated 30.03.1984, relied on by the respondent/writ petitioner, is not applicable to his case. The said Government Order relates to promotion to higher posts for Higher Grade Teachers working in Government Schools, for those who were absorbed as Secondary Grade Teachers, after completion of three months special training. The respondent/writ petitioner, who was initially appointed in an Aided School, cannot be conferred with the benefits given in the said G.O.Ms.No.367, dated 30.03.1984. Even otherwise, the claim of the respondent/writ petitioner for re-fixation, cannot be done, in view of Ruling No.6 of F.R.22-B.

10. According to the learned Additional Advocate General, if a Government servant, who is already in a post, is appointed to another post through the Tamil Nadu Public Service Commission by direct recruitment and when the mode of his appointment is treated as a fresh recruitment, he should be allowed to draw the minimum time scale of pay fixed in the new post to which he was appointed. Further, the service of the respondent/writ petitioner in the Aided School was ordered to be considered for the purpose of conferment of pensionary benefits alone on his retirement. However, his claim for re-fixation of his scale of pay on the basis of the past service rendered in an Aided School, is legally untenable. The respondent/writ petitioner, who was appointed in an Aided School, cannot seek for re-fixation of his pay on par with the scale of pay he had drawn in the unaided School, after his fresh appointment in the

Government service. The learned Single Judge, without considering the aforesaid facts, had allowed the Writ Petition filed by the respondent and it calls for interference by this Court.

11. Countering the above submissions of the learned Additional Advocate General, the learned counsel for the respondent/writ petitioner contended that the post of School Assistant/B.T. Assistant/Secondary Grade Teacher are governed by Special Rules for Tamil Nadu Educational Subordinate Service. The post of Secondary Grade Teacher held by the respondent/writ petitioner in an Aided School, is the feeder category post for promotion to the post of School Assistant/B.T. Assistant. The appointment of the respondent/writ petitioner as School Assistant/B.T. Assistant was neither by way of promotion, nor by way of direct recruitment. According to the learned counsel appearing for the respondent/writ petitioner, Rule 3(I)(IV) of the Special Rules for Tamil Nadu Educational Subordinate Service, which deals with appointment to several classes and categories of the services, reads as follows:-

"3.Appointment:- (a) Appointment to the several classes and categories of the service shall be made as follows:-

Class and Category (1)	Method of Appointment (2)
Class I	
1.Deputy Inspectors of Schools and School Assistants	(i) (ii) (iii)..... (iv)Transfer from any class or category in the service on an identical scale of pay; or (v)"

12. According to the learned counsel for the respondent/writ petitioner, the appointment of the respondent as B.T. Assistant in the Government service, falls under the above said Clause 3 (iv) relating to method of appointment. As per the said class, appointment shall also be made by way of transfer from any class or category in the service on an identical scale of pay. According to the learned counsel for the respondent-writ petitioner, prior to the appointment of the respondent/writ petitioner as B.T. Assistant, he was drawing Selection Grade Secondary Grade Assistant's pay, which is equivalent to that of the pay of a B.T.Assistant. By relying upon G.O.Ms.No.992, Education Department, dated 22.06.1979, it is contended that the service rendered by a Teacher in a School under the Corporation and Aided Agencies and also in schools under the control of Director of Backward Classes, Director of Harijan and Tribal Welfare prior to his or her resignation, termination, transfer

or migration, shall be counted for reckoning the required period of 10 years of service for the purpose of granting Selection Grade in that post, excluding the period of break, if any, in such service. Therefore, as per the aforesaid G.O.Ms.No.992, dated 22.06.1979, the service rendered by the respondent-writ petitioner in the Aided School, shall also be counted for the purpose of granting Selection Grade in the post of B.T.Assistant. Above all, F.R.22.B adequately protects the pay of the respondent/writ petitioner. Even as per G.O.Ms.No.367, Education Department, dated 30.03.1984, the benefit of FR 22-B shall be conferred on the staff employed in all recognised schools under the management of Aided Agencies and local Bodies. Therefore also, the claim of the respondent-writ petitioner for re-fixation of his pay is well founded on the basis of the aforesaid Government Order and therefore, the learned counsel for the respondent prayed for dismissal of the Writ Appeal.

13. We have heard the learned counsel appearing for both sides and perused the materials placed. The learned counsel for the respondent/writ petitioner vehemently contended that the respondent/writ petitioner is entitled for re-fixation of his pay on the basis of G.O.Ms.No.367, Education, Science and Technology Department, dated 30.03.1984. In the said Government Order, it has been stated as follows:-

"Government of Tamil Nadu

Abstract

Schools - Promotion to Higher Posts - Minimum increase of 5% in pay - Applicability to schools under aided and local bodies - Orders - Issued.

"Department of Education Science & Technology

G.O.Ms.No.367

Dt. 30.03.84

Read:

1. G.O.Ms.No.588, Personnel & Administrative Reforms (FR.I) Department, dt. 6.6.1981.
2. Letter No.55146, Personnel & Administrative Reforms (FR.I) Department, dt. 21.11.1981
3. From the Director of School Education Letter No.359254/D2/82, dated 10.12.1982 and 12.1.1983.

In the G.O. read above, orders were issued to the effect that on promotion to higher post in the same service or appointment to another service by the method of recruitment by transfer involving higher responsibilities, the pay of the Government servant shall be fixed under the relevant provisions under the Fundamental Rules and that, if such

fixation to a higher post carrying higher responsibility confers monetary benefit of less than 5% over his pay in the lower post, his pay shall be fixed in the higher post in such a way so as to ensure a minimum benefit of atleast 5% over his pay in the lower post. The Government have also issued certain clarifications on the applicability of the above order, in their letter read above.

2. It has been brought to the notice of the Government that the above benefit has not been given to the teachers working in schools under the management of aided agencies and local bodies. The Government now direct that the above orders will be applicable to the staff employed in all recognised schools under the management of aided agencies and local bodies.

3. It is also been represented to Government that higher grade teachers who are appointed in the upgraded post of Secondary Grade Teachers sanctioned with reference to the orders in G.O. Ms. No.699, Education dated 25.04.1979 may be given the benefit of fixation of pay under F.R.22 (B). The procedure enunciated under F.R. 22 (B) for fixation of pay can be applied when the appointment is made by promotion to higher posts involving higher responsibilities. As per Rule 2 (a) of the Special Rules for the Tamil Nadu Educational Sub-Ordinate Service, the post of secondary grade teachers shall be filled in by promotion from the category of higher grade teachers, as the post of Secondary Grade Teacher carries a higher pay of Rs.350-10-420-15-600 with higher duties and responsibilities than the post of Higher Grade Teacher which carry the scale of pay of Rs.280-5-320-10-450. Therefore, the higher grade teachers upgraded as Secondary Grade Teachers as per the order in G.O. Ms. No.699, Education dated 25.04.1979 are appointed as Secondary Grade Teacher by promotion from the category of Higher Grade Teacher as per rules, as upgradation is not a method of appointment under the said rules. Therefore, the Government direct that the appointment of Higher Grade Teachers in upgraded posts of Secondary Grade Teacher sanctioned with reference to the orders in G.O. Ms. No.699, Education dated 25.04.1979 be entitled for fixation of pay under F.R.22 (B) and the benefit of the orders referred to in para 1 above be extended to these appointments also. However, such fixation of pay in the upgraded post of Secondary Grade Teachers can be done only after getting a certificate from the Deputy Inspectors of

Schools concerned to the effect that the teachers concerned are actually handling higher responsibilities similar to those of any other secondary grade teachers, consequent on the upgradation of their posts. This order will apply to the teachers employed in all schools under all kinds of managements viz., Government Aided and Local Bodies."

14. It is evident from the aforesaid order passed by the Government that the service rendered by a Government servant, in the same service or to another service by method of recruitment by transfer, is entitled for re-fixation of pay. In Para No. 2 of the above Government Order, it has been clearly stated that the above order will be applicable to the staff employed in all recognised schools under the management of aided agencies and local bodies. Therefore, the respondent/writ petitioner, who was appointed earlier in an aided school, is entitled for the benefit of re-fixation on his appointment to the post of B.T. Assistant in Government Service. Therefore, as per the order passed by the Government, mentioned supra, the service rendered by the respondent-writ petitioner in an Aided School shall be counted for the purpose of fixation of his pay on his appointment to the post of B.T. Assistant. The appointment of the respondent/writ petitioner to the post of B.T. Assistant is by way of transfer of appointment and he cannot be treated as a fresh appointee in the post of B.T. Assistant. This is also in tune with Rule 3(I)(IV) of the Special Rules for Tamil Nadu Educational Subordinate Service. In such circumstances, it cannot be contended by the appellants that the respondent's appointment as B.T. Assistant is as per his own wish and he is not entitled for protection of his pay. When the appellants have decided to count the past service of the respondent/writ petitioner for the purpose of conferment of pensionary benefits on his retirement, equally, the same yardstick has to be resorted to by the appellants for re-fixation of his pay during the course of his service as B.T. Assistant. It is to be noted that, as on 02.01.2009, when the respondent/writ petitioner was relieved, his Basic Pay was Rs.16,650 along with admissible Grade Pay. However, on his appointment to his higher post as B.T. Assistant, his pay was fixed only as Rs.14,630/- with applicable pay. On appointment to a higher post, the respondent-writ petitioner cannot be deprived of re-fixation of pay, taking into account the past service rendered in the Aided School. The learned Single Judge also, on appreciation of the above factual as well as legal grounds, has rightly allowed the writ petition filed by the respondent and we see no reason to interfere with the same.

15. In the result, the Writ Appeal fails and it is dismissed, by confirming the order dated 16.07.2019 passed by the learned Single Judge in W.P.No.32645 of 2018. No costs. Consequently, connected C.M.P.No.24323 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsh/cs

To

1. The Secretary to State Government
Department of School Education
Fort St. George
Chennai - 600 009
2. The Chief Educational Officer
Nilgiris District
Additional Collector's Office Complex
Finger Post, Udagamandalam
The Nilgiris - 643 101

+1 cc to Mr.R.Sivakumar, Advocate Sr.No. 34440
+1 cc to The Government Pleader, Sr.No. 34750

WA No. 3868 of 2019

SSD(CO)
RMP(11/12/2020)

सत्यमेव जयते

WEB COPY