



W.P.No.30463 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30463 of 2018

J.Helbert

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The District Educational Officer,
Ariyalur District,
Ariyalur.

4.The Block Educational Officer,
T.Palur Union,
Ariyalur District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to pass appropriate orders for allowing fixation of Selection Grade scale of pay to the Petitioner in the post of Secondary grade Teacher in the pre-revised scale of pay and consequently allow the petitioner with fixation of scale of pay in Pay Band-



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II Rs.9,300-34,800 + 4500GP in Tamil Nadu Revised Pay Scales Rules, 2009, notified in G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009 with all consequential and attendant benefits, by considering the representation submitted by the Petitioner dated 02.01.2018, within a time frame to be fixed by this Honorable Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mrs.S.Mythreyechandru
Special Government Pleader

ORDER

The relief sought for in the present writ petition is for a direction to direct the Respondents to pass appropriate orders for allowing fixation of Selection Grade scale of pay to the Petitioner in the post of Secondary grade Teacher in the pre-revised scale of pay and consequently allow the petitioner with fixation of scale of pay in Pay Band-II Rs.9,300-34,800 + 4500GP in Tamil Nadu Revised Pay Scales Rules, 2009, notified in G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009 with all consequential and attendant benefits, by considering the representation submitted by the Petitioner dated 02.01.2018, within a time frame to be fixed by this Honorable Court.



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2. The petitioner states that he was initially appointed as Secondary Grade Teacher in St.Philominal's Higher Secondary School, Kulumur Village, Sendurai Union, Udayarpalayam Taluk, Ariyalur District, which is an Aided Minority School on 29.10.2006. The appointment of the writ petitioner was approved by the Education Department. On completion of 10 years of service, Selection Grade was awarded to the petitioner on 29.10.2006. Subsequently, the petitioner was transferred to St.Ignatius Primary School, Kokudi, Thirumanur Union, Ariyalur District on 14.03.2007 and the transfer was also approved by the Department. While so, the petitioner was directly recruited for appointment to the post of Secondary Grade Teacher in Government Schools. Based on the selection, he was appointed as a Secondary Grade Teacher in Thethur Panchayat Union Primary School, Margapuri Union, Trichy District on 21.07.2009.

3. The grievance of the writ petitioner is that he was receiving Selection Grade scale of pay in the post of Secondary Grade Teacher, when he was working in the Aided School. While so, the fixation already granted to the writ petitioner in the Aided School is to be taken into consideration for re-fixing the scale of pay after his joining in the Government School.



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The said contention of the writ petitioner was not considered by the authorities and thus, the petitioner is constrained to move the present writ petition.

4. The learned counsel for the petitioner mainly contended that the petitioner submitted an application to participate in the recruitment process only through the Department and he was relieved from the Aided School services and joined in Government services and therefore, it cannot be equated with the case of resignation, wherein forfeiture of service would be applicable.

5. In the present case, the petitioner secured direct appointment to the post of Secondary Grade Teacher in Government School only by participating in the process of selection and therefore, the fixation already granted to the writ petitioner in the Aided School is to be taken into consideration for re-fixing the scale of pay in Government School after his joining in the post of Secondary Grade Teacher.

6. The learned Special Government Pleader appearing on behalf of the respondents objected the said contention by stating that the petitioner's



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services in the Aided Minority School is not disputed by the Department.

He joined in the Aided Minority School as a Secondary Grade Teacher and his appointment was approved and accordingly, the scale of pay was fixed as per the Government orders, which all are applicable to the Teachers working in the Aided Minority Schools. However, the fixation of pay in Government School Teachers are no way connected and it is fixed under the Fundamental Rules, which is applicable to the Government employees. Thus, the service conditions of the Aided Minority School Teachers are different and the service conditions of the Government service are governed under the Special Rules and more so, the petitioner was directly recruited to the post of Secondary Grade Teacher and as per the Recruitment Notification, time scale of pay notified was fixed to the writ petitioner. Thus, there is no infirmity.

7. The facts are not in dispute between the parties. The petitioner joined as a Secondary Grade Teacher in the Aided Minority School, wherein he had completed 10 years of service and awarded Selection Grade. Thereafter, he submitted an application for selection to the post of Secondary Grade Teacher, pursuant to the notification issued by the Teachers Recruitment Board and got selected and appointed in Government



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School. As per the recruitment notification, he was treated as a fresh appointee and accordingly, his pay was fixed.

8. Question arises, whether fixation granted to the petitioner in Aided Minority School is to be taken into consideration for re-fixing his scale of pay in the post of Secondary Grade Teacher in Government services.

9. The Service Rules governing the Government Aided Minority Schools Teachers are entirely different. They are governed under the Private School Regulations Act and Rules and the Government employees are governed under Special Rules namely Fundamental Rules and Subordinate Service Rules etc., More so, the petitioner was directly recruited as a Secondary Grade Teacher by participating in the process of selection and in the notification itself, time scale of pay applicable was stated. Therefore, the petitioner, accepting the said time scale of pay, got selected and appointed. However, the petitioner submitted an application through proper channel and relieved from service. Thereafter, he was issued with an order of appointment by the competent authorities of the Government and he joined as a fresh entrant in the post of Secondary Grade Teacher in the Government School.



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10. Whether the petitioner resigned his job in the Aided Minority School or not is to be verified by the competent authorities. If at all the petitioner has not resigned or he resigned only for the purpose of taking employment in the Government services, then Rule 23 of the Tamil Nadu Pension Rules, 1978 is to be applied for the purpose of counting of earlier services. However, the facts in this regard are to be verified with reference to the service records of the writ petitioner.

11. As far as the fixation of pay in the post of Secondary Grade Teacher is concerned, 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.



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

13. 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.

14. In view of the facts and circumstances, the case of the writ petitioner is covered under Rule 41 of the Tamil Nadu State and Subordinate Services Rules and therefore, this Court do not find any infirmity in respect of the fixation of pay of the writ petitioner in the post of Secondary Grade Teacher in Government services.

15. However, if the petitioner is eligible for any other benefits under the rules in force, he is at liberty to approach the authorities with all relevant documents.



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WEB COPY 16. With this liberty, the writ petition stands disposed of. No costs.

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Index : Yes
Speaking order: Yes
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To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Director of Elementary Education,
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S.M.SUBRAMANIAM, J.

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