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W.P.(MD)No.9860 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2022

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

W.P.(MD)No.9860 of 2015

B.R.George Inigo

... Petitioner

vs.

- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai.
- 2.The Director of Elementary Education,
Nungampakkam, Chennai.
- 3.The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.
- 4.The Correspondent,
St. Xaviers Middle School,
Perumanal, Vallioor,
Tirunelveli District.

... Respondents



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***(R4 impleaded, vide Court order, dated 15.11.2022,
made in W.M.P.(MD)No.10020 of 2022 in
W.P.(MD)No.9860 of 2015)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the proceedings of the 3rd respondent in Na.Ka.No.8145/A4/2012, dated 01.06.2012 and to quash the same and to direct the respondents to provide notional increment for the period 22.09.2004 to 29.03.2005 and monetary benefits for the period 30.03.2005 to 31.05.2006 to the petitioner as given to 12 secondary grade teachers in Karur District in terms of G.O.Ms.3D 128, dated 28.09.2011.

***(Prayer amended, vide Court order, dated 30.11.2020, in W.M.P.(MD)No.21477
of 2019 in W.P.(MD)No.9860 of 2015)***

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



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ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash impugned order dated 01.06.2012 of the 3rd respondent and to direct the respondents to provide notional increment for the period 22.09.2004 to 29.03.2005 and monetary benefits for the period 30.03.2005 to 31.05.2006 to the petitioner as given to 12 Secondary Grade Teachers in Karur District in terms of G.O.Ms.3D 128, dated 28.09.2011. In the impugned order, the respondents have stated that the petitioner has joined the Government service and there is a break in service to the tune of less than one year. Therefore, the petitioner's claim cannot be considered.

2. The case of the petitioner is that the petitioner is having Diploma in Teachers Training in the year 1999. Based on the Diploma, the petitioner has registered his name in Tamil Nadu Employment Exchange Office. The petitioner



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was appointed as Secondary Grade Teacher in aided minority school namely, St. Xaviers Middle School, Tirunelveli District on 08.03.2000 and the same was approved by the official respondents. Later, the petitioner's name was sponsored by the employment exchange on the basis of seniority in the employment exchange and he was selected to the post of Secondary Grade Teacher in Government School on 25.04.2005. The petitioner was relieved from St.Xaviers Middle School on 21.09.2004. The petitioner joined the Panchayat Union Primary School, Velayuthapuram, Alangulam on 30.03.2005 on consolidated salary of Rs.3,000/- per month. The petitioner was granted selection grade on 05.10.2012 counting the service of 4 years, 6 months in the aided School and the petitioner was granted time scale of pay on 01.06.2006. When the petitioner was working in the aided School in time scale of pay, he was relieved from the School on 21.09.2004 as the petitioner was selected for the post of Secondary Grade Teacher in Government School on 20.05.2004. The petitioner was permitted to



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join duty on 30.03.2005. Hence, there was a break in service for a period from 22.09.2004 to 29.03.2005. The respondents stated that due to this break, continuity of service cannot be granted to the petitioner and consequently he is not entitled for pension scheme.

3.The petitioner further submits that the Government has issued G.O.Ms.No.143, School Education S(2) Department, dated 25.06.2007 and G.O.Ms.3D No.128, dated 28.09.2011, wherein 12 Secondary Grade Teachers in Karur District were given notional seniority from 03.01.2002 date of their selection as Secondary Grade Teachers even though they had joined the service on 20.07.2004. The petitioner is similarly placed person, selected on 25.04.2005 but was allowed to join duty on 29.03.2005. Hence, the petitioner is claiming continuity of service.



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4.The 3rd respondent filed a counter affidavit stating that the petitioner had left the job at St.Xaviers Middle School on his own accord on 21.09.2004. The petitioner was out of employment thereafter. He was selected and appointed as Secondary Grade Teacher in Panchayat Union Primary School, vide proceedings, dated 24.03.2005 and he had joined duty on 30.03.2005. The petitioner cannot claim benefits under the referred G.O.s. The petitioner is not similarly placed person. In the G.O., it is referred to the Teachers selected for appointment in the respective years were denied appointment at the first instance as they failed to prove the bonafide of their residential certificates and based on the intervention of this Court, they were appointed belatedly and their seniority was restored based on the year for which the selection was made. They were allowed seniority in their respective years. The facts are entirely different in the said G.O.s. Therefore, the G.O.s relied on by the petitioner are not applicable to the petitioner. Hence, the 3rd respondent prayed to dismiss the writ petition.



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5. Heard Mr.C.Godwin, learned Counsel appearing for the petitioner and Mr.S.Kameswaran, learned Government Advocate appearing for the respondents and perused the records placed before this Court.

6. It is an admitted fact that the petitioner was in service in private aided School from 08.03.2000 onwards and he resigned from the said School on 21.09.2004. The contention of the petitioner is that he was selected by the official respondents as Government Teacher on 22.09.2004. But the respondents have allowed to join the service only belatedly, i.e., on 29.03.2005. But this fact is refuted by the respondents stating that the petitioner has resigned the previous service on his own accord. While the petitioner was without job, his name was sponsored by the employment exchange, on consideration of his qualification, the petitioner was granted appointment in the year 2005. The allegations that the petitioner was selected and the respondents did not allow the petitioner to join the



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service was specifically denied by the respondents.

7. Admittedly, the petitioner was out of service and there is break in service from 22.09.2004 to 29.03.2005. The petitioner has not given explanation for the break in service in the affidavit but has simply stated that the official respondents have not allowed the petitioner to join the Government School in time. But the same was denied by the respondents. On perusal of the relieving order, it is stated that the petitioner was selected for Government job and since he is supposed to join the place, the petitioner was relieved from the service. The claim of the petitioner is that he has not resigned from the earlier School and he was relieved from the School to join the Government School. After hearing the rival submission this Court is of the considered opinion that there is break in service and the only authority to condone the break in service is the first respondent.



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8. Therefore, this Court deems it fit to remit the case to the first respondent. The first respondent after perusing the entire records shall pass orders. The petitioner is permitted to submit written representation along with this order to the first respondent. If the petitioner is eligible to condone the break in service, the same shall be considered by the 1st respondent. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

9. With the above said observation, the writ petition is disposed of. No costs.

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Internet : Yes

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To

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S.SRIMATHY, J

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