



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.19383 of 2014 and

M.P(MD).No.1 of 2014

WEB COPY

R. Mary Arul Selvi

:Petitioner

..vs..

1.The State of Tamil Nadu
Rep. By its Secretary
Department of School Education
Fort. St. George, Chennai - 600 009.

2.The Director of Elementary Education,
College Road,
Chennai - 600 000.

3.The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

4.The Assistant Elementary Educational Officer,
Alwarthirunagari at Thenthiruperi,
Tuticorin District.

5.The Correspondent,
St. Aloysius Primary School,
Pirandarkulam,
Tuticorin District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ in the nature of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3rd respondent DEEO vide Na.Ka.No.1052/A5/2014, dated .09.2014 (signed on 20.09.2014) quash the same and further direct the respondents 2 to 4 herein to revise the date of petitioner's upgradation as primary school Headmistress in the 5th respondent school w.e.f. 01.06.1992 with salary and other attendant benefits.

For Petitioner : Mr.A.Ajith Geethan

For R1 to R4 : Mr.N. Ramesh Arumugam
Government Advoate (Civil Side)

For R5 : Fr. V. John Kennedy
for Mr. Father Xavier Associate



O R D E R

This writ petition has been filed to quash the impugned proceeding issued by the 3rd respondent DEEO vide Na.Ka. No.1052/A5/2014, dated 20.09.2014 and further direct the respondents 2 to 4 herein to revise the date of petitioner's upgradation as Primary School Headmistress in the 5th respondent school w.e.f. 01.06.1992 with salary and other attendant benefits.

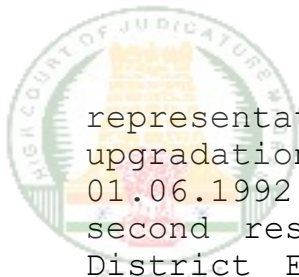
2. The petitioner is working as Headmistress in the 5th respondent's school and is possessing Diploma in Teacher Educational D.T.Ed., B.Lit., (Tamil), B.Ed., (Tamil) and M.A., (Tamil). The 5th respondent school is having standards from 1 to 5. The school was granted recognition with effect from 01.06.1987 vide proceedings dated 18.07.1989 without grant-in-aid. The petitioner is appointed as Secondary Grade Teacher with effect from 01.06.1987. The Government sanctioned grant-in-aid for 26 schools throughout the State including the 5th respondent school vide G.O.Ms.No.591 Education (B2) Department, dated 02.07.1992. The 5th respondent school was sanctioned with two Secondary Grade posts with effect from 01.06.1991. The Secondary Grade Teacher with 5 years teaching experience will become eligible to be a Primary School Headmistress. The contention of the petitioner is that, in the 5th respondent school, even after completion of five years of service as Secondary Grade Teacher / in-charge Headmistress, her post was not upgraded into that of Primary School Headmistress. The school submitted a proposal dated 27.06.1997 requesting to upgrade one post of Secondary Grade Teacher as Primary School Headmistress post w.e.f. 01.06.1992 and to promote the petitioner as Primary School Headmistress. The District Elementary Educational Officer forwarded the proposal to the Director with his recommendations vide proceedings dated 28.07.1999. The Government Vide G.O.Ms. 5, School Education (B2), Department, dated 09.01.2001 conferred the power upon the 2nd respondent Director conversion of post. Thereafter, the second respondent Director issued proceedings, dated 09.01.2001, converting one Secondary Grade Teacher post in the school into that of Primary School Headmistress. Since the petitioner being the senior most Secondary Grade Teacher in the school was promoted as Primary School Headmistress w.e.f. 09.01.2001. The contention of the petitioner that with respect to one another school under the same Management viz., St. Thomas R.C Primary School, Kanthankudiyiruppu, Tuticorin District was upgraded as Primary School Headmistress with effect from 01.06.1992. Since the senior most teacher in that school viz., S. Gracia, who had completed five years of service was promptly promoted as Primary School Headmistress w.e.f. 01.06.1992 vide proceeding of the third respondent dated 13.06.1995. Therefore, the petitioner seeking to confer her the Primary School HM post from the 1992 onwards.

3. Heard the learned counsel appearing on either side and

<https://hcservices.courts.tn.in/hcservices/> perused the materials available on record.



4. The grievance of the petitioner is that the respondents did not upgrade the post with effect from the date of completion of five years of service as Secondary Grade Teacher on 01.06.1992. Hence, the petitioner submitted a representation to the 5th respondent school dated 31.10.2001 requesting to take necessary action to get approval for the upgradation as Headmistress w.e.f. 01.06.1992. Thereafter, the school submitted a proposal to the first respondent Government through proper channel on 19.11.2001 requesting to upgrade the Primary School Headmistress w.e.f. 01.06.1992 and the respondents sought additional details and returned the proposal vide proceedings dated 06.09.2002. Thereafter, the school furnished the details on 11.10.2002 and the Assistant Elementary Education Officer returned the proposals directing the school to resubmit along with a copy of the proceedings of the Director, dated 03.05.1995. The claim of the petitioner that under the said proceedings the Headmistress post was sanctioned w.e.f. 01.06.1992 to another school namely St. Thomas R.C Primary School, Kanthankudiuruppu. The petitioner contention that despite the efforts, the 5th respondent school could not get the above proceedings of the Director dated 03.05.1995. However, on 29.09.2003 the school re-submitted the proposal along with a copy of the proceedings of the third respondent dated 13.08.1995 which had been issued pursuant to the above said proceedings of the Director and requested to grant upgradation to the petitioner with effect from 01.06.1992. Again the fourth respondent returned the same vide proceeding dated 10.10.2003 with instructions to resubmit the proposal with the proceedings of the Director, dated 03.05.1995. The school resubmitted a representation to the 4th respondent stating that the copy of the proceeding of the Director dated 03.05.1995 had not been communicated to the 5th respondent school and requesting to upgrade the post w.e.f. 01.06.1992. The fourth respondent school forwarded the proposal to the third respondent along with his recommendation dated 25.11.2003. Thereafter, several representations were submitted to the respondents 2 and 3 dated 02.11.2005, 12.12.2007, 06.07.2009, 08.06.2010, 14.03.2011 and 31.07.2012. The 3rd respondent returned the representation and instructed to submit the same through proper channel i.e. through 4th respondent. The petitioner submitted her representation to the third respondent District Elementary Education Officer through proper channel i.e., 4th respondent Assistant Elementary Education Officer dated 06.09.2012. The petitioner submitted an application under Right to Information Act requesting a copy of the proceeding of the Director dated 03.05.1995 and the respondents 2 and 3 stated that the such proceedings are not in their office. Hence, the petitioner made an appeal dated 11.03.2013 to the State Information Commission and in spite direction of the Commission to serve the copy still the proceeding is not served to the petitioner. Hence, the petitioner filed W.P(MD).No.3302 of 2014 seeking a direction to the respondents 2 and 3 to pass orders on the proposal submitted by the 5th respondent school dated 19.1.2001 along with the petitioner's final



representation dated 06.09.2012 seeking to revise the date of her upgradation as primary school Headmistress with effect from 01.06.1992 and this Court vide order dated 26.02.2014 directed the second respondent to consider and pass orders. Thereafter, the District Elementary Education Officer vide proceeding dated Nil. 09.2014 stating that the Headmaster post had been sanctioned to the school only w.e.f. 09.01.2001. Hence, the request for approval with effect from 01.06.1992 is not feasible. Aggrieved over the same, the petitioner has preferred the present Writ Petition.

5. The third respondent has filed a counter. The Chief Educational Officer has granted recognition vide proceeding dated 18.07.1989 for the period from 01.06.1987 to 31.03.1989. The Government in G.O.Ms. No.591 Education (B2) Department, dated 02.07.1992 has sanctioned two posts of Secondary Grade Teachers to St. Aloysius R.C.Primary School, Pirandankulam from 01.06.1991. There is no automatic upgradation of the post of Secondary Grade Teacher as Headmaster of Primary School. The Government also took a decision and issued G.O.Ms.No.5, School Education (B2), Department, dated 09.01.2001 sanctioning upgradation of the Secondary Grade Teacher post into Headmaster post to various schools in the State including 5th respondent school with effect from 09.01.2001. The respondents have specifically stated in the counter that the District Elementary Educational Officer, Tuticorin, in respect of St. Thomas R.C. Primary School, Kandankudieruppu is not in order. The reference in that order dated 03.05.1995 is not at all available. Moreover, the District Elementary Educational Officer has no power to sanction upgradation of Secondary Grade Teacher post as Primary School Headmaster as the said power is vested with the Government. For the first time the Government has issued G.O.Ms.No.5, dated 09.01.2001 delegated the power of upgradation to the Director of Elementary Education, Chennai. Therefore, the reference stated in that order dated 03.05.1995 is false and a bogus proceedings. As a matter of right the petitioner cannot demand upgradation of Secondary Grade post on completion of five years of service with effect from 01.06.1992. One of condition while granting recognition is the Management should run the school from its own funds and no Court proceedings should be resorted to seeking sanction of posts of teachers. The order of sanction granted to St. Aloysius R.C. Primary School, Pirandankulam, is a wrong order and therefore, the petitioner cannot quote based on the wrong order. The petitioner is seeking to upgrade the post of Secondary Grade Teacher as Headmaster that too after the laps of 22 years cannot be entertained. The Management was granted recognition with a condition that the management shall not claim any such post, then the individual petitioner has no right to claim upgradation. The petitioner preferred Writ Petition to consider his claim in W.P. (MD). No.3302 of 2014 and based on the direction of this Court, the District Elementary Educational Officer vide its proceeding dated 19.09.2014 stated that since the post of Headmaster of Primary School is sanctioned only from 09.01.2001 as per G.O.Ms.No.5 dated



09.01.2001 and the proceedings of the Director of Elementary School Education dated 19.01.2001, the request for approval of the petitioner as Headmistress from 01.06.1992 cannot be granted. As the sanctioned posts of Primary School Headmaster was granted only from 09.01.2001, now the petitioner cannot seek to sanction the post prior to that date and also regularize the post from 1992 onwards is illegal. Since the 5th respondent school is a minority school and the school has every right to open any school without the permission of the Department under the minority right. However, under Rule 6 of the Tamil Nadu Minority Schools (Recognitions and payment of Grant) Rules, 1977 specifically lays down that payment of Grant to Minority Schools is subject to the orders and instructions issued by the Government from time to time. Hence, the petitioner is not having any right to seek approval from the date of prior to 09.01.2001, since the Government has granted order on 09.01.2001 and therefore, the petitioner cannot seek any relief prior to 2001.

6. It is seen that the claim of the petitioner is that he was joined in the service on 01.06.1987 and was serving as Headmaster-In-charge from 1987 to 1992, even though the petitioner is appointed as Secondary Grade Teacher, the petitioner has gained five years of experience on 01.06.1992 and therefore, she is eligible to be promoted as Primary School Headmaster. However, the respondent's contention is that the school was not sanctioned the post of Headmaster until 2001. In fact several school submitted representation to sanction the post, thereafter the Government after careful consideration of the representations from various school has issued G.O.Ms.No.5 School Education (B2) Department, dated 09.01.2001 creating for the first time the post of "Primary School Headmaster" for various schools. Infact the Headmaster post was sanctioned only through G.O.Ms.No.5 to the school. The respondents contention is that when there is no sanctioned post, the petitioner cannot claim to upgrade her post from the Secondary Grade to Primary School Headmaster prior to 2001. The petitioner relied on the Judgment rendered in W.A.No.1969 of 2010 in the case of V. Pauldurai Vs. the Director of Elementary Education, Chennai - 6 and others. In the said Judgment the school was upgraded from Primary School to Middle School. In the present case the school was not given any sanctioned post for Primary School HM at all. Even though there is a reference of G.O.Ms.No.5, in the said writ appeal the issue is totally different in that Writ Appeal and the same is not applicable for the present case. In the present case the school was not granted any sanctioned post of Primary School Headmaster post at all. When the school was sanctioned it was sanctioned by "two Secondary Grade Post" and there was no sanction of "Primary School Headmaster" post. Infact in the entire state of Tamil Nadu there was no Primary School Headmaster post sanctioned at all, until the issuance of G.O.Ms.No.5, dated 09.01.2001. When there is no post at all, more so when there is no sanctioned post for the school in the category of "Primary School Headmaster" post then there is no

<https://hccservices.courts.gov.in/hccservices/> upgradation from 1992 onwards as claimed by the



petitioner. Infact the petitioner was serving as Secondary Grade Teacher alone even though she may be senior in that school. The Government has sanctioned only two Secondary Grade post. After issuance of G.O.Ms.No.5, the school has submitted a proposal for upgrading one post of Secondary Grade Teacher to Primary School Headmaster. Therefore, from the date of G.O.Ms.No.5 alone the petitioner has right for upgradation. Therefore, this Court is of the considered opinion that the petitioner can claim upgradation only from 09.01.2001 since there was no sanctioned post for Headmaster prior to that.

7. Hence, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

trp

To

1. The Secretary
Department of School Education
Fort. St. George, Chennai - 600 009.

2.The Director of Elementary Education,
College Road, Chennai - 600 000.

3.The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

4.The Assistant Elementary Educational Officer,
Alwarthirunagari at Thenthiruperi, Tuticorin District.

5.The Correspondent,
St. Aloysius Primary School,
Pirandarkulam, Tuticorin District.

+1 CC to M/s.SPL.GP (SR-984[F] dated 10/01/2022)

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M.P(MD).No.1 of 2014
07.01.2022

RD(03.03.2022) 6P 7C