



W.P.(MD)No.3594 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.3594 of 2020
and
W.M.P.(MD)No. 3037 of 2020

M.Palpandian

... Petitioner

Vs.

1.The Director of School Educational
DPI Compound,
College Road,
Chennai.

2.The Chief Educational Officer,
Chief Education Office,
Theni,
Theni District.

3.The Headmaster,
Government Higher Secondary School,
Devadanapatti,
Periyakulam Taluk,
Theni District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent in R.C.No.1930/A3/2019 dated 22.05.2019 and quash the same and consequently direct the respondents 1 and 2 to re-fix the salary and service after reckoning the petitioner's previous service rendered in Pachaiyappa High School, Uppukottai, Bodi Taluk, Theni District from 01.06.2006 to 01.03.2011 and on the basis of last drawn pay.

For Petitioner : Mr.V.M.Jegadeesha Pandian

For Respondents : Mr.S.Saji Bino
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order passed by the second respondent in R.C.No.1930/A3/2019 dated 22.05.2019 and quash the same and consequently direct the respondents 1 and 2 to re-fix the salary and service after reckoning the petitioner's previous service rendered in Pachaiyappa High School, Uppukottai, Bodi Taluk, Theni District, from 01.06.2006 to 01.03.2011 and on the basis of last drawn pay.



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2. The case of the petitioner is that initially he was appointed as B.T. Assistant on 01.06.2006 at Pachaiyappa High School, Uppukottai, Bodi Taluk, Theni District and his appointment was approved by the second respondent vide proceedings Na.Ka.No.3344/A2/2006, dated 28.09.2006 and his basic pay was fixed as Rs.9,300/-. The said school is a aided school. After completion of four years and 9 months of service, the petitioner selected in the Teacher Recruitment Board and posted as B.T. Assistant from 02.03.2011 at Panchayat Union Middle School, Nariyuthu, Andipatti Taluk, Theni District. Thereafter, transferred to the second respondent school as B.T. Assistant (Science) on 08.08.2014 and still working without any remarks. The petitioner rendered a service nearly about 4 years and 9 months under the Government approved post in the aided School with the approval of the Education Department and hence, he is entitled to account the said service for the purpose of fixation of scale of basic pay of Rs.13,070/- instead of Rs.9,300/-. Hence, the petitioner has given a representation, dated 24.12.2018 to the second respondent to refix the basic salary and the same was not considered and hence, he filed writ



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petition before this Court in W.P.(MD) No.3849 of 2019, wherein, this Court directed the respondent to consider the petitioner's representation and pass orders on merits and in accordance with law after giving opportunity to the petitioners. Pursuant to which, the second respondent passed an order dated 22.05.2019, rejecting the request of the petitioner. Challenging the same, the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner would submit that the issue raised in this writ petition is no longer *res integra*. A learned Single Judge of this Court in W.P(MD)No.17205 of 2020, vide order, dated 01.04.2022, has held that any Teacher, who worked in aided school, would always like to migrate to Government service for betterment of their service benefits and career. Such option exercised by the petitioner cannot be put against him and on that basis, the denial of pay scale on par with other similarly placed teachers, would be grossly discriminatory and would cause grave injustice to the interest of the petitioner. In fact the improper fixation of pay scale, without taking into account the past service of the petitioner in the aided schools, would amount to violation of equality clause enshrined in



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Article 14 of the Constitution of India and allowed the writ petition.

Accordingly, he prayed for extending the similar relief to the petitioner also.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that earlier decision referred to by the learned counsel appearing for the petitioner in W.P(MD)No.17205 of 2020, vide order, dated 01.04.2022, was not accepted by the Division Bench of this Court in W.A(MD)No.627 of 2022 and the Division Bench followed the dictum laid down by the Honourable Apex Court in the case of ***Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others*** reported in ***(2017) 5 SCC 783***, wherein the Apex Court has held that once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have been the normal course had he continued in the parent service.



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5. In the present case, earlier the petitioner was appointed as a B.T. Assistant in an aided school and thereafter, he participated in the selection process to the Post of B.T. Assistant through Teachers Recruitment Board and appointed as B.T. Assistant on 02.03.2011. It was a fresh appointment in Government service and not a transfer or migration transfer as stated by the petitioner. Accordingly, his pay was fixed and the impugned order has been passed, which is perfectly in order and there is no need to interfere with the same.

6. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents and perused the materials produced before this Court.

7. The petitioner was initially appointed as a B.T. Assistant in an aided school and after completion of 4 years and 9 months of service, he participated in the examination conducted by the Teachers Recruitment Board and got selected as a B.T. Assistant and his pay was fixed in the scale of pay of Rs.9,300/- instead of fixing the salary of R.13,070/-. Aggrieved



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by the same, the petitioner made a representation to the second respondent and considering the claim of the petitioner, the second respondent rejected the same, vide impugned order, dated 22.05.2019.

8. Earlier, when the similar issue came up before a learned single Judge in W.P(MD).No.6285 of 2018, the learned Single Judge dismissed the writ petition filed by the petitioner therein, which was confirmed by the Division Bench of this Court in W.A(MD)No.627of 2022, wherein the Division Bench followed the decision of the Honourable Apex Court in *Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others reported in (2017) 5 SCC 783*. The relevant portion of the said decision is extracted hereunder:

“25. The Hon'ble Supreme Court in a judgment reported *in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others)* in Paragraph Nos.14 and 15 has held as follows:

“14.Transfer and recruitment by transfer are entirely two different concepts. No doubt



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transfer can be from one category to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra-category and inter-category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class to another class or from one service to another. If it is a transfer simpliciter it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.

15.Transfer in relation to service simply means a change of a place of employment within an organization. Such transfer being to a similar post in the same cadre and therefore, obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter, to a different service altogether. Once an



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employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in change of place of employment and therefore, there is no termination of lien (see.V.Jagannadha Rao Vs.State of A.P and B.Thirumal V.Ananda Sivakumar) ”

26. We are not in agreement with the judgment of the Division Bench in W.A.No.3868 of 2019 dated 16.10.2020 for the following reasons:

(i).The judgment of the Hon'ble Supreme Court reported in ***in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs P.Ramaseshaiah and***



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others) as referred supra has not been taken into consideration.

(ii).Rule 2(b)(ii) of Special Rules for Tamil Nadu Higher Secondary Educational Service relating to 50% reservation for direct recruitment has not been brought to the notice of the Division Bench.

(iii).Rule-8 relating to fixation of two different periods of probation for the candidates selected through direct recruitment and transfer of service has not been brought to the notice of the Division Bench.

27.In view of the above said circumstances, we respectfully follow the judgement of the Hon'ble Supreme Court reported in *in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others)*.

28. The petitioner has referred to the dismissal of SLP (Civil).No.5633 of 2021 dated 12.04.2021 which challenged the Division Bench judgment in W.A.No.3868 of 2019. A perusal of the order of Hon'ble Supreme Court reflects that the Special Leave Petition has been dismissed



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without assigning any reasons. The Hon'ble Supreme Court in a judgment reported ***in (2019) 4 SCC Page 376 (Khoday Distilleries Limited (Now known as Khoday India Limited) and others -Vs- Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator)*** in Paragraoh No.26.2 has held as follows:

“26.2. We reiterate the conclusions relevant for these cases as under (Kunhayammed case, SCC P. 384).

“(iv).An order refusing special leave to appeal may be a non-speaking order of a speaking one. In either case, it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v). If the order refusing leave to appeal is a speaking order i.e.gives reasons for refusing the grant of leave, then the order has two implications. Firstly,



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the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi). Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.



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(vii). On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

10. The said decision is squarely applicable to the case on hand. Hence, applying the ratio laid down by the Honourable Division Bench of this Court following the decision of the Honourable Apex Court, the prayer sought for by the petitioner cannot be granted. Accordingly, this writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

20.12.2022

Index : Yes / No

Speaking Order : Yes / No

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M.DHANDAPANI,J.

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