



W.P.(MD)No.16881 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2022

PRONOUNCED ON : 07.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16881 of 2014

and

M.P(MD) No.1 of 2014

M. Sivaganesan

... Petitioner

-Vs-

- 1.The State of Tamilnadu
Rep., by its Secretary,
Department of School Education,
Fort St.George, Chennai -09.
- 2.The Director of School Education,
College Road, Chennai -06.
- 3.The District Educational Officer,
Kumbakonam Education District,
Kumbakonam, Thanjavur District.
- 4.The Correspondent,
Thiruvaduthurai Adheenam
Higher Secondary School,
Thiruvidaimaruthur, Thanjavur District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the second and third respondents to approve the petitioner's appointment w.e.f 21.12.2002 with regular time scale of pay as admissible for that post and release the differential pay, allowance and other attendant benefits including Teachers Provident Fund and Pensionary benefits from the said date.

For Petitioner : Mr.F.Deepak

For R1 to R3 : Mr.S.Kameswaran
Government Advocate (Civil side)

For R4 : No appearance

ORDER

This writ petition is filed for directing the second and third respondents to approve the appointment of the petitioner with effect from 21.12.2002 with regular time scale of pay as admissible for the post and release the differential pay, allowance and other attendant benefits including Teachers Provident Fund and Pensionary benefits from the said date.



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2.The brief facts of the case are that the petitioner was working as a Post Graduate Teacher in the fourth respondent school. Initially, the petitioner was appointed as Middle Grade Graduate Teacher in the fourth respondent school on 21.12.2002 as per G.O.Ms.No.79, School Education Department, dated 14.06.2002 in an approved post. The vacancy arose on account of the voluntary retirement of one Mr.M.Sundarrajan vide order, dated 13.12.2002 issued by the fourth respondent. The fourth respondent school is a Recognized Aided Denomination Minority school. The third respondent vide letter dated 06.01.2003 requested the Chief Educational Officer, Thanjavur to convert the said Secondary Grade vacancy as a Middle Grade Graduate Teacher. The third respondent vide proceedings, dated 11.03.2005 granted approval for the petitioner's appointment from 01.06.2003 on consolidated pay of Rs.4,000/- per month following G.O.Ms.No.100, School Education Department, dated 27.06.2003 and also following G.O.Ms.No.125, school education department, dated 12.11.2003 and G.O.Ms.No.130 School Education Department, dated 27.09.2004. Later, as per G.O.Ms.No.99 School Education Department, dated 27.06.2006, the third respondent vide his proceedings, dated 17.10.2007 granted regular time scale of pay of Rs.5500-175-9000 from 01.06.2006.



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Subsequently, on 21.01.2008 the petitioner was promoted as a Post Graduate Teacher in the same school. Though the petitioner pay was converted to regular time scale of pay from 01.06.2006, the petitioner's name was not included in Teachers' Provident Fund and any pension scheme.

3.The contention of the petitioner is that the petitioner was wrongly placed on consolidated pay. The scheme of consolidated pay would arise only in respect of the appointment approved vide G.O.Ms.No.4, School Education (X2) Department, dated 19.01.2004, which governs only the vacancies arising from 01.06.2003 and the appointments made therein. In the case of the petitioner, the post was an approved vacant post as on 21.12.2002, which is much before the issuance of G.O.Ms.No.4. The further contention of the petitioner is that he ought to have been paid time scale of pay instead of consolidated pay and the petitioner ought to be included in the regular pensionary scheme. The petitioner was granted time scale of pay from 01.06.2006 instead of 21.12.2002. In the meanwhile, Government of Tamil Nadu had issued another order in G.O.Ms.No.430, dated 06.08.2004, wherein, it has been stated that the employees appointed on or after 01.04.2003 are



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entitled to get only contributory pension. Hence, the petitioner filed this writ petition.

4. The respondent filed a counter affidavit stating that the petitioner is working as a Post Graduate Teacher in the fourth respondent school and the said school is an Aided Non-Minority Higher Secondary School and the salary to the teachers and non-teaching staffs, are paid by the Government by way of grant in aid. Due to the voluntary retirement of the erstwhile incumbent on 20.12.2002 the post of Secondary Grade Assistant Teacher fell vacant. Subsequently, the petitioner was appointed in the resultant vacancy from 21.12.2002. The petitioner was appointed as Middle Grade Graduate Teacher as per GO.Ms.No.79, School Education (VI) Department, dated 14.06.2002, wherein, it has been specifically stated that prior permission of the Government should be obtained before filling up of the post. The fourth respondent has not followed the above condition issued in the Government Order and hence the petitioner's appointment is an irregular one. Subsequently, the Government by way of G.O.Ms.No.130, dated 27.09.2004, has sympathetically considered all such appointments on humanitarian



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grounds regularized all the appointments made by the managements from 14.06.2002 by extending the consolidated pay from 01.06.2003. The Government issued another G.O.Ms.No.430, dated 06.08.2004, wherein it has been clearly stated that the employees appointed on or after 01.04.2003 are not entitled to any pensionary benefits. Since the appointment is made without getting any prior approval, the school is not eligible for any grant-in-aid in the said post. The Government has extended such concession to the appointment by granting consolidated pay and the petitioner cannot seek for further concession from the Government. Hence, the respondent prayed to dismiss the writ petition.

5.Heard Mr.F.Deepak, learned counsel for the petitioner and Mr.S.Kameswaran learned Government Advocate (Civil side) for the respondent and perused the records.

6.It is seen from the records that the fourth respondent has filed a suit in O.S.No.133 of 1981 before District Munsif Court, Valangiman at



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Kumbakonam, wherein, the District Munsif has declared that the plaintiff Thiruvavaduthurai Adhianam as a religious denomination, to which the provision of Tamil Nadu Recognized Private Schools (Regulation) Act are not applicable. The defendant and his men are hereby restrained from enforcing the provision of the Act in respect of the four schools viz., (i) Thiruvavaduthurai Adheenam High School, Thiruvidadaimaruthur (ii) Thiruvavaduthurai Adheenam Middle School at Thiruvidadaimarudur (iii) Thiruvavaduthurai Adheenam Primary School at Thiruvidadaimarudur (iv) Thiruvavaduthurai Adheenam high School, Thiruvidadaimarudur.

7. The claim of the petitioner is that the Civil Court has declared the school as a minority denomination school and hence, the provision of the Tamil Nadu Recognized Private Schools (Regulation) Act is not applicable and the school has every right to appoint its own Teachers without any prior permission from the official respondents. However, in ***T. Varghese George Vs Kora K. George and others*** reported in ***(2012) 1 SCC 360***, the Hon'ble Supreme Court has held that minority status ought to be granted only by the competent authority and Civil Court has no jurisdiction. The relevant



WEB COPY portion is extracted hereunder:

“29. Then comes the question as to whether the orders obtained under the above referred Tamil Nadu Act by three schools belonging to the trust can make any difference. It is necessary to note in this connection that these orders were obtained from a Civil Court and were confirmed in appeal. However, we must note that a recognition of a school as a minority school is to be obtained from a competent authority under Section 11 of that Act, and not from any Civil Court, and any party aggrieved by non-grant thereof has a right of appeal under Section 41 of that Act to the prescribed Authority. Section 53 of the Act clearly lays down that no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by an authority or officer mentioned in this Act. Thus, prima facie, it would appear that the orders were obtained from a forum non-juris. The reliance on the judgments of the Civil Court though pressed into service before the single Judge were not taken as a relevant factor for deciding the minority character of the trust. Now, that this submission is being reiterated, Shri Ganesh has submitted with some force that these orders are from a Court without any jurisdiction. We must note in this connection, that the statement of objects and reasons of the Act states that the act was passed to regulate the service conditions of the teaching and non-teaching staff in private schools and in that context some separate provisions were made for the minority schools. In the present case, though the declaration was claimed under the Tamil Nadu Act, it was not obtained from an authority specifically created for that purpose under the act to give such a status declaration. Therefore, in our understanding these orders cannot be used for determining the character of



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9.The said G.O Ms. No.79 was challenged before this Court in several cases, wherein, this Court has held that if any secondary grade teacher post fell vacant according to G.O.Ms.No.79 it is automatic upgradation. However, the respondent repeatedly had taken a stand that it is not an automatic upgradation. The school ought to obtain permission to upgrade the said post. Since this Court held in several cases prior permission is not necessary for upgrading the said post, the claim of the respondent ought to be rejected and the post has to be automatically upgraded. If the post is upgraded, then the petitioner's appointment on 21.12.2002 and the petitioner is entitled to be considered as an appointment as per G.O.Ms.No.79. It is seen from the records that G.O.Ms.No.4, School Education (X2) Department, dated 19.11.2004 is applicable to the vacancy which arises from 01.06.2003 onwards. In the present case, since the vacancy arose on 14.12.2002 onwards, the said G.O.Ms.No.4 is not applicable.



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10.From the discussion as stated above, this Court is of the considered opinion that the petitioner is entitled to be included in the old pensionary scheme, but the petitioner is entitled to the Scale of Pay applicable to the Middle Grade Graduate Teacher until the petitioner was appointed as Post Graduate Teacher on 21.01.2008. Hence, the official respondents 1 to 3 are directed to grant approval to the petitioner's appointment from 21.12.2002 as Middle Grade Graduate Teacher and include the petitioner in the Teachers Provident Fund and grant old pensionary benefits from the date of appointment i.e., 21.12.2002. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

11.With the above directions, this Writ Petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No

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To

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S.SRIMATHY,J.

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Dated:
07.07.2022