



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WEB COPY

W.P. (MD) .No.17205 of 2020

A.Joseph Sebastian

... Petitioner

vs.

- 1.The State of Tamil Nadu
represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
- 2.The Director of Elementary Education,
College Road,
Chennai 600 009.
- 3.The District Educational Officer,
Davakottai,
Sivagangai District.
- 4.The Block Educational Officer (3),
Block Education Office,
Kalayarkovil,
Sivagangai District 630 551.
- 5.The Headmistress,
Panchayat Union Primary School,
Oyyavanthan,
Kalaiyarkovil Union,
Sivagangai District - 630 551.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent District Educational Officer in Na.Ka.No.3909/A4/2020, dated --.10.2020 and the consequential proceedings of the fourth respondent Block Educational Officer in Moo.Mu.No.659/e1/2020, dated 02.11.2020, quash the same and further direct the respondents herein to re-fix the petitioner's salary on the basis of his last pay drawn in St. Antony's Higher Secondary School, Thiruchancode, Namakkal District from 08.02.2010.

For Petitioner

: M/s.A.Amala

For R1 to R4

: Mr.G.Vairam Santhosh

Additional Government Pleader

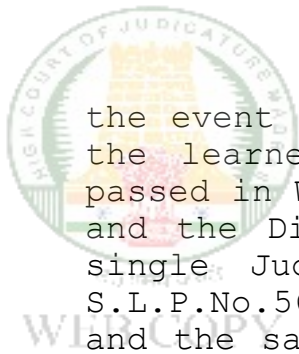


ORDER

This Writ Petition has been filed challenging the proceedings issued by the third respondent/District Educational Officer in Na.Ka.No.3909/A4/2020, dated --.10.2020 and the consequential proceedings of the fourth respondent/Block Educational Officer in Moo.Mu.No.659/e1/2020, dated 02.11.2020 and to quash the same and consequently direct the respondents to re-fix the petitioner's salary, on the basis of his last pay drawn in St. Antony's Higher Secondary School, Thiruchancode, Namakkal District.

2. The writ petitioner was initially appointed as Secondary Grade Teacher in St. Paul Higher Secondary School, Maravaneri, Salem on 14.09.2001, in the sanctioned vacancy. His post was approved by the District Educational Officer vide proceedings in Na.Ka.No.345, dated 15.03.2002. Thereafter, on 09.06.2004, he was transferred to St. Antony Higher Secondary School, Thiruchancode, Namakkal District, which is under the same Corporate Management. In the month of December 2009, the petitioner was selected by the Tamil Nadu Teacher's Recruitment Board and was appointed as Secondary Grade Teacher in Panchayat Union Primary School, Arangiran Patti, Thirumayam, Pudukottai District and the same was communicated to the District Elementary Educational Officer in the month of February 2010. On 08.02.2010, the petitioner was relieved from St. Antony Higher Secondary School, Thiruchancode with the last basic pay of Rs.13640-3683-1000-100 (18,423). The relieving order was countersigned by the District Educational Officer, Namakkal on 08.02.2010. On 09.02.2010, the very next day after relieving from the earlier school he joined as Secondary Grade Teacher in Panchayat Union Primary School, Arangiranpatti, Thirumayam, Pudukottai District. However, he was surprised to receive the basic pay of Rs.8,000/-. Therefore, on 20.03.2013, he made a written request to the District Elementary Educational Officer to re-fix his pay, based on the last pay received in the Government Aided School ie., 13640-3683-1000-100 (18423) till 08.02.2010. However, his request was rejected on 02.11.2020, by the fourth respondent Block Educational Officer, based on the proceedings of the third respondent District Educational Officer. Challenging the same, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner would submit that the issue is no more *res integra* and the issue has already been well settled in similar cases. This Court in W.P.No.32645 of 2018 has categorically held that 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 in G.O.(Ms.) No.367, Education, Science and Technology Department, dated 30.03.1984, would also be extended to these appointments as well. A person, who was initially appointed as Secondary Grade Teacher in a Government Aided School is entitled for the same scale of pay, in



the event if he has been appointed in a Government School. Further, the learned counsel for the petitioner submitted that the order passed in W.P.No.32645 of 2018 was challenged in W.A.No.3868 of 2019 and the Division Bench of this Court has upheld the order of the single Judge, vide its order dated 16.10.2020. Against which, S.L.P.No.5633 of 2021 was preferred before the Hon'ble Supreme Court and the said SLP also dismissed. Therefore, the issue was attained finality at the level of Hon'ble Supreme Court of India. The learned counsel for the petitioner also brought to the notice of this Court that the said order had also been duly complied with by the Department. Therefore, he prayed for allowing this writ petition and the same benefit may be extended to the petitioner as well.

4. Mr.G.Vairam Santhosh, learned Additional Government Pleader appearing for the respondents vehemently opposed the petition stating that the petitioner has migrated to Government service on his own wish and his past service cannot be counted for the purpose of fixation of pay scale. He further submitted that the past service of the petitioner could be included only for pensionary benefits and could not be included for the fixation of pay. Therefore, the petitioner is not entitled for re-fixation. Further, he referred the averments in page No.3 of the counter and made his submissions.

5. Upon hearing the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents, it appears that the present issue of fixation of salary of the petitioner is no more *res integra* and the same issue was already came before this Court and this Court rejected the contention of the respondents and allowed the W.P.No.32645 of 2018 as follows:

"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 14 ½ 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, Education, 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.

11. Therefore, this court is of the view that the petitioner is entitled to proper fixation of pay on the basis of his last pay drawn, before his appointment in Government service.

12. In the above said circumstances, the impugned order passed by the second respondent/Chief Educational Officer, in his proceedings in Na.Ka.No.5953/A4/2018 dated 15.11.2018 is hereby set aside and there shall be consequential direction to the respondents to fix the pay of the petitioner, after taking note of his last pay drawn before his migration to the Government service, in terms of G.O.(Ms.)No.367, Education, Science and technology Department dated 30.03.1984 and pay arrears of differential pay to the petitioner on such re-fixation."

and the said order was upheld by the Division Bench of this Court in W.A.No.3868 of 2019, vide order dated 16.10.2020 and against the said judgment, S.L.P.No.5633 of 2021 was filed and the same was also dismissed. In the present case also the petitioner was appointed as Secondary Grade Teacher in the Government Aided School and subsequently he was migrated to the Government School. He was relieved by the District Educational Officer on 08.02.2010 and on the very next day ie., on 09.02.2010, he had joined as Secondary



Grade Teacher in Panchayat Union Primary School. The grievance of the petitioner was that he is entitled for the same scale of pay as drawn in the Secondary Grade Teacher in the Government Aided School before migration to the Government School as Secondary Grade Teacher. As stated above, the issue has already been settled and reached the finality at the level of Hon'ble Supreme Court. Therefore, the issue is no more *res integra*. Thus, this Court is of the view that the petitioner is entitled for re-fixation of pay, based on the last pay received in the Government Aided School till 08.02.2010 and thus the impugned order is liable to be quashed.

6. In the result, the Writ Petition is allowed and the impugned order passed by the fourth respondent dated 02.11.2020 is quashed and the respondents are directed to re-fix the petitioner's salary, based on the last pay drawn in St. Antony's Higher Secondary School, Thiruchancode, Namakkal District ie., 13640-3683-1000-100 (18423) from the date of his appointment into Government School ie., 09.02.2010, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

7. Post this matter for reporting compliance on **15.06.2022**.

Sd/-

Assistant Registrar (CO)

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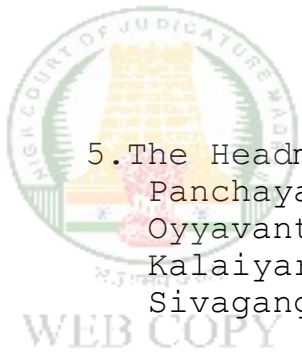
/ /2022

Sub Assistant Registrar(CS)

akv

To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
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Chennai 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai 600 009.
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5.The Headmistress,
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Kalaiyarkovil Union,
Sivagangai District - 630 551.

Copy to:

The Section Officer, Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.AMALA, Advocate (SR-16375[F] dated 04/04/2022)

+1 CC to M/s.SPL GP (SR-16348[F] dated 04/04/2022)

W.P. (MD) .No.17205 of 2020
01.04.2022

MGJ(18.04.2022) 6P 9C