



WEB COPY

WP(MD)No.4136 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.01.2022

Pronounced on : 05.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.4136 of 2015

and

M.P.(MD)No.2 of 2015

L.Esakkiraj

... Petitioner

vs.

1.The Chief Educational Officer,
Chief Education Office, Thirunelveli.

2.The District Educational Officer,
District Educational Office,
Thenkasi, Thirunelveli District.

3.The Headmaster,
Thirumathi Manjammal Government Girls
Higher Secondary School,
Thenkasi, Thirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 1st Respondent in ஓ.மு.எண்.5684/அ5/2014, dated 20.06.2014 and to quash the same as illegal and consequentially to direct the 1st respondent to pay Selection Grade Pay scale at a sum of Rs.9300-34800+4300- Pb2 by including the service rendered by the petitioner at the aided school from the date of his appointment at the 3rd respondent school that is on 24.11.2012.

For Petitioner : Mr.K.M.Mohamed Ali
for Mr.T.S.Mohamed Mohideen

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in ஓ.மு.எண்.5684/அ5/2014, dated 20.06.2014 and consequentially to pay Selection Grade Pay scale at a sum of Rs.9300-34800+4300-Pb2 by including the service rendered by the petitioner at the aided school from the date of his appointment at the 3rd respondent school that is on 24.11.2012.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The brief facts of the case are that the petitioner has completed the certificate course in Physical Education in Karnataka Secondary Education Examination Board. The petitioner enrolled in employment exchange on 17.08.1992. The petitioner was appointed as Physical Education Teacher on 30.03.1996 in Chathiram Bharathi Higher Secondary School, Kadayam, Tirunelveli District. Thereafter, transferred to Venkateshwarapuram Village Committee Higher Secondary School in the academic year 2004-2005. On 27.02.2007, the petitioner was granted Selection Grade along with the monetary benefits. In the meanwhile, the District Employment Officer has deleted the petitioner's registration from the live register. The petitioner filed a Writ Petition in W.P.(MD)No.5196 of 2011 and the same was allowed, vide order, dated 29.04.2011. Accordingly, the petitioner's seniority was restored to its original place and thereafter, the petitioner's name was recommended by the District Employment Office, Tirunelveli and he was appointed as Physical Education Teacher at Manjammal Government Girls Higher Secondary School, Thenkasi. The petitioner joined on 24.11.2012.

3.The petitioner's contention is that he has joined with the permission of the second respondent to the new Government School. While he was serving in the Aided School, the petitioner was granted Selection Grade Physical Education Teacher pay band and has received the salary at the sum of Rs.9300-34800+4300-Pb2. However, in the Government School, the petitioner was appointed as a Physical Education Teacher in Manjammal Government Girls Higher Secondary with a pay fixation as Rs.5200-2800+750. The contention of the petitioner is that since the petitioner was appointed in a Government School, the respondents ought to have taken the service rendered in Aided School and ought to have taken the Selection Grade pay and fixed the same in the Government School, while appointing the petitioner in the Government School. Hence, the petitioner has prayed to grant and fix the Selection Grade pay band that was received during the service rendered in the Aided School and pay the monetary benefits and arrears.

4.The second respondent has filed a counter affidavit stating that the petitioner was working in Aided School from 17.08.1992 and has obtained a Selection Grade in the category of Physical Education Teacher. Thereafter, the petitioner was selected in the Government service and was appointed as a Physical Education Teacher on 24.11.2012. The first respondent has appointed the petitioner, vide order, dated 24.11.2012, made in Na.Ka.No.12739/A4/2012. At the time of appointment in the Government School as a Government Teacher, the scale of pay was specifically mentioned as Rs.5200-29200+G.P.2800. The petitioner has accepted the Government service and has joined the duty on his own willingness. However, the petitioner submitted a representation, dated 11.01.2014, to fix a pay scale of Rs.9300+4300 G.P. The earlier service in Aided School



the service terms and conditions are entirely different. It is the contract between the petitioner and the Aided School Management, which is governed under the Tamil Nadu Recognized Private Schools Regulations Act, 1973. However, the appointment in the Government Higher Secondary School is under the Tamil Nadu Educational Subordinate Service and the rules and terms and conditions are entirely different in the Government service. The previous service put in by the petitioner in the Aided School cannot be taken into account for fixation of salary and other increments. The petitioner was recruited afresh in the Government service and the appointment in the Government service will be as per the rules applicable to the Government service. The petitioner has willingly joined the Government service and he cannot compel the Government to pay the salary, which was paid in the Aided School. The Director of School Education issued a proceeding to fill up the vacancy in the Government Schools for the academic year 2010-2011 and 2011-2012. The vacancy was notified by the Teachers Recruitment Board and thereafter, the Teachers Recruitment Board has called for the list from the employment exchange and an online counselling was carried on 24.11.2012. The petitioner participated in the recruitment process conducted by the Teachers Recruitment Board. In the notification for the recruitment, it has been categorically held that it was conducted for the vacant post in the Government Schools and the pay scale would be Rs.5200-29200+G.P.2800. The petitioner after knowing all the conditions including the scale of pay has participated in the online counselling held by Teachers Recruitment Board. Thereafter, he accepted the appointment order and joined the Government service. Hence, the petitioner cannot claim to fix the Selection Grade pay received in Aided School. Therefore, it was rightly declined through the impugned order.

5.Heard Mr.K.M.Mohamed Ali, learned Counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents and perused the materials placed before this Court.

6.It is seen that the petitioner has joined the Aided School. Admittedly, it is a Private Aided School and the School has recruited the petitioner as per the Tamil Nadu Recognized Private Schools Regulation Act, 1973. A separate contract has been entered into between the petitioner and the Aided School Management. The petitioner has rendered more than 10 years of service. Therefore, the Aided School has granted Selection Grade pay band to the petitioner. The petitioner without continuing the service in the Aided School was aspiring to get a Government job. The Government School vacancies during the academic year 2010-2011, 2011-2012 was published and the Teachers Recruitment Board has called for aspiring candidates. The petitioner has participated in the recruitment



process. Thereafter, the petitioner was granted the appointment in the Government School. While conducting the recruitment process by the Teachers Recruitment Board, the conditions and the salary payable were all mentioned in the recruitment process. The petitioner with knowledge that the payment is lesser than the Aided School has participated in the recruitment process and has opted to join the Government service. Now, he cannot go back and seek the Selection Grade pay band, which was granted in the Aided School and take a plea to fix it in the Government service, which is a dangerous proposition. If such a plea is accepted, then, a flood gate will be opened and wherever the Teachers are shifting from the Aided Schools to Government Schools will start demanding to fix the salary of pay paid in the Aided School. Admittedly, the petitioner has participated in the fresh recruitment process and has opted for the Government job.

7.The petitioner relied on certain G.O.s, where it says that any person rendered service in the Aided School is also eligible for Selection Grade and Special Grade. Here, the facts are entirely different. The petitioner was freshly recruited under the separate notification issued by the Teachers Recruitment Board. Therefore, based on these facts and circumstances, those G.O.s are not applicable. Now, the petitioner cannot be allowed to go back to fix scale of pay granted for Aided School.

8. If the petitioner plea is accepted, then another person will come up with plea of pay disparity, inspite of recruited in the same batch. Another person will come up with the plea inspite of recruiting in the same year there is pay disparity, there will be change reaction. Therefore, the petition is devoid of merits.

9. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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 Chief Educational Officer,
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2.The District Educational Officer,
District Educational Office,
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3.The Headmaster,
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+1 CC to M/s.SPL.GP (SR-16845[F], SR-17030[F] dated 06/04/2022)

W.P. (MD)No.4136 of 2015
05.04.2022

RD(19.04.2022) 5P 5C