



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.20916 of 2014

A.Imthiaz Ahamed

... Petitioner

vs.

1.The State of Tamil Nadu
represented by Secretary (Education Department),
Fort.St.George, Chennai.

2.The District Educational Officer,
Tiruchirapalli District,
Collectorate, Tiruchirapalli.

3.The Joint Director of School Education,
Chennai.

4.Kajamain Higher Secondary School represented
by its Correspondent, Kaja Nagar,
Tiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the second respondent to rectify the anomaly in the pay structure between the petitioner and Sathik Basha, co-teacher in the fourth respondent school as provided in the tabular column forwarded by the fourth respondent to the second respondent and to approve the regularisation of the service of the petitioner between 13.01.1999 and 01.12.2002.

For Petitioner : Mr.S.K.Mani

For R1 to R3 : Mr.R.Suresh Kumar
Government Advocate

For R4 : Mr.M.Subash Babu

O R D E R

This Writ Petition is filed for issuance of a Writ of Mandamus, to direct the second respondent to rectify the anomaly in the pay structure between the petitioner and one Sathik Basha, a Co-Teacher in the fourth respondent School, as provided in the tabular column forwarded by the fourth respondent to the second respondent and to approve the regularization of the service of the petitioner between 13.01.1999 and 01.12.2002.



2. Heard Mr.S.K.Mani, learned Counsel appearing for the petitioner, Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondents 1 to 3 and Mr.M.Subash Babu, learned Counsel for the fourth respondent.

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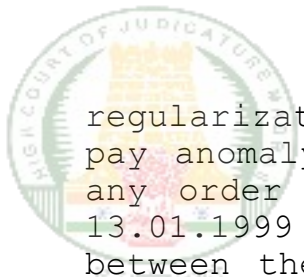
3. Brief facts, that are necessary for the purpose of disposal of this Writ Petition, are as follows:

3.1. The petitioner is working as P.G. Assistant in the fourth respondent School. The fourth respondent School is an Aided Minority School. The petitioner joined in the service as B.T. Assistant on 11.09.1989 and passed M.A. Degree in History in April 1985. The petitioner also completed his M.Ed. Degree in May 1992. It is not in dispute that the petitioner was also granted an increment for obtaining additional qualification (M.A.).

3.2. The petitioner was suspended along with a few other Teachers in the same School on 13.01.1999. After the disciplinary proceedings, the petitioner was dismissed along with others by an order, dated 02.06.1999. However, the order of termination was not approved till date. Challenging the illegal suspension and termination, suits were filed and ultimately, a compromise between the delinquent staffs and the fourth respondent management was arrived at, in which, the management agreed to treat the entire period of suspension as a period of service and to cancel the order of termination, which resulted in a compromise decree, dated 13.12.2002. The petitioner and others agreed not to claim the salary for the period during which the petitioner and others were suspended, so as to regularize the service of the petitioner and other staff.

3.3. The management also submitted a representation requesting the second respondent to regularize the service of the petitioner. It is specifically stated by the petitioner that the third respondent, by proceedings, dated 11.08.2009, directed the second respondent to regularize the service of the petitioner and others for the period between 13.01.1999 and 01.12.2002 after getting proposal from the management. Pursuant to the communication, the management also promptly submitted a representation for regularization of service of the petitioner for the period during which the petitioner was placed under suspension. In the same representation, a request was also made by the management to remove the pay anomaly, as the petitioner was getting lesser salary than his junior. However, the pay anomaly continued even after the representation of the management for regularization of the service of the petitioner and hence, the petitioner has filed the present Writ Petition with the above prayer.

4. The facts stated above are not in dispute. Despite the <https://hcmavaregistrars.org.in/hcsew/cases/> the School submitted a representation for



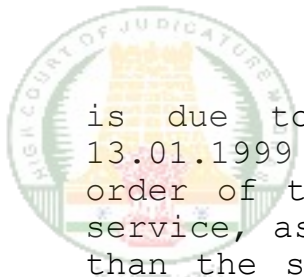
regularization of the service of the petitioner and for removing the pay anomaly, it is seen that the second respondent has not passed any order regularizing the service period of the petitioner from 13.01.1999 to 01.12.2002. This has resulted continuous pay anomaly between the petitioner and one Sathik Bash, who is much junior to the petitioner and was appointed nine years after petitioner's appointment.

5.The second respondent filed a counter affidavit admitting the communication received from the third respondent, dated 09.08.2009, informing the second respondent that the pay for the petitioner should be notionally fixed after the regularization of suspension period. However, it is contended by the second respondent that the fourth respondent did not take any steps to regularize the period of suspension. The statement of facts furnished by the second respondent in paragraph 6 of the counter affidavit is contrary to the admitted facts.

6.The statement found in paragraph 6 of the counter affidavit is not in consonance with the admitted facts and the documents filed by the petitioner before this Court. It is stated by the second respondent that the Joint Director of School Education, Chennai, has issued an order, dated 24.12.2010, that the request to treat the period of non employment of the petitioner from 13.01.1999 to 01.10.2002, as service, is unjustified and against the rules and that the management was informed that the Government alone has the power to treat the period of non employment as duty period. However, by communication, dated 11.08.2009, the Joint Director of School Education has directed the third respondent to pass appropriate orders after getting proposal from the management to regularise the period of suspension.

7.From the counter affidavit, it is seen that the second respondent has not disputed the representation of the management/Headmaster of the School for regularization of the service of the petitioner for the period from 13.01.1999 to 01.12.2002. Only to enable the second respondent to consider the period of suspension as duty period, the management has come forward to pay the salary for the period of suspension and duly communicated the same to the second respondent.

8.From the sequence of events and the correspondence, this Court is of the view that the management is not at fault. The management has submitted proposal to regularise the service of the petitioner and hence, there is no break in service from 13.01.1999 to 01.12.2002. It is to be noted that the salary for the period also was paid by the management, as the management has once felt that the petitioner will not be able to get his service benefits, unless the salary for the period of suspension is paid by the management. It is now admitted before this Court that the pay anomaly exists between the petitioner and his junior by name, Sathik Basha,



is due to the order of suspension, which was in force from 13.01.1999 to 01.12.2002. When the management has cancelled the order of termination and came forward to regularise the period of service, as period of duty, the petitioner's salary cannot be lesser than the salary, that was paid to his junior, who got appointment about nine years after the date of petitioner's appointment in the fourth respondent School

9.The contention of the official respondents that the petitioner cannot claim parity, if there was break in service from 13.01.1999 to 01.12.2002 cannot be countenanced, in view of the admitted facts. Any how, the petitioner's salary for the suspension period is paid by the management and the management has properly regularised the service of the petitioner and submitted proposal for approval. It is not necessary for the management of the petitioner to approach the Government for regularization of service. The petitioner is not at fault for his non employment for a period from 13.01.1999 to 01.12.2002. When the management has withdrawn the order of termination and reinstated the petitioner in service with pay, it is not for the second respondent to deny the increments, which are due and payable to the petitioner by treating him as a Teacher, who is deemed to be in service without any break.

10.In the counter affidavit, it is stated that the Government cannot make payment of the period of non employment in view of Rule 17(3)(ii) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. Rule 17(3)(ii) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 reads as follows:

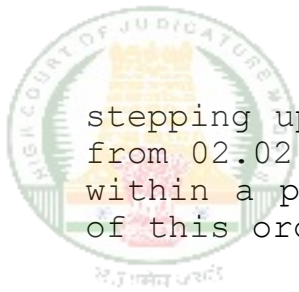
"17.Dismissal, removal or reduction in rank or suspension of teacher or other persons employed in private school :-

.....

(ii) Where a substitute is appointed in the place of a teacher or other person employed in a private school kept under suspension, the management shall not be entitled to any grant in respect of such a substitute."

11.It is not the case that the management claimed salary for another person after appointing a substitute in the place of petitioner, when the petitioner was kept under suspension. When the management has paid salary to the petitioner for the period during which the petitioner was out of employment due to the order of suspension, this Court is unable to find any justification in the stand taken by the official respondents to deny the increments, which has put the petitioner to draw salary, which is lesser than the pay that was paid to his junior.

12.Hence, the Writ Petition is allowed. The second respondent is directed to regularize the service of the petitioner for the period from 13.01.1999 to 01.12.2002 and remove the pay anomaly by



stepping up the pay of petitioner to that of his junior with effect from 02.02.2002 and disburse the monetary benefits to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

tmg/cmr

To

- 1.The Secretary (Education Department),
The State of Tamil Nadu,
Fort.St.George, Chennai.
- 2.The District Educational Officer,
Tiruchirapalli District,
Collectorate, Tiruchirapalli.
- 3.The Joint Director of School Education,
Chennai.

+1 CC to M/s.SPL.GP (SR-31192[F] dated 05/10/2021)

W.P. (MD) No.20916 of 2014

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MGJ(22.10.2021) 5P 5C