



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 19.01.2022

ORDER PRONOUNDED ON : 24.01.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P. (MD) .No.14704 of 2014

and

MP (MD) .No. 1 of 2014

S.Jayakumar

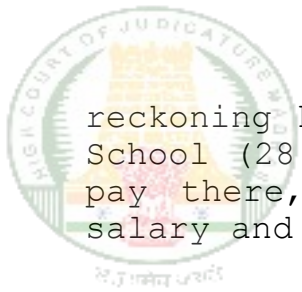
...Petitioner

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 Elementary Educational Officer
Madurai, Madurai District
- 4.The Additional Assistant Elementary
Educational Officer, Sedapatti
Madurai District
- 5.The Headmaster
Panchayat Union Middle School
T.Krishnapuram, Sedapatti Union
Madurai District
- 6.The Correspondent
T.E.L.C. Primary School
M.Kallupatti, Sedapatti Union
Madurai District

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent Additional Assistant Elementary Educational Officer in O.Mu.No.471/A2/2013 dated 13.06.2013, quash the same and further direct the 3rd and 4th respondents herein to sanction and disburse salary to the petitioner by re-fixing his scale of pay after



reckoning his previous service rendered in the 6th respondent aided School (28.08.2000 to 16.12.2012 and on the basis of the last drawn pay there, with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.K.Ragatheesh Kumar
For M/s.Iasaac chamber
For R1 to R4 : Mr.G.Sivaraja
Government Advocate
For R5 & R6 : No appearance

O R D E R

The writ petition has been filed to quash the order passed by the fourth respondent and to direct the respondents 3 and 4 to sanction and disburse the salary of the petitioner by re-fixing his scale of pay after reckoning his previous service rendered in the sixth respondent aided school with all attendance benefits including the arrears of salary and allowances.

2.The learned counsel for the petitioner had contended that the 6th respondent School is a recognized aided minority Institution and he was appointed as Secondary Grade Teacher in the said School on 28.08.2000 in a sanctioned post. The said appointment was approved by the third respondent on 30.01.2001 with effect from 28.08.2000. The petitioner was drawing a salary in the pay scale of Rs.4500-125-7000. After rendering service for 12 years and 4 months, he was drawing salary in the pay scale of Rs.5200-2800-20200+750 PP (Basic pay of Rs.17,450/-). The petitioner was appointed in the fifth respondent Panchayat Union Middle School and hence, he was relieved from the sixth respondent School on 17.12.2012 fore noon. On the same day, he joined in the fifth respondent School.

3.According to the petitioner, he was placed in the pay scale of Rs.5200-2800-20200+750 PP (Total Rs.8750/-). The petitioner has contended that he was placed in a lesser pay scale than what he was drawing while he was working in the same cadre in the sixth respondent aided School. The petitioner sent a representation to the fourth respondent on 06.04.2013 and the said request was rejected by the fourth respondent on 13.06.2013 which is impugned in the present Writ petition.

4.The learned counsel for the petitioner contended that the petitioner was working as Secondary Grade Teacher in the private aided School and now he was appointed in the same cadre in the Government School and hence, his appointment in the fifth respondent School should be treated only by way of transfer of service. Since the appointment is to be treated as transfer of service, the service rendered by the writ petitioner in the private aided School should be taken into consideration not only for pensionary benefit but also for pay fixation and monitory benefits.

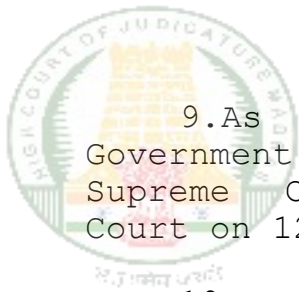


5.The third respondent has filed a counter contending that the petitioner was originally working in an aided minority School. His service condition was governed under Tamil Nadu Recognized Private Schools Regulation Act, 1973 and Rules 1974 framed thereunder. The appointment of the writ petitioner in the fifth respondent School is a fresh appointment and now, the petitioner is governed by the Provisions of Tamil Nadu Educational Subordinate Service Rules. Since the appointment of the writ petitioner as a Secondary Grade Teacher in the fifth respondent School is a fresh appointment and the service conditions of aided Schools teachers and to that of teachers in government service are completely different, the service rendered by the petitioner in aided School cannot be taken into consideration for the purpose of pay fixation of the petitioner in the Government School.

6.I have considered the submission of the writ petitioner and that of the respondent.

7.The learned counsel for the writ petitioner had relied upon the judgment rendered by this Court in W.P.No.32645 of 2018 dated 16.07.2019 wherein under similar circumstances, the learned Single Judge of this Court has accepted the contention of the Government High School Teacher who was earlier working as a Secondary Grade Assistant in a private aided School with regard to re-fixation of pay scale. The learned Single Judge has directed the authorities to confer benefits upon the said writ petitioner taking into consideration the service rendered by the writ petitioner in the private aided School and re-fixing the pay scale and disburse the arrears amount. The said order of the learned Single Judge was challenged by the Government in W.A.No.3868 of 2019. The Hon'ble Division Bench of our High Court in a judgment delivered on 16.10.2020 has confirmed the order passed by the learned Single Judge after holding that the service rendered by the writ petitioner in an aided School should be counted for the purpose of fixation of his pay on his appointment to the post of B.T.Assistant in a Government School. The Hon'ble Division Bench has further held that the appointment of the writ petitioner to the post of B.T.Assistant is by way of transfer of appointment and he cannot be treated as a fresh appointee for the post of B.T.Assistant. The Hon'ble Division Bench has further held that the Government Authorities have decided to count the past service of the writ petitioner for the purpose of conferment of pensionary benefits on his retirement, equally, the same yardstick has to be resorted to by the appellants for re-fixation of his pay during the course of his service as B.T.Assistant.

8.Based upon the said observations, the Hon'ble Division Bench confirmed the order of the learned Single Judge and dismissed the writ appeal filed by the Government.



9.As against the order of the Hon'ble Division Bench, the Government filed SLP (Civil) No.5633 of 2021 before the Hon'ble Supreme Court. The said SLP was dismissed by the Hon'ble Supreme Court on 12.04.2021.

10.According to the learned counsel for the writ petitioner, the issue is no longer res integra. The respondents are bound by the judgment of the Hon'ble Division Bench which has been confirmed by the Hon'ble Supreme Court.

11.The facts of the present case are squarely covered by the judgment rendered by the learned Single Judge in W.P.No.32645 of 2018 which is confirmed in W.A.No.3868 of 2019 and further confirmed in SLP(Civil).No.5633 of 2021. Hence, I find that the impugned order passed by the third respondent is liable to be set aside and the writ petitioner is eligible for counting of his past service in the aided School not only for the purpose of retirement benefits but also for re-fixation of his pay scale. Accordingly, the impugned order passed by the third respondent is set aside. The writ petition stands allowed. The respondents 3 and 4 are directed to re-fix the pay scale of the writ petitioner taking into consideration of his past service rendered in the private aided School and disburse the arrears of pay scale within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

NOTE:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary
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 Elementary Educational Officer
Madurai, Madurai District

4.The Additional Assistant Elementary
Educational Officer, Sedapatti
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5.The Headmaster
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6.The Correspondent
T.E.L.C. Primary School
M.Kallupatti, Sedapatti Union
Madurai District

+1 CC to M/s.K.Ragatheesh Kumar (ISAAC CHAMBERS), Advocate
(SR-2459[F] dated 25/01/2022)

+1 CC to M/s.SPL.GP (SR-2397[F] dated 25/01/2022)

order made in
W.P. (MD) .No.14704 of 2014
and
MP (MD) .No. 1 of 2014
24.01.2022

NSN(CO)
GC(08.02.2022) 5P 9C