



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.02.2022

PRONOUNCED ON : 02.06.2022

CORAM

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

W.P.(MD)No.4709 of 2015

WEB COPY

M.Anantharaj

... Petitioner

vs.

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

2.The District Educational Officer,
Tirunelveli, Tirunelveli District.

3.The Accountant General,
Office of the Accountant General,
(Accounts and Entitlements),
261, Anna Salai, Chennai.

4.The Correspondent,
St.Johns Higher Secondary School,
Palayamkottai -627 002,
Tirunelveli 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 relating to the order of cancellation of selection grade pay and special grade pay and the consequential order of revised pay fixation and recovery order entries, dated 28.05.2008 and 06.10.2008, made by the 4th respondent herein in petitioner's Service Register and the consequential counter signed, dated 27.04.2009, by the 2nd respondent herein and to quash the same and consequently, to direct the respondents herein to count the service rendered by the petitioner for the period 01.06.1985 to 31.08.1987 for pay fixation including awarding selection grade and special grade pay in the cadre of BT Assistant with all attended benefits and to direct the respondents to repay a recovered amount of sum of Rs.18,241/- and Rs.67,172/- to the petitioner.

For Petitioner	: Mr.T.Pon Ram Kumar
For R1 and R2	: M/s.D.Sachi Kumar
	Additional Government Pleader
For R3	: Mr.P.Gunasekaran
For R4	: No appearance



O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of cancellation of selection grade pay and special grade pay and the consequential order of revised pay fixation and recovery order entries, dated 28.05.2008 and 06.10.2008, made by the 4th respondent herein in petitioner's Service Register and the consequential counter signed, dated 27.04.2009, by the 2nd respondent herein and consequently, to direct the respondents herein to count the service rendered by the petitioner for the period 01.06.1985 to 31.08.1987 for pay fixation including awarding selection grade and special grade pay in the cadre of BT Assistant with all attended benefits and to direct the respondents to repay a recovered amount of sum of Rs.18,241/- and Rs.67,172/- to the petitioner.

2. The brief facts of the case are that the petitioner was appointed as B.T. Assistant (Science) on 01.06.1985 in TDTA Higher Secondary School, Kurukalperi, Aasirvathapuram, Sathankulam Taluk, Tuticorin District. Since there was no grant in aid, the Correspondent filed a Writ Petition in W.P.No.6454 of 1987 and the Madras High Court passed an interim order. Pursuant to the interim order, the Government has issued a Government order in G.O. Ms. No. 1614, Education (D1) Department, dated 14.10.1997, whereby created temporary 2 B.T. Assistant Posts, 1 Tamil Pandit post, 1 Physical Education Teacher and 2 Non-Teaching Staffs, namely, one Record Clerk and one Sweeper cum Watchman post. Pursuant to the temporary posts, the petitioner's appointment was approved temporarily and the petitioner received salary. Since the appointment was temporary, the petitioner resigned the post on 31.08.1987. Thereafter, again on 08.03.1989, the petitioner was appointed as B.T. Assistant in Kathitral Higher Secondary School, Palayamkottai. On 04.06.1996, the petitioner was transferred to RMPN Higher Secondary School. On 03.06.1997, again he was transferred to St. Johns Higher Secondary School, Palayamkottai and was working until his retirement.

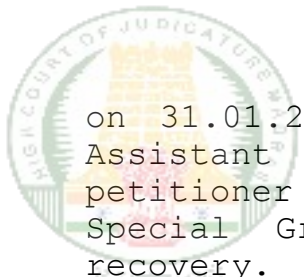
3. The contention of the petitioner is that the Government has issued G.O.Ms.No.333, Education Department, dated 14.02.1997, thereby, held that the service rendered under different management shall be counted for pay fixation. Based on the said G.O., the second respondent granted Selection Grade by counting the service rendered under the temporary post in B.T. Assistant post on 08.12.1996. On 07.12.2006, the petitioner completed 20 years of service as B.T. Assistant. Therefore, the petitioner requested the School to grant Special Grade with effect from 08.12.2006. The School has forwarded the proposal to the officials. The said proposal was kept pending, since the officials was under confusion, whether the temporary post shall be counted for service and monetary benefits. While the fourth respondent made the pensionary papers ready, the third respondent without issuing notice to the petitioner has refixed the pay and has held that the petitioner is not entitled to Selection Grade for the period of service rendered as temporary



and recovered a sum of Rs.18,241/- and Rs.67,172/-. The contention of the petitioner is that the fourth respondent threatened the petitioner to remit the said amount, otherwise, the pensionary papers would not be forwarded. Since the petitioner was suffering from certain illness, the petitioner remitted the amount. The School promised the petitioner that the refixation order would be obtained from the Government. Moreover, the contention of the petitioner that the fourth respondent has not taken any further step to get back the special provident fund.

4. In the meanwhile, the Writ Petition filed by the School in W.P.No.6454 of 1987 was disposed of with a direction to the Government to grant grant-in-aid to the said School and granted permanent post to the School and regularized the other Teachers from the date of appointment. The petitioner submitted several representations, dated 24.08.2008, 19.08.2009, 28.08.2009, 07.03.2010, 15.03.2010, 13.04.2010, 06.02.2012 and 06.03.2012, requesting to take the service rendered under temporary appointment period and grant monetary benefits. The petitioner approached the District Collector and submitted a petition. Further, the D.E.O. Tuticorin, by a letter, dated 03.02.2011, informed that already entries were made in the service register and there is no necessary to do that once again. The petitioner approached the Chief Educational Officer and other authorities. Since the same was not rectified, the petitioner has filed the present writ petition.

5. The second respondent has filed a counter affidavit stating that the petitioner retired from service on 31.01.2008 and filed this Writ Petition challenging the orders of the Correspondent, St. John's Higher Secondary School, Palayamkottai after a lapse of seven years and is hit by delay and laches. The respondents have stated that the service from the date of regular appointment alone will be counted for the purpose of granting Selection Grade and Special Grade. The School has contended that in W.P.No.6454 of 1987, the High Court of Madras has directed to grant temporary post in the interim order and based on the same temporary post was granted through G.O. Ms. No. 1614, Education (D1) Department, dated 14.10.1997, where the petitioner was granted minimum scale of pay of the B.T. Teachers for a period from 01.06.1985 to 31.08.1987. The said period cannot be considered for granting Selection Grade as per G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M), Department, dated 23.01.1986. Since, the service rendered in the post where grant-in-aid was not granted, then the said period cannot be taken for granting service benefits. The respondents have contended that the Selection Grade and Special Grade were wrongly granted to the petitioner and the same was cancelled by the Correspondent of St. John's Higher Secondary School on 28.05.2008. His Selection Grade was modified from 08.12.1996 to 08.03.1999 by taking his regular service from 08.03.1989. Since the petitioner's service in the Special Grade post fell short of 10 years, as he retired from service



on 31.01.2008, he is not entitled to Special Grade in the B.T. Assistant post. Therefore, the excess salary drawn by the petitioner due to wrong grant of Selection Grade from 08.12.1996 and Special Grade from 08.12.2006 was rectified and ordered for recovery. The excess salary was remitted back by the petitioner in the years 2008 and 2009. After the lapse of six years, the petitioner had chosen to file the present Writ Petition. Therefore, the Writ Petition is not maintainable and the respondents prayed to dismiss the Writ Petition.

6. Heard Mr.T.Pon Ram Kumar, learned Counsel appearing for the petitioner, M/s.D.Sachi Kumar, learned Additional Government Pleader appearing for the first and second respondents and Mr.P.Gunasekaran, learned Counsel appearing for the third respondent.

7. It is seen from the records that the petitioner challenged the two recovery proceedings in this present Writ Petition. The service rendered under unaided post cannot be taken into account for granting any monetary or service benefits but once the aid is granted, the Government is liable to pay all statutory benefits to the concerned Teachers. Therefore, the recovery order for the unaided post is legally sustainable. The petitioner resigned from the said post on 31.08.1987. Since under Section 23 of the Pension Rules, resignation would amount to forfeiture of service, on this ground also the petitioner is not entitled to get any benefits for the above said period. The petitioner was again appointed on 08.03.1989 as B.T. Assistant in Kathitral Higher Secondary School, Palayamkottai and then the petitioner is entitled to Selection Grade on 08.03.1999, but the School has wrongly fixed the Selection Grade on 08.12.1996 itself. Therefore, the same was cancelled by the Correspondent of the said School on 28.05.2008 by modifying the Selection Grade from 08.12.1996 to 08.03.1999. Therefore, the excess payment during 08.12.1996 to 08.03.1999 was recovered from the petitioner. Therefore, the two recoveries namely, Rs.18,241/- and Rs.67,172/- are legally sustainable.

8. Therefore, this Court is of the considered opinion that the petitioner has not made out any case to interfere in the impugned order.

9. The Writ Petition deserves dismissal and hence, the Writ Petition is dismissed. No costs.

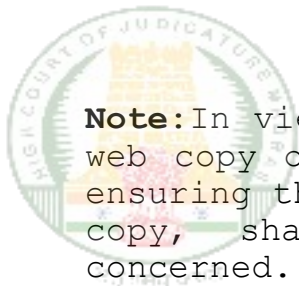
Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)



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.

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To

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Office of the Director of School Education,
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- 3.The Accountant General,
Office of the Accountant General,
(Accounts and Entitlements),
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+1 CC to M/s.T. PON RAMKUMAR, Advocate (SR-24310[F]
dated 06/06/2022)

+1 CC to M/s.SPL.GP (SR-24312[F] dated 06/06/2022)

Order made in
W.P.(MD)No.4709 of 2015
02.06.2022

NSN(CO)
GC(07.06.2022) 5P 6C