



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.6538 OF 2015

J.Damodaran

... Petitioner

.Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus,
Chennai - 600 006.
3. The Chief Education Officer,
Vellore.
4. The Head Master,
Government Higher Secondary School,
Virinjipuram,
Vellore District - 632 104.

... Respondents

PRAYER:-

This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in Na.Ka.No.98740/C2/E1/2014 dated 06.02.2012 and quash the same and consequently direct the 1st and 2nd respondent of refix the scale of pay of the petitioner as special grade B.T. Assistant and grant all arrears and other attendant benefits from 03.01.2009.

For Petitioner : Mr.P.Arumugavel

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader



ORDER

The petitioner herein, had originally joined as a B.T.Assistant in the Government Aided Christian Minority Thanthai Hans Roever Higher Secondary School, Perambalur, on 12.03.1981. On completion of 10 years of service, he was granted Selection Grade on 18.03.1997 and his scale of pay was fixed at 6,500-200-10,500 and on completion of 20 years, the petitioner was granted Special Grade on 18.03.2007 and his scale of pay was fixed at 8,000-275-13,500. Thereafter, the petitioner herein was appointed as a B.T.Assistant, in the Government School on 03.01.2009 and he was selected through the Teacher's Recruitment Board as a Secondary Grade Teacher and accordingly, his scale of pay was fixed at 5,500-175-9,000. It is the claim of the petitioner that since the Government Orders and the Regulations, enable migration from an aided school to a Government school, his pay scale in the earlier school should be protected. His request in this regard came to be rejected by the respondents, through an impugned order dated 06.02.2015, which is under challenge in the present writ petition.

2. The learned counsel for the petitioner placed reliance on the Government Orders in G.O.(Ms) No.1296, Department of Education, Science and Technology, dated 19.06.1982 and G.O.(Ms) No.992, Education Department, dated 22.06.1979 and submitted that these Government Orders enable the services rendered by the petitioner under an Aided Institution, prior to his migration to the Government School, to be counted for reckoning the period of 10 years and 20 years.

3. The learned Additional Government Pleader for respondents, placed reliance on the averments in the impugned order as well as the counter affidavit and submitted that since the petitioner had completed his 20 years of service in the Aided Private School, he would be eligible only for the benefit of Selection Grade in the Government Service and therefore, there is no infirmity in the impugned order.

4. G.O.(Ms) No.992, provides that the past services rendered by a teacher prior to his migration from one Management School to an other Government School, should be counted for reckoning the required period of 10 or 20 years for the purpose of granting Selection Grade and Special Grade of pay.

5. G.O.(Ms) No.1296, provides that when the selection grade secondary grade teachers migrate from one Management to a Government School, they would be allowed the minimum time scale of pay of selection grade secondary grade, if they are appointed in a Secondary Grade Post. This Grade shall also apply to other categories of migrated selected teachers, if they are appointed



in the same post.

6. Viewing from this rule position, when the petitioner was granted the Selection Grade from 18.03.1997 in the scale pay of 6,500-200-10,500 and subsequently on completion of 20 years of service, his Special Grade scale pay was fixed at 8,000-275-13,500 on 18.03.2007, the scale of pay last drawn by him in the earlier School requires to be protected, in accordance with G.O. (Ms) No.1296, dated 19.06.1982, i.e., his scale of pay should be allowed on the minimum time scale of pay of selection grade secondary grade post, when he is appointed in the Secondary Grade Post.

7. The only objection seems to be raised by the respondents is that as per the Fundamental Rule 22(b), the petitioner would be eligible to draw minimum of the time scale of pay, as on the date of his appointment in the Government School.

8. Rule 22(b) does not deal with the case of a teacher migrating from an Aided School to an other Government School. Rather the Fundamental Rule can be applied only in case of promotion or deputation within the Government School. The very purpose of granting a Selection Grade is only to recognize the fact that these teachers do not have a promotional avenue and therefore, Selection Grade and Special Grade pay has been granted to them, on completion of 10 years or 20 years of service, respectively. This Fundamental Rule 22(b), is not applicable to the case of a teacher, who claims Special Grade. The Government had therefore, issued orders in G.O.(Ms) No.992, dated 22.06.1979 and G.O.(Ms) No.1296, dated 19.06.1982.

9. It is now brought to the notice of this Court that the respondents, in identical circumstances, had re-fixed the scale of pay to a similarly placed Selection Grade B.T.Assistant. In one such order passed by the Joint Director of Higher Education in Na.Ka.No.58601/W20/98, dated 02.07.2002, a similarly placed Selection Grade B.T.Assistant's scale of pay was re-fixed by taking into account the earlier scale of pay, drawn by him in the school, from which he had migrated.

10. While that being so, the very fact that the respondents had fixed the pay scale of the petitioner at 5,500-175-9,000 on 03.01.2009, when he had joined the duty in the Government School, cannot be sustained. Rather they ought to have fixed the petitioner's scale of pay at 8,000-275-13,500 which was the minimum scale of pay, he was drawing, when he had migrated from an Aided School to the Government School. In this background, the reasoning given in the impugned order, while fixing the petitioner scale of pay, disregarding the Special Grade B.T.Assistant scale of pay, cannot be sustained.



11. In the light of the above findings, the impugned order dated 06.02.2015, is quashed. Consequently, there shall be a direction to the first and second respondents to notionally re-fix the time scale of pay of the petitioner, in the Special Grade B.T. Assistant Post at 8,000-275-13,500 and grant the arrears of pay, including the other attendant benefits from 03.01.2009, onwards. Such orders shall be passed at least within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. Accordingly, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Secretary,
The State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 002.
2. The Director of School Education,
DPI Campus,
Chennai - 600 006.
3. The Chief Education Officer,
Vellore.
4. The Head Master,
Government Higher Secondary School,
Virinjipuram,
Vellore District - 632 104.

+2ccs to Mr.M.Habeeb Rahman, Advocate, S.R.No.22612
+1cc to the Government Pleader, S.R.No.23675

W.P.NO.6538 OF 2015

RK(CO)
PBS/26/04/2022