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W.P.Nos.5674 and 5675 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.5674 and 5675 of 2014

and

M.P.Nos.1 and 1 of 2014

1.Tmt.S.Malathy	... Petitioner in W.P.No.5674 of 2014
2.V.A.Thiyagarajan	... Petitioner in W.P.No.5675 of 2014
Vs.	

1.The State of Tamil Nadu Rep. by its Secretary to Government Education Department Secretariat, Chennai – 9.	
2.The Director of Elementary Education College Road, Chennai – 6.	
3.The District Elementary Educational Officer Vellore – 4.	
4.The Assistant Elementary Educational Officer Sholinghur 631 102 Vellore District.	... Respondents in both W.Ps

Prayer in W.P.No.5674 of 2014: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the entire records connected with impugned letter of the 3rd respondent vide A.TH.I.MU.No.4971/A4/12 dated 6.12.2012, and quash the same and direct the respondents to count the service of the petitioner



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rendered in the aided Bharathi Aided Primary School, and Gandhiji Aided Middle School, as Secondary Grade Teacher from 12.12.2001 to 03.03.2008 for the purpose of re-fixation of scale of pay and pension benefits.

Prayer in W.P.No.5675 of 2014: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the entire records connected with impugned letter of the 3rd respondent vide A.THI.MU.No.4971/A4/12 dated 6.12.2012, and quash the same and direct the respondents to count the service of the petitioner rendered in the aided E.S.Subramniam (ANM) Middle School, Podaturpet, as Secondary Grade Teacher from 30.03.2001 to 04.12.2006 for the purpose of re-fixation of scale of pay and pension benefits.

For Petitioners : Mr.S.N.Ravichandran
(in both W.Ps)

For Respondents : Mr.R.Neelakandan
[R1 to R4] Additional Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader
(in both W.Ps)

COMMON ORDER

The orders impugned dated 06.12.2012, rejecting the claim of the writ petitioners to count the services of the petitioners rendered in the Aided Primary Schools as Secondary Grade Teachers are under challenge in the present writ petitions.



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2. In respect of W.P.No.5674 of 2014, the petitioner joined as Secondary Grade Teacher on 12.12.2001 in the aided school namely Bharathi Aided Primary School, Vilampadi, Kaveribakkam Union. The appointment of the writ petitioner was approved by the District Elementary Educational Officer, Vellore, in proceedings dated 18.12.2001, with effect from 12.12.2001 as Secondary Grade Teacher in the regular scale of pay. She was redeployed from Bharathi Aided primary School to Gandhiji Aided Middle School, Karaikal, Kaveripakkam Union and worked till 03.03.2008. The last drawn salary was a sum of Rs.11,654/-. The petitioner was appointed as Secondary Grade Teacher based on her employment seniority and was posted at Panchayat Union Primary School, Panavaram, Kaveripakikami Union. She has resigned the post in the Aided School and accordingly, relieved on 03.03.2008. She joined in the Panchayat Union Elementary School in the scale of pay attached to the post of Secondary Grade Teacher i.e., Rs.4500-125-7000. She was treated as fresh appointee.

3. In respect of W.P.No.5675 of 2014, the petitioner joined as Secondary Grade Teacher on 30.03.2001 in the aided school namely E.S.Subramaniam A.N.M.Middle School, Podaturpet, Tiruvallur. The appointment of the writ petitioner was approved by the District Elementary



Educational Officer, Thiruvellore, in proceedings dated 24.12.2001, with effect from 30.03.2001 as Secondary Grade Teacher in the regular scale of pay. The last drawn salary was a sum of Rs.10,098/-. The petitioner was appointed as Secondary Grade Teacher based on his employment seniority and was posted at P.U.Primary/Middle School, Nelvoy Kandigai, Nemili Union. He has resigned the post in the Aided School and accordingly, relieved on 04.12.2006. He joined in the Panchayat Union Elementary School, Nelvai Kandigai, Nemili in the scale of pay attached to the post of Secondary Grade Teacher i.e., Rs.4500-125-7000. He was treated as fresh appointee.

4. The grievances of the writ petitioners are that they were earlier appointed as Secondary Grade Teachers in the Bharathi Aided Primary School and E.S.Subramaniam A.N.M.Middle School respectively and their appointments were approved by Competent Educational Authorities. However, the 3rd respondent returned the proposal for fixing their pay in continuation of their appointment in the aided school was not in accordance with the procedures.

5. The petitioners state that even an employee without substantive appointment in the Government post and on discharge from service for want of vacancy and on re-appointment to the same post, draw the pay last



drawn prior to the discharge from service and the period prior to the discharge from service shall count for the purpose of future increment in the time scale of pay of that post. However, contrary to the said fundamental Rule, the petitioners were treated as fresh appointees and their scale of pay was reduced. Thus, the petitioners are constrained to move the present writ petitions.

6. The learned Counsel appearing on behalf of the writ petitioners relied on the Government order passed in G.O.Ms.No.536, Education and Public Health Department dated 13.04.1966 and further relied on G.O.Ms.No.1072 Personnel and Administrative Reforms (FR.III) Department dated 31st October, 1986.

7. The learned counsel for the petitioners relied on the judgment of the Hon'ble Division Bench of this Court dated 04.12.2018 passed in W.A.No.1832 of 2018, wherein, the Hon'ble Division Bench held as follows:

“24. In W.A.No.928 of 2009, dated 30.08.2010 [G.D.Rajeswari v. The Commissioner, Transport Department, Chennai], the appellant therein, who served in Judicial Department as Steno - Typist for a period of eight years, on getting selected in the Tamil Nadu Public Service Commission

Group IV Examination, joined in Transport Department.



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Though the appellant therein was granted the benefit of Earned Leave accumulation after getting relieved from the Judicial Department, she was denied pay fixation by order dated 20.8.1996, passed by the Transport Commissioner, Chepauk, Chennai. Challenging the same, she filed O.A.No.6021 of 1997, before the Tamil Nadu Administrative Tribunal and on abolition of the Tribunal, the same was transferred to this Court and re-numbered as W.P.No.26605 of 2006. Writ Court dismissed the writ petition, holding that the appellant is not eligible for her past services to be counted for pay fixation. Aggrieved by the said order, she has preferred an appeal. Considering the facts and circumstances of the case, a Hon'ble Division Bench of this Court, held as follows:

"6. The fact remains that the appellant was appointed as Steno - Typist in the Tamil Nadu Judicial Ministerial Service with effect from 19.01.1987 and she was regularised in the post. While in service, she had applied for the post of Steno-typist by appearing in Group IV Examination. It is not in dispute that she was relieved from the Judicial Department with effect from 06.9.1994 afternoon and she joined in Transport Department on 07.9.1994 and hence, it cannot be said that she resigned her service in the Judicial Department. It is to be noted that both the posts carry same scale of pay. The appellant had applied for the post through proper channel and that too, after getting No Objection Certificate from the Judicial Ministerial Service. Further, in the relieving order dated 05.9.1994 issued by the Chief Judicial



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Magistrate, Vellore, reference has been cited only as application of the appellant and nowhere in the records, it is mentioned as resignation by the appellant. Therefore, it is clear that she was appointed to an identical post with identical scale of pay and as such, it cannot be said that she resigned her earlier service so as to disentitle the benefits of past service rendered by her.

7. The learned Judge negated the claim of the appellant based on F.R. 22-B. The proviso to F.R. 22-B reads as follows:-

"Provided that if a Government servant has previously held substantively or officiated in -

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post on an identical time-scale or a temporary post on an identical timescale, such post being same time-scale as a permanent post then the initial pay shall not be less than the pay other than special pay, personal pay or emoluments classed as pay by Government under rule 9(21)(a)(iii) which he drew on the last such occasion and he shall count the period during which he drew that pay on such last occasion and any previous occasions, for increment in the stage of time-scale equivalent to that pay."

8. It is also pertinent to note that F.R. 22-B has been relaxed by virtue of G.O. Ms. No. 85, Personnel & Administrative Reforms Department



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dated 20.02.1990 wherein the Government had passed orders that those members who were appointed in the Tamil Nadu Ministerial Service in the same cadre shall be fixed in the pay last drawn by them in the post prior to their appointment in relaxation of FR 22-B.

9. A reading of the above exception to F.R. 22-B would make it abundantly clear that the appellant is entitled for fixation of the pay last drawn by her in the Judicial Department. As rightly submitted by the learned counsel for the appellant, when the appellant's Earned Leave in Judicial Department was taken into account in Transport Department, it is to be assumed that her previous service is not erased off fully. In such case, her last drawn pay in the Judicial Department should have been taken into account with effect from 07.9.1994. The respondents have committed error in rejecting the claim of the appellant. Therefore, we are of the view that the learned Judge has not considered the claim of the appellant in its proper perspective which needs to be interfered with.

10. Considering the above stated facts and circumstances of the case, we set aside the order dated 20.8.1996. The respondents are directed to reconsider the claim of the appellant and pass appropriate orders taking into consideration her past services in the Judicial Department and also in the light of the exception to F.R. 22-B and G.O. Ms. No. 85 Personnel and Administrative Reforms



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Department dated 20.02.1990. 11. The Writ Appeal is disposed of accordingly."

8. The learned Additional Advocate General appearing on behalf of the respondents raised an objection that it is true that the petitioners were appointed as Secondary Grade Teachers based on the employment seniority and was posted at Panchayat Union Primary School, Panavaram, Kaveripakkam Union and Panchayat Union Elementary School, Nelvai Kandigai, Nemili respectively. The contention that the petitioners were relieved on 03.03.2008 and 04.12.2006 in the Gandhiji Aided Middle School, karaikkal and E.S.Subramaniam A.N.M.Middle School respectively is totally false and denied. The petitioners on their own volition, have resigned the post of Secondary Grade Teacher in the Aided School and joined as fresh candidates in the Panchayat Union Primary School. Hence, they were fixed in the scale of pay of Rs.4500-125-7000, treating them as fresh appointee. The judgment and the Government orders relied by the petitioners are of no support as the petitioners had resigned the earlier post in the aided school and thereafter, joined as fresh appointees in Panchayat Union School. On their resignation, the petitioners forfeits their past service.



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9. Rule 41 of the Tamil Nadu State and Subordinate Services provides that a member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of his resignation but all his previous services under the Government. The re-appointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply and on such re-appointment, he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order.

10. Even as per the Rule 23 of the Tamil Nadu Pension Rules, resignation from a service rendered by the petitioner prior to her resignation cannot be taken into account for the purpose of grant of pension as well.

11. As per amendment to Fundamental Rule 26, the periods prior to the discharge from service shall count for the purpose of future increment in the time scale of pay of that post. For counting the service for the purpose of future increment in the time scale of pay of that post, the petitioner should have been discharged (relieved) from the post. But in



these cases, the petitioners, on their own volition, have tendered resignation prior to joining the new post and it was duly accepted by the authority. Hence the petitioners are not eligible for inclusion of the service rendered prior to their resignation, for the purpose of re-fixation of scale of pay and pension benefits as per Rule 41 of the Tamil Nadu State and Subordinate Services and Rule 23 of the Tamil Nadu Pension Rules.

12. The petitioners referred the case of one Rev.Fr.Stanislaus M.Fernandez. The said case cannot be made applicable to the petitioners, since the individual in that case was relieved from the earlier service prior to joining the later service. But in the petitioners cases, they had resigned the post and as such they are not entitled for the relief on par with the lines of Rev. Fr.Stanislaus M.Fernandez.

13. Even in the case of Thiru. M.Jayaraj, pursuant to the orders passed in W.A.Nos.291 and 292 of 2008, the Government orders issued in G.O.Ms.No.181 School Education dated 09.01.1997. In the said case also, the individual Thiru. M.Jayaraj had not resigned his post but was relieved from earlier service prior to join the later service. Thus, the said case is also not applicable to the case of the writ petitioners as they had resigned from the earlier post.



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14. The grounds raised by the petitioners are applicable for the cases, where, the employee has not resigned the post but relieved properly. In the present cases, the petitioners at their own volition, resigned their post and joined as fresh appointees in the Panchayat Union School and accordingly, their scale of pay was fixed.

15. Under these circumstances, the case of writ petitioners are covered under Rule 41 of the Tamil Nadu State and Subordinate Services Rules and Rule 23 of the Tamil Nadu Pension Rules and therefore, the petitioners are not entitled for the relief as such sought for in the present writ petitions.

16. Accordingly, both the Writ petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.07.2022

Jeni/Kak

Index : Yes

Speaking order : Yes

To

1. The Secretary to Government
Education Department
Secretariat, Chennai – 9.

<https://www.mhc.tn.gov.in/judis>

2. The Director of Elementary Education



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College Road, Chennai – 6.

3.The District Elementary Educational Officer
Vellore – 4.

4.The Assistant Elementary Educational Officer
Sholinghur 631 102
Vellore District.



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S.M. SUBRAMANIAM, J.

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