



W.P.(MD)No.19154 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.19154 of 2015

B. Manjulavalli

... Petitioner

Vs.

1. The Director of School Education,
Chennai-6.

2. The Joint Director of School Education,
Chennai-6

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

4. The District Educational Officer,
Devakottai, Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Certiorarified Mandamus***, to call for the records pertaining to the impugned order in Na.Ka.No. 4985/A3/2015, dated 07.09.2015 on the file of the Respondent No. 3 and quash the same as illegal and consequently to direct the Respondents No. 3 and 4 to re-fix the pay and pension of the petitioner in the post of Headmistress with all consequential monetary benefits within the time stipulated by this Court.



W.P.(MD)No.19154 of 2015

WEB COPY

For Petitioner : M/s.T.Lajapathi Roy

For Respondents : Mr.J.John Rajadurai
Government Advocate (Civil Side)

ORDER

This Writ Petition is filed for issuing Writ of ***Certiorarified Mandamus***, to quash the impugned order in Na.Ka.No.4985/A3/2015, dated 07.09.2015 on the file of the Respondent No. 3 and also sought for a consequential direction to the Respondents No. 3 and 4 to re-fix the pay and pension of the petitioner in the post of Headmistress with all consequential monetary benefits within the time stipulated by this Court.

2. The petitioner has joined the service as PG Assistant (Tamil) in the year 1979. Thereafter, she was relieved on 05.01.1993, since the petitioner was appointed as Higher Secondary School Headmistress in another aided school on 06.01.1993 and thereafter, she was retired from service on 30.04.2012.



W.P.(MD)No.19154 of 2015

WEB COPY

3. The ground raised by the petitioner is that the 3rd respondent has approved the fixation of pay, vide proceedings, dated 13.09.1995 in Na.Ka.4039/A2/95 and the pay band was fixed as Rs.2650 + 25 and the consequential increments from the year 1993 to 2006 was paid. Thereafter, the 4th respondent after change of person in the year 2007 questioned the pay band. The school has submitted reply explaining the fixation of pay band. In the year 2009, after lapse of 16 years the respondents decided that the petitioner was paid excess amount and forced to recover from the petitioner. Against the same, the petitioner has submitted a representation stating that the pay was fixed in fair manner, but there was no response for the 2nd respondent. Finally, the petitioner was allowed to retire on 30.04.2012. The petitioner was granted revised scale of pay and the pensionary benefits was calculated based on the revised pay of scale.

4. The petitioner further contended that similarly placed Headmaster at Arunachalam Chettiyar Higher Secondary School, Pallathur, Sivagangai District, the 1st respondent has passed favourable order to the said HM. Citing the same, the petitioner submitted a representation, dated 20.07.2013, prayed to refix



W.P.(MD)No.19154 of 2015

WEB COPY

the scale of pay and consequently to refix the pension. The 4th respondent has returned the same, vide its proceedings, dated 23.07.2013, directing the petitioner to approach through proper channel i.e., through the Secretary of the School. The petitioner has also submitted representation through the proper channel, dated 14.03.2014 and 29.12.2014. Since there was no response, the petitioner was constrained to file W.P.No.10759 of 2015 and the same was disposed on 30.06.2015, directing the respondents to consider the petitioner's representation. The 3rd respondent has passed the impugned order, dated 07.09.2015, rejecting the claim of the petitioner, stating that the order passed in favour of one Mr. K. Chandran is applicable only to that person. The petitioner further contended that, if the said order was passed to a similarly placed person, if it is not applicable to the petitioner, then the 3rd respondent should state the reason for the same. Without assigning any reason, the impugned order was passed. Hence, the petitioner has filed this Writ Petition.

5. The respondents have stated in the counter affidavit that the petitioner was appointed as P.G. Assistant in St. Joseph Secondary School,



W.P.(MD)No.19154 of 2015

WEB COPY

Dindigul till 05.01.1993 and on his own got relieved and got appointment as Headmaster at Chidambaram Chettiar Girls Higher Secondary School Kottaiyoor. In the earlier post of PG Assistant, the petitioner was paid Rs. 2200-75-2800-100-4000 and basic pay Rs.2575+25. But the petitioner has been provided with Rs.2650+25 basic pay wrongly and thereafter, from 01.01.1994, Rs.75/-was ordered and pay was fixed as Rs.2725+25 as basic pay wrongly. As per **G.O.No.1289 Education Science and Technology Department, dated 18.06.1982,**

(i). *When such teacher resigns in the end of the school year and joins another aided school he shall be eligible for the next increment only from the date of which he would normally eligible had he continued in the previous school,*

(ii) *When such teacher resigns in the middle of the school year and joins another aided school or when he leaves one aided school for some reason and join another aided school with a break in service condoned, he will be eligible for the next increment only from the date he joins the new school and,*

(iii) *Such a teacher who joins in the different category of post carrying identical scale of pay would be qualified to hold that teaching post also.*



W.P.(MD)No.19154 of 2015

WEB COPY

6. The respondents have further submitted that the appointments in Aided schools from other schools, either after migration of their own volition with reference to the orders mentioned in Para No.1 above or on transfer with reference to Para No.3 above will not amount to fresh appointments and will not therefore be governed by (i) the rule of the Backward Classes with reference to Rule 15 of the Tamil Nadu Recognized Private Schools Rules and Regulations Rule 1974 (as amended last) in ***G.O.Ms.No.1371 Education, dated 22.07.80***) and the orders in ***G.O.Ms.No.1138 Labour and Employment, dated 25.09.1978*** enjoining consultation with employment exchanges.

7. In the present case, the petitioner has joined in the second school, after relieving herself on her own will from the 1st school. Secondly the petitioner was serving in P.G. Assistant in the earlier school and in the new school she was appointed as Headmaster. If the candidate has been transferred, they would take the junior most in the transferred school and such undertaking ought to be given, then only such transfer would be approved. Moreover the writ petitioner has worked in two different management and has joined the 2nd school after relieving



W.P.(MD)No.19154 of 2015

WEB COPY

wholly from the school and hence the Fundamental Rule 22(B) will not have any implication upon the petitioner. Therefore, the respondents prayed to dismiss the Writ petition.

8. Heard M/s.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.J.John Rajadurai, learned Government Advocate (Civil Side), appearing for the respondents. Perused the material documents available on record.

9. It is seen in the present case, the petitioner has joined in the Saint Joseph Higher Secondary School in the year 1979. On 05.01.1993 she was relieved from the said School and joined as Headmistress in the Arunachalam Chettiar Higher Secondary School, Pallathur, Sivagangai District, on 06.01.1993.

10. Earlier, in the post of PG Assistant (Selection Grade) the petitioner was receiving Rs.2200-75-2800-100-4000 and basic pay of Rs. 2575+25 from the private aided school. But in the earlier school the pay was



W.P.(MD)No.19154 of 2015

WEB COPY

wrongly fixed as 2650+25, thereafter granted Rs.75 as personal pay which comes to 2725+25 as basic pay. But the petitioner relies on the relieving order issued by the Saint Joseph's Girls Higher Secondary School, which states that the petitioner's scale of Pay was Rs.2725 + 25 p.p., in the post of P.G. Assistant. However, the contention of the respondents is that the petitioner was appointed in the second school in the year 1993 by fixing a wrong pay.

II. After hearing the rival submissions of the parties, this Court is of the considered opinion that the petitioner is entitled to the scale of pay that is applicable to the post of P.G. Assistant, then the petitioner has put in 10 years of service and hence she is entitled to selection grade pay in the P.G. Assistant post. When the petitioner was appointed by the second school in the post of HM, then the petitioner is recruited afresh in the post of HM and not by transfer. In such circumstances, the petitioner is entitled to the scale of pay that is applicable to the HM post and not the scale of pay applicable to the P.G. Assistant post. The petitioner is bound by the contract which was executed with the two schools. Moreover, the petitioner was holding the post of P.G. Assistant in the in Saint



W.P.(MD)No.19154 of 2015

WEB COPY

Joseph Higher Secondary School, whereas the petitioner was holding a post of HM in the Chidambaram Chettiar Girls Higher Secondary school, so both the posts are not one and the same. The petitioner is relying on the 22(B) of the Fundamental Rules, but the Fundamental Rules are not applicable to the Private Aided Schools. The Fundamental Rules are applicable to the government servants alone and the teachers working in the Private Aided Schools cannot be considered as government servants. Since the government is granting grant-in-aid for salary, the petitioner cannot be considered as government employee. Therefore, the claim of the petitioner cannot be entertained.

12. The fixing of salary to two different posts was elaborately dealt with by the Hon'ble Division Bench in W.A.(MD)No.627 of 2022 vide judgment dated 15.07.2022, wherein it is held that when the recruitment is not by transfer of service, but by direct recruitment then the employee cannot seek any pay protection. In the present case the petitioner was recruited by the second school by direct recruitment and not by transfer of service and hence the petitioner cannot seek any pay protection as held in the aforesaid judgment.



W.P.(MD)No.19154 of 2015

WEB COPY

13. The concept of “grant-in-aid” is misunderstood by the petitioner.

The government is only extending the support to the Private Aided Schools by way of “grant-in-aid” for salary and maintenance. The schools and employees of the school under teaching and non-teaching category cannot claim to treat them on par with the government teachers and seek the benefits granted to them under Fundamental Rules.

14. For the reasons stated above, this Court is not inclined to grant relief sought for by the petitioner. Accordingly, this Writ Petition stands dismissed. No Costs.

Index : Yes / No
Internet : Yes
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31.10.2022



WEB COPY



W.P.(MD)No.19154 of 2015

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W.P.(MD)No.19154 of 2015

S.SRIMATHY, J

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Order made in
W.P.(MD)No.19154 of 2015

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