



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P. (MD) No.4308 of 2015

R.Muthiah

... Petitioner

Vs.

1.The Accountant General,
Officer of the Accountant General,
No.361, Annasalai,
Chennai - 600 018.

2.The Director of Elementary Education,
DPI Complex, College Road,
Nungambakkam, Chennai.

3.The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.

4.The Assistant Elementary Educational Officer,
Kadayanallur, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings made in Na.Ka.No.996/AA1/2012, dated 20.06.2013 on the file of the 4th respondent and quash the same as illegal, arbitrary and unsustainable in law and consequently direct the respondents herein to refix the pensionary benefits, DCRG in accordance with G.O.Ms.No.202, School Education Department (G2) dated 24.09.2008 and pay the monthly pension at the revised rate and disburse the entire arrears accrued thereon to the petitioner herein with effect from 01.06.1988.

For petitioner : Mr.M.Thirunavukkarasu

For 1st respondent : Mr.P.Gunasekaran

For respondents 2 & 3 : Mr.N.Shanmugaselvam,
Special Government Pleader



O R D E R

This Writ Petition has been filed by the petitioner challenging the order denying to extend the benefit of G.O.Ms.No.202, School Education Department (G2), dated 24.09.2008 and for a consequential direction to the respondents herein to refix the pensionary benefits, DCRG in accordance with G.O.Ms.No.202, School Education Department (G2) dated 24.09.2008 and pay the monthly pension at the revised rate and disburse the entire arrears accrued thereon with effect from 01.06.1988.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Headmaster in a Panchayat Union School on 01.10.1972 and thereafter, shifted to Aided School as Secondary Grade Teacher on 03.06.1981 and after about 20 years of service as Secondary Grade Teacher, the petitioner got voluntary retirement from service on 30.11.2002. While so, the Government of Tamil Nadu has issued G.O.Ms.No.202 stating that the employees, who worked as Headmaster in the Elementary School before 01.06.1988, be treated as such even if they are transferred to another Union as Secondary Grade Teacher. Seeking to extend the said benefit and refix the pension, the petitioner has sent a representation to the 4th respondent. As there was no response to the same, the petitioner has filed W.P.(MD).No.6202 of 2010 and this Court, by order dated 29.04.2010, directed the respondents therein to dispose of the representation within a stipulated time. After considering the representation of the petitioner, the 4th respondent has sent a revised pension proposal to the first respondent / Accountant General. However, as per the instruction of the first respondent, the fourth respondent, by the impugned order dated 20.06.2013, has rejected the claim of the petitioner stating that the petitioner has worked in a Private Aided School and therefore, he is not entitled to get the benefit of the said G.O. Questioning the same, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner would further submit that the petitioner has obtained salary only from the Government and it is immaterial whether the petitioner has served in a Private Aided School or Government School and therefore, the benefit of the said G.O. ought to have been extended to him. In support of his contention, he relied a decision of this Court in T.Joseph and others Vs. State of Tamil Nadu rep. by its Secretary to Government, W.P.No.11190 of 2019, dated 22.08.2014. Thus, he prayed to allow this writ petition.

4. The learned counsel appearing for the respondents in unison submitted that only after resigning his Headmaster post from Panchayat Union School, the petitioner joined in Private Aided School as Secondary Grade Teacher and therefore, his employment can be considered only as a fresh employment in Private Aided School. Therefore, the benefit of G.O. cannot be extended to him.



5. At this juncture, the learned counsel for the petitioner submitted that the respondents cannot take a different stand or improve their case, contrary to the reason to deny the relief mentioned in the impugned order.

6. Heard the learned counsel for both sides and perused the records carefully.

7. The ground on which the 4th respondent rejected the case of the petitioner has already been considered and rejected by a learned Single Judge of this Court in the case of T.Joseph and others Vs. State of Tamil Nadu rep. by its Secretary to Government in W.P.Nos.23975 to 23980 of 2012, dated 04.09.2012. The relevant portion is extracted hereunder:

"4. In my considered opinion, the orders passed by the Madurai Bench of this Court in W.P.No.10397 of 2009 dated 09.03.2010 and the orders passed by this Court in a batch of writ petitions in W.P.No.28902/2010 and etc., batch squarely cover the cases of these petitioners as well. There is no controversy before this Court that these petitioners worked as Primary School Headmasters/Headmistresses which was then kept on par with the Secondary Grade Teachers. That post of Primary School Headmaster is kept in high pedestal in the matter of scale of pay only by the implementation of V Pay Commission on 01.06.1988. It is only by having taken note of this fact, the Tribunal as well as this Court have directed that for no fault of those teachers who were transferred from the post of Primary School Headmasters/Headmistresses to the post of Secondary Grade Teachers, they should not be allowed to suffer monetary loss. It was, in those cases, the Government, also, issued G.O.Ms.No.202, School Education Department, dated 24.09.2008. So far as the G.O.Ms.No.202 is concerned, it is irrelevant as to whether the transfer from the post of Primary School Headmaster to the post of Secondary Grade Teacher was made on his own volition or on administrative grounds. Similarly, it is immaterial as to whether such transfer was effected prior to 01.06.1988 or subsequently. In view of all the above, I am of the firm view that the petitioners are entitled for the benefit of G.O.Ms.No.202, School Education Department, dated 24.09.2008 and the contrary orders which are impugned in these writ petitions are liable to be quashed.

5. In the result, the writ petitions are allowed and the impugned orders are set aside and the respondents are directed to extend the benefit of

G.O.Ms.No.202, School Education Department, dated



24.09.2008 to the petitioners herein also. In any event, consequential orders shall be passed by the respondents within a period of three months from the date of receipt of a copy of this order."

[emphasis supplied]

8. Following the above decision, a learned Single Judge of this Court in the case of **S.Manimuthu Samuel Vs. the Secretary to Government, School Education Department, State of Tamil Nadu, Chennai and others, W.P.(MD).No.11190 of 2009, dated 22.08.2014,** has held in paragraph No.9 as follows:

"9.A plain reading of the Government Order in G.O.(Ms).No.202 would go to show that there is no indication that it is not applicable to private aided schools. As has been held by this Court in **T.Joeshp's** case, it is immaterial as to whether a teacher had worked in private aided school or in a Government School. If at all even assuming that a teacher is working in a private school, salary is only paid by the Government. There is no disparity between the teachers between the private schools and Government Schools. In all respects in respect of salary, service conditions etc., the teachers working in private schools are treated on par with the teachers working in Government Schools. Therefore, when the Government Order in G.O.Ms.No.202 is made applicable to the teachers working in Government Schools, quite naturally, logically and ethically, it should be applicable to the teachers working in private schools as well. In such view of the matter, I hold that the petitioner is entitled to the benefits of Government Order in G.O.Ms.No.202, School Education (G2) Department, dated 24.09.2008."

9. The above decisions are squarely applicable to this case, as in this case also the petitioner worked as Headmaster in Panchayat Union School and then, joined in the post of Secondary Grade Teacher in Private Aided School on his own volition. As stated in the above decisions, it is irrelevant as to whether the transfer from the post of Primary School Headmaster to the post of Secondary Grade Teacher was made on his own volition or on administrative grounds.

10. Though it is stated by the respondents that after resigning the post of Headmaster, the petitioner joined the post of Secondary Grade Teacher in Private Aided School, as rightly stated by the learned counsel for the petitioner, the respondents cannot improve their case contra to the reason to deny the relief mentioned in the impugned order. More over, the fact remains that only in order to join the post of Secondary Grade Teacher in Private Aided School,



the petitioner has resigned the post of Headmaster and accordingly, he joined the Post of Headmaster on the next day of his relieving and his services were counted for pensionary benefits also. Therefore, the respondents are restrained from raising such ground.

11. In view of the above and following the above decisions, the impugned order passed by the fourth respondent is set aside and the respondents are directed to extend the benefit of G.O.Ms.No.202 to the petitioner and to pay arrears and consequential benefits within a period of six weeks from the date of receipt of a copy of this order.

12. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Accountant General,
Officer of the Accountant General,
No.361, Annasalai,
Chennai - 600 018.

2. The Director of Elementary Education,
DPI Complex, College Road,
Nungambakkam,
Chennai.

3. The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4. The Assistant Elementary Educational Officer,
Kadayanallur,
Tirunelveli District.

+1 CC to M/s. Special Govt. pleader (SR-2128[F] dated 21/01/2020)
+1 CC to M/s. P. GUNASEKARAN, Advocate (SR-2013[F]
+1 CC to M/s. M. THIRUNAVUKKARASU, Advocate (SR-2077[F]

W.P. (MD) No.4308 of 2015
20.01.2020

gcg

<https://hcds.ces.courts.gov.in/cses/ces/> 5P-8C