



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) .No.13535 of 2021

and

W.M.P. (MD) .Nos.10493 and 10495 of 2021

A.Rose Pauline

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 006.
- 2.The Director of Elementary Education,
College Road,
Chennai - 600 006.
- 3.The District Educational Officer,
Sivagangai,
Sivagangai District.
- 4.The Block Educational Officer,
Thiruppathur Union,
Sivagangai District.
- 5.The Correspondent,
R.C. Primary School,
C.K. Mangalam,
Sivagangai District.
- 6.The Headmaster,
Panchayat Union Primary School,
Kalaiyar Kovil (East),
Devakottai Educational Block,
Sivagangai District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent BEO in Na.Ka.No. 762/A2/2020 dated 05.10.2020 and quash the same and further direct



the respondents herein to re-fix the petitioner's salary on the basis of her last pay drawn in R.C.Primary School, C.K.Mangalam, Ramanathapuram District.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers
For R-1 to R-4 : Mr.S.Shaji Bino,
Special Government Pleader.

ORDER

The petitioner herein was originally appointed as a Secondary Grade Assistant on 25.08.1999 in the R.C. Primary School, Sivagangai District, which is an aided school. Thereafter, she was selected as a Secondary Grade Teacher through TRB on 15.07.2009. She was relieved from the R.C. Primary School on 28.07.2009 and consequently, she had joined in the new post of Panchayat Union School on 29.07.2009 itself, without any break. Though the second respondent herein had taken into account the past service rendered by the petitioner in the aided school from 01.09.1999 to 28.07.2009, the last drawn salary in the aided school was not taken into account for the purpose of fixation of the pay scale in the Panchayat Union School. Her request in this regard came to be rejected on 07.12.2015, which was challenged by the petitioner before this Court in W.P.(MD).No.452 of 2016 and by an order dated 27.11.2019, The Writ Petition was allowed in the following manner:

"7.From the materials on record, it is seen that the petitioner, who was working as Secondary Grade Teacher in a private School from 01.09.1999 to 28.07.2009, got appointment in the year 2009 in the third respondent School. The AEE0, Thiruvadanai, on the application of the petitioner, has permitted the petitioner to relive on 28.07.2009. The petitioner has joined in the third respondent School on the next date ie., 29.07.2009. The past service of the petitioner is taken into account for pensionary benefits, payment of Provident Fund, as well as for granting Selection Grade. When the past service is taken into account for the above benefits, the impugned order of the second respondent, rejecting the request of the petitioner to take into account the last drawn salary in the previous School for fixing of scale of pay in the third respondent School, is erroneous. The learned Government Advocate appearing for the respondents 1 and 2 stated that the salary of the said D.Narayanasamy was wrongly fixed and orders were passed for recovery of the excess amount. On the other hand, the learned counsel appearing for the petitioner has produced the copy of the order dated 16.08.2017 made in W.P.No.31114 of



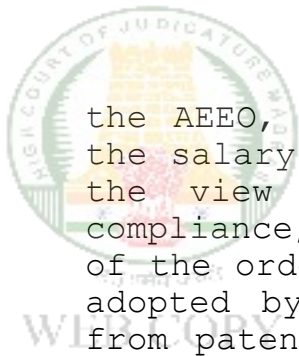
2013, which was filed by the said Narayanasamy, challenging the order of recovery, wherein this Court has remanded the matter to the respondents to pass orders on merits, after affording opportunity of hearing. After various orders passed by this Court, the respondents have not conducted any enquiry and not passed any orders, recovering the amount from the said Narayanasamy and the same is applicable to the petitioner also. The petitioner is also entitled for the similar relief.

8. In view of the order dated 16.08.2017 passed in W.P.No.31114 of 2013, the impugned order of the second respondent dated 07.12.2015, is set aside. This Writ Petition is allowed, directing the respondents 1 and 2 to refix the petitioner's salary, on the basis of the her last pay drawn in R.C.Primary School, C.K.Mangalam, Ramanathapuram District as well as in the light of the proceedings of the AEEO Sivagangai, in Na.Ka.No.3033/A1/2013, dated 25.05.2013. No costs."

2. In spite of favourable orders, when the respondents had failed to refix the petitioner's salary on the basis of her last pay drawn in R.C. Primary School, a Contempt Petition came to be filed before this Court in Cont.P.(MD).No.797 of 2020. The fourth respondent herein had then rejected the petitioner's request for re-fixation of her salary through another order, dated 05.10.2020, which is impugned in the present Writ Petition, and by quoting the rejection order, the Contempt Petition was dismissed.

3. When the petitioner herein had earlier approached this Court for re-fixation of her salary, this Court, had held that the petitioner was entitled for re-fixation of her salary on the basis of her last drawn salary in the R.C. Primary School and had also directed the respondents to refix the salary in the light of the proceedings of the AEEO, Sivagangai, dated 25.05.2013, whereby, a similarly placed teacher was extended with the same benefit. However, the respondents herein have now referred to the proceedings of the AEEO, dated 25.05.2013 and by observing that since the said order was withdrawn and that there are no rules or regulations for re-fixing the salary on the basis of the last drawn wages, they had rejected the same.

4. The impugned order, on a *prima facie* view, seems to be in willful disobedience of the earlier orders of this Court passed in W.P.(MD).No.452 of 2016, dated 27.11.2019. When the Court had directed the respondents to refix the petitioner's salary, a justification was made in paragraph 7 of the order, which has been extracted above. It is not only on the basis of the proceedings of



the AEEO, dated 25.05.2013, was the respondents directed to re-fix the salary. Even otherwise, if at all the fourth respondent was of the view that the order of this Court was not feasible of compliance, the only option left to them would be to seek for review of the order or to file an intra-court appeal. Thus, the very mode adopted by the respondents in passing the impugned order suffers from patent illegality and can also be construed as a contempt of the earlier order of this Court.

5. Even otherwise, this Court in various orders have upheld the claim of the petitioner by holding that the past services and the last drawn wages in the earlier aided school of a Teacher requires to be protected and in one such decision of this Court in the case of **G.Rufus David Vs. The Secretary to State Government, Department of School Education, Chennai and another** passed in **W.P.No.32645 of 2018** dated **16.07.2019**, the ratio was held in the following manner:

"9.This Court, after considering the arguments of both sides, is unable to appreciate the stand of the respondents that the petitioner is not entitled to fixation of proper pay scale on par with other similarly placed teachers only because of the fact that he had, on his own wish, went to Government service, after rendering 14½ years of continuous service in aided schools. This Court is unable to comprehend such objection being raised, that too, seriously by the Government. 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 Article 14 of the Constitution of India.

10.In fact while rejecting the claim of the petitioner, the Authorities have not taken into consideration the contents of G.O.Ms.No.367, Educational, Science and Technology Department dated 30.03.1984. According to the said Government Order, the appointment of Higher Grade teacher in upgraded post of Secondary Grade Teacher, is also entitled to fixation of pay under FR 22(B) and the benefit of the orders referred to in paragraph (1)



of the Government Order would also be extended to these appointments as well. Unfortunately, it appears that the Authority has not applied his mind properly with reference to the contents of the said Government Order and has simply denied only on specious reasoning that the petitioner has migrated to Government Service on his own wish. This Court is unable to find such reasoning has any meaning at all with relation to the claim of the petitioner herein. On the whole, it appears that the basis of the rejection is wholly unjustified, not acceptable and the same has to be rejected outright."

6. The order in G.Rufus David's case (supra) came to be affirmed by the Hon'ble Division Bench of this Court in W.A.No.3868 of 2019, dated 16.10.2020, as well as by the Hon'ble Supreme Court in SLP (Civil) No.5633 of 2021, dated 12.04.2021. In the light of the aforesaid decisions, the impugned order of rejection also cannot be sustained.

7. Though this Court has found that the disobedience of the earlier order of this Court could be termed as a contempt, I am consciously refraining from taking any further course of action for the present, with the hope that the respondents might comply with the present order.

8. In the result, the impugned order dated 05.10.2020 stands quashed. Consequently, the fourth respondent herein shall forthwith pass orders, re-fixing the petitioner's salary on the basis of her last drawn pay at R.C. Primary School, C.K.Mangalam, Ramanathapuram District, within a period of two (2) weeks from the date of receipt of a copy of this order.

9. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (As)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To

1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai - 600 006.



2.The Director of Elementary Education,
College Road,
Chennai - 600 006.

3.The District Educational Officer,
Sivagangai,
Sivagangai District.

4.The Block Educational Officer,
Thiruppathur Union,
Sivagangai District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate(SR-28329[F] dated
27/06/2022)

+1 CC to M/s.SPL.GP (SR-28243[F] dated 27/06/2022)

W.P. (MD) .No.13535 of 2021
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MGJ(06.07.2022) 6P 7C