



W.P.No.6714 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6714 of 2018
and
W.M.P.No.8492 of 2018

G.Senthilkumar

...Petitioner

-Vs-

- 1.Director of Elementary Education,
Chennai – 600 006.
- 2.District Elementary Educational Officer,
Cuddalore, Cuddalore District.
- 3.Additional Assistant Elementary Educational Officer,
Mangalore Union at Ramanatham,
Thozhuthur, Tittakudi Taluk,
Cuddalore District.
- 4.The Secretary,
Ramaswamy Memorial Middle School,
Vasudevanallur – 627 758,
Sivagiri Taluk,
Tirunelveli District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, calling for the records



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pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.876/A1/2013 dated 12.02.2018 and quash the same and direct the respondents to fix the scale of pay of the petitioner on the basis of the last pay drawn and confer all the consequential benefits.

For Petitioner : Mr.V.Sivalingam
for M/s.C.S.Associates

For R1 to R3 : Mr.M.Shahjahan
Special Government Pleader

For R4 : Mr.B.Balavijayan

ORDER

Heard Mr.V.Sivalingam, learned counsel appearing for the petitioner, Mr.M.Shahjahan, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.B.Balavijayan, learned counsel for the fourth respondent.

2. The petitioner herein was appointed as a Secondary Grade Assistant on 30.08.1991 in the fourth respondent school, which is a non-minority aided school. Since he was selected as a Secondary Grade Assistant in a Government school, he had resigned from the fourth respondent school,



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which resignation was accepted by them on 14.07.2009 and he was properly relieved from the services of the fourth respondent school on 15.07.2009 at 4.10 P.M. Thereafter, he had joined the Government school on 16.07.2009 itself. To the request of the petitioner to revise his pay scale on the basis of the last pay drawn, the third respondent herein, through his proceedings dated 12.12.2018, had rejected the same predominantly on the ground that he would not be eligible for the last drawn pay, in view of Fundamental Rule 23 of the Tamil Nadu Government and also that since he has resigned from the fourth respondent school, he would not be entitled for pay protection. Both the reasons assigned in the impugned order seems to be factually incorrect.

3. Fundamental Rule 22B of the Tamil Nadu Government provides that, when a Government servant holding a post in a substantive or officiating capacity is appointed in a substantive capacity to another post, his initial pay in the level of the higher post in the pay matrix shall be fixed by granting one increment in pay in the level of the lower post and he shall be placed at a cell equal to the pay so arrived at in the level of the higher post in the pay matrix of the higher post. If the pay so arrived at in the level in the lower post after granting one increment is lower than the minimum pay or the first cell in the



level of the higher post, the initial pay shall be fixed at minimum pay or the first cell of the level of higher post.

4. The respondents have placed reliance on Fundamental Rule 23, which relates to fixation of pay when the scale of pay is changed due to revision of pay. However, in view of Fundamental Rule 22B, which relates to fixation of pay on appointment to another post, placing reliance on Rule 23 would be improper and the petitioner's scale of pay requires to be protected by applying Rule 22B.

5. Insofar as the other reason assigned in the impugned order that the petitioner is not entitled for revision of pay scale, since he has voluntarily resigned from the fourth respondent school, is concerned, the learned counsel for the petitioner had produced copies of the relieving letter from the fourth respondent school dated 14.07.2009, which clearly indicates that as per the resolution passed by the fourth respondent school committee, the school had accepted the resignation and had properly relieved the petitioner from his services as a Secondary Grade Assistant with effect from 15.07.2009 at 4.10 P.M. onwards.



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6. In view of the same, it cannot be stated that the petitioner was not properly relieved from services and therefore, he is entitled for revision of the pay scale.

7. In the light of the above findings, the impugned order dated 12.12.2018 is quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, re-fixing the petitioner's scale of pay on the basis of the last pay drawn and confer all consequential benefits, within a period of six (6) weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2022

Index:Yes/No
Speaking order/Non-speaking order
hvk



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M.S.RAMESH,J.

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To

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