



W.P.(MD)No.1005 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.1005 of 2020

B.Rajavel

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Education Department,
Secretariat, Chennai – 600 009.
2. The Director of Elementary Education
College Road,
Chennai – 600 006.
3. The Commissioner,
Government Date Centre,
Guindy, Chennai – 600 034.
4. The District Educational Officer,
Kumbakonam.
5. The Block Educational Officer,
Kumbakonam.
6. The Bharathi Aided Primary School,
Represented by the Secretary,
Alamankurichi, Kumbakonam.

... Respondents



W.P.(MD)No.1005 of 2020

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the fourth respondent vide Na.Ka.No.2512/A4/2018, dated Nil. 06.2019 signed on 08.06.2019 and quash the same and consequently direct the respondents to count the service of the petitioner as Headmaster from 13.04.1998 to 24.06.2005, in the sixth respondent School for old pension scheme and for other service benefits.

For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.T.Amjadkhan
Government Advocate for R1 to R5
No appearance for R6

ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the fourth respondent, vide proceedings in Na.Ka.No.2512/A4/2018, dated Nil. 06.2019, signed on 08.06.2019, quash the same and consequently, direct the respondents to count the service of the petitioner as Headmaster from 13.04.1998 to 24.06.2005, in the sixth respondent School for old pension scheme and for other service benefits.



W.P.(MD)No.1005 of 2020

WEB COPY

2. The case of the petitioner is that the sixth respondent School is an Aided Primary School. A vacancy arose for the post of Primary School Headmaster in the sixth respondent School, due to retirement of one Sambandam on 31.10.1997 and he served till 28.02.1998 on extension of service. Hence, the sixth respondent issued a paper advertisement on 04.04.1998 for the post of Headmaster. In the meanwhile, the third respondent has granted permission to fill up the post of Headmaster, vide proceedings, dated 06.04.1998. The petitioner has applied for the post of Headmaster and he is having five and half years teaching experience. The School Committee has selected the petitioner and appointed him as Headmaster, vide order dated 13.04.1998. The School Committee submitted the proposal dated 15.04.1998 to the fourth respondent through the fifth respondent along with necessary documents for approval of his appointment as Headmaster. However, the fourth respondent returned the proposal without approving his appointment on the ground that higher qualified person could not be appointed in the post of Secondary Grade Headmaster as per G.O.(Ms).No.559, School Education Department, dated 11.07.1995. The said Government Order is applicable to the Secondary Grade Teacher



W.P.(MD)No.1005 of 2020

post and it is not applicable to the post of Primary School Headmaster.

Challenging the said Government Order, a batch of Writ Petitions was filed before this Court in W.A.Nos.991 to 998 of 1998. This Court, by order, dated 29.06.2001, upheld the validity of the said Government Order with a direction to approve the appointments made from 11.07.1995 to 19.05.1998, on completion of one month Child Psychology Training. Consequent to the judgment of this Court, the Government passed G.O.(Ms).No.155, School Education Department, dated 03.10.2002, with a direction to approve the appointment from 11.07.1995 to 19.05.1998, subject to the completion of one month Child Psychology Training by the said Teachers. In pursuance of the said G.O.(Ms).No.155, dated 03.10.2002, the Teachers covered under the said Government Order underwent one month Child Psychology Training and on completion of the training, their appointments were approved in the regular time scale of pay with effect from 02.06.2003. However, the petitioner was sent for one month Child Psychology Training after lapse of two years, vide proceedings of the fifth respondent dated 23.05.2005 and he had successfully completed the said training from 25.05.2005 to 24.06.2005. Thereafter, his appointment was approved, vide



W.P.(MD)No.1005 of 2020

proceedings of the third respondent dated 22.08.2005, with effect from 25.06.2005 in the scale of pay of Rs.4,500-125-7000, applicable to the Secondary Grade Post. While that being so, the fourth respondent has not admitted the petitioner in the Old Pension Scheme, on the ground that his appointment was approved with effect from 25.06.2005, vide proceedings of the fourth respondent, dated 22.08.2005. Hence, the petitioner has made a representation, dated 12.06.2018 to the respondents requesting to count the service of the Headmaster from 13.04.1998 to 24.06.2005 for extending the benefits of old pension scheme and General Provident Fund. But, till date, no order was passed. Hence, the petitioner has filed a Writ Petition in W.P. (MD)No.4452 of 2019. This Court, by order dated 27.02.2019, directed the respondents to consider the representation of the petitioner, dated 12.06.2018 on merits and in accordance with law as against which, the present impugned order is passed. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that though the petitioner possessed qualification from the recognized



W.P.(MD)No.1005 of 2020

Private School, even then, the post was not approved by the respondents till 2005. Thereafter, the post was approved on 25.06.2005. However, in the approval order, it has been specifically stated that the petitioner is entitled to receive salary as Secondary Grade Teacher as Rs.4500-125-7000 from 25.06.2005 and after completion of five years, his salary will be increased on par with the Primary School Headmaster and the petitioner is not entitled to any increments or any benefits and his seniority will be reckoned as junior most surplus teacher in the said School. Further, the petitioner is directed to maintain people ratio as per G.O.(Ms).No.525, School Education Department, dated 29.12.1997 with certain conditions. However, the fact remains that the petitioner was appointed in the year 1998 and the said appointment was approved only in the year 22.08.2005 after completion of Child Psychology Training. Though the Child Psychology Training was introduced in the year 2003, the petitioner was sent for the training only in the year 2005, after a lapse of two years and fixing the responsibility as against the petitioner is not sustainable one. Hence, the petitioner is entitled to be counted for service from the date of initial appointment, i.e., in the year 1998 onwards. However, without counting the service rendered by the



W.P.(MD)No.1005 of 2020

petitioner and extending the new pension scheme to the petitioner, is not sustainable one and the petitioner is entitled to be fixed into old pension scheme and provident fund. Hence, the impugned order is liable to be interfered with. Accordingly, he prayed for appropriate orders.

4. The learned Government Advocate appearing for the respondents would submit that the main grievance of the petitioner is that the respondents should count the service of the petitioner as Headmaster from 13.04.1998 to 24.06.2005 and not from 25.06.2005. It is pertinent to note that G.O.(Ms).No.413 has been passed in favour of the similar persons like the petitioner who have been approached this Court in W.P.Nos.26933 and 26934 of 2007 and W.P.(MD)Nos.12280 to 12282 of 2010 and not to the petitioner. Though the petitioner had acquired B.Ed., qualification, he was appointed as Headmaster in a Primary School and the said appointment was made as per G.O.(Ms).No.559, School Education Department, dated 11.07.1995. Subsequently, the School Education Department has issued G.O.(Ms).No.155 dated 03.10.2002 and thereby ordered that B.T.Assistant / Tamil Pandits having B.Ed., qualifications who were appointed in the



W.P.(MD)No.1005 of 2020

sanctioned regular posts of Secondary Grade Teachers in Private Aided Schools from 11.07.1995 to 19.05.1998 shall undergo one month Child Psychology Training through District Institute of Education and Training (DIET) and on the date of completion of the training, their appointments shall be approved and salary shall be paid with effect from the date of approval of appointment in the post of Secondary Grade Teachers by relaxing Rule 15(6) of the Tamil Nadu Private Schools (Regulation) Rules, 1974. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. Admittedly, the sixth respondent appointed the petitioner as Headmaster as 13.04.1998. Though the petitioner had acquired B.Ed., qualification, he did not possess five year experience in the recognized Private School. Initially, the sixth respondent Management forwarded the petitioner's appointment for approval and the same was not considered on the ground that the petitioner has not acquired necessary qualifications.



W.P.(MD)No.1005 of 2020

WEB COPY

Further, the petitioner's appointment was subsequently approved only on 22.08.2005 with certain conditions that the petitioner is entitled to receive salary as Secondary Grade Teacher as Rs.4500-125-7000 from 25.06.2005 and after completion of five years, his salary will be increased on par with the Primary School Headmaster and the petitioner is not entitled to any increments or any benefits and his seniority will be reckoned as junior most surplus teacher in the said School. Further, the petitioner was appointed in violation of G.O.(Ms).No.525, School Education Department, dated 29.12.1997. Contrary to the same, the petitioner has made a claim before the respondents for approval of his post from the date of initial appointment and for conferring old pension scheme in favour of the petitioner is not sustainable one. Till date, earlier appointment issued by the Government by relaxing the Rules was not challenged by the petitioner and when the earlier appointment order, dated 22.08.2005 is in force, the claim made by the petitioner in the present Writ Petition cannot be granted. Further, reliance placed upon the decision of the Hon'ble Division Bench of the Principal Seat of this Court in W.A.Nos.1573 of 2021 etc., batch by the learned counsel for the petitioner, is not applicable to the present case and it relates



W.P.(MD)No.1005 of 2020

to Secondary Grade Teacher not Headmaster. The petitioner has been appointed in the post of Headmaster without five years experience and even on 24.06.2005, his five years of experience is not dispensed with. However, the Government approved his appointment, taking into consideration the completion of Child Psychology Test. Hence, the impugned order passed in the present Writ Petition cannot be interfered with.

7. Accordingly, this Writ Petition is dismissed. No costs.

05.12.2022

Index : Yes / No

Speaking Order : Yes / No

vji



W.P.(MD)No.1005 of 2020

WEB COPY

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W.P.(MD)No.1005 of 2020

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W.P.(MD)No.1005 of 2020

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