



W.P(MD)No.17834 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.17834 of 2016

S.Seenipappa,

: Petitioner

Vs

1. The Director of School Education,
O/o.Director of School Education,
Chennai.

2. The Chief Educational Officer,
O/o. the Chief Educational Office,
Tirunelveli

3. The Headmaster,
Bharathiar Government Higher Secondary School,
Veeravanallur,
Tirunelveli District

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned rejection of the 2nd respondent by his proceedings in A.Thi.Mu.No.10402/A3/12 dated 28.09.2012 and quash the



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same as illegal and consequently, direct the 1st and 2nd respondents herein to re-fix the petitioners salary in the post of P.G.Assistant (Maths) from 01.06.2011, by taking note of her earlier services as B.T.Assistant pursuant to her representation dated 10.09.2012.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.S.Kameswaran

Government Advocate (Civil Side)

ORDER

This Writ Petition had been filed in the nature of Certiorarified Mandamus, seeking to quash the impugned rejection order of the second respondent by his proceedings in A.Thi.Mu.No.10402/A3/12 dated 28.09.2012 and consequently, direct the respondents 1 and 2 herein to re-fix the petitioner's salary in the post of P.G. Assistant (Maths) from 01.06.2011, by taking note of her earlier services as B.T. Assistant pursuant to her representation dated 10.09.2012.



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2. The brief facts as stated in the writ petition is that the petitioner was appointed as B.T. Assistant pursuant to the appointment order, dated 01.03.2006 and joined the service as B.T. Assistant on 03.03.2006 at Panchayat Union Middle School, Kumbaram Panchayat Union, Ramanathapuram District. After the petitioner's appointment as B.T. Assistant, the said school was upgraded as High School in the academic year 2010-2011. Thereafter, the petitioner was absorbed in the School Education Department on 01.06.2010 from the Elementary Education Department. The petitioner's scale of pay as B.T. Assistant was 9300 - 34800 + 4600 and she was received a sum of Rs.18,270 as salary.

3. Thereafter the Teachers Recruitment Board conducted recruitment process and conducted examination for P.G. Assistant post during the academic year 2009-2010. Since the petitioner is having the qualification to the post of P.G. Assistant, with the permission of the Department the petitioner attended the selection process and was selected as P.G. Assistant (Maths). Thereafter, the Joint Director (Higher Education) issued the appointment order dated 31.08.2010 and she was posted at Government Higher Secondary School, Reguanthapuram, Ramathapuram District.



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4. The contention of the petitioner is that the Headmaster, Kumbaram Panchayat Union High School has issued the relieving order on 01.06.2011 pursuant to the direction given by the Joint Director (Personnel)'s vide proceedings dated 20.05.2011. Thereafter, the petitioner joined as P.G. Assistant (Maths) in the third respondent school on 01.06.2011. But, the scale of pay that was granted to P.G Assistant (Maths) is fixed as 9300 - 34800 + 4800 and the petitioner's salary was fixed as Rs.14,100/-. When the petitioner worked as B.T. Assistant, she received the salary of Rs.18,270/-. Aggrieved over the difference of pay, the petitioner submitted a representation through the second respondent on 10.09.2012 to rectify the anomaly. But the second respondent without considering the same, has returned the proposal by saying that the petitioner has no right to claim fixation of salary by taking note of earlier service of B.T.Assistant as the petitioner's appointment as P.G.Assistant (Maths) is direct appointment through the Teachers Recruitment Board. Aggrieved over the same, this petition has been filed.

5. The respondents had filed counter affidavit stating that the petitioner served as B.T. Assistant, on her own interest, she has left the said post and participated in the fresh recruitment process. After agreeing to the conditions



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prescribed in the P.G Assistant recruitment process, the petitioner participated in the selection process, got selected and accepted to the salary offered.

Thereafter, she joined the service as P.G. Assistant (Maths). After joining, the petitioner cannot be allowed to claim the salary that was paid in the post of B.T. Assistant. The petitioner is claiming to refix the salary by invoking the Fundamental Rule 22 B. Since the petitioner was recruited through a fresh recruitment process and not promoted as P.G. Assistant (Maths), the said Rule is not applicable and hence the respondent prayed to dismiss this petition.

6. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (Civil Side) appearing for the respondents.

7. The above issue is considered by this Court in W.P. (MD) No. 6285 of 2018 and it has been held as under:

“5. This Court is of the considered view that the P.G. Assistant post is a fresh recruitment by Teacher Recruitment Board. The salary that is applicable to the P.G. Assistant post, should be as per the notification that is applicable to the petitioner in the recruitment process. Having accepted the rules applicable to the recruitment process including the salary applicable to the said post P.G. Assistant, now the petitioner cannot turn around and seek different salary. Having accepted the terms and conditions, with the knowledge that the salary would be less than the B.T. Assistant post, the petitioner is barred from claiming salary applicable to B.T. Assistant post, when he has accepted the



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P.G. Assistant post. If this plea is accepted, then the persons of the same batch of recruits would claim discrimination. Then the other P.G. Assistants would claim discrimination, which would be endless. Therefore this Court is of the considered opinion the claim of the petition is illegal and hence Mandamus cannot be granted for such illegal claim.”

8. Aggrieved over the order passed in the aforesaid writ petition in W.P. (MD)No.6285 of 2018, the petitioner therein had preferred writ appeal in S.K.Kannan Vs. The Director of School Education and 3 others in W.A.(MD) No. 627 of 2022 and the Hon’ble Division Bench vide order dated 15.07.2022 has confirmed the order passed in writ petition and dismissed the employee’s appeal. The Hon’ble Division has further held that “direct recruitment to a post” cannot be considered as “promotion by transfer”. Also held that the Service Rules for the private schools are different and the Service Rules for the government schools are different and has held that the petitioner therein is not entitled to the claim. In the present case admittedly the Service Rules for the post of B.T. Assistant is different from the Service Rules for the post of P.G. Assistant and hence the same cannot be compared to fix salary.

9. This Court has held in another writ petition filed in W.P. (MD) No. 15364 of 2013 and the relevant portion is extracted hereunder:



'12. In the present case, the petitioner was employed in the aided School and he was drawing more salary. The petitioner agreed for the salary fixation which was fixed for the B.T. Assistant post. Having agreed to such salary fixation and subsequently accepted the offer of post, thereafter, the petitioner cannot claim that there is a salary disparity and he should be granted pay protection. Since it is a contract between the Government and the individual, when the petitioner has agreed to the said contract, now he cannot turn around and seek more salary on par with the aided School salary. The petitioner has an option to continue in the B.T. Assistant post, if the petitioner is not agreeing for lesser salary, then the petitioner shall very well quit the job. Having accepted to serve for the lesser salary, now the petitioner is estopped from claiming more salary on par with the salary for the aided School. If the petitioner's plea is accepted, then the persons appointed in the petitioner's batch would claim pay disparity by comparing with the petitioner and it will have a change reaction with endless litigation, which will have serious financial implication to the government's exchequer and the same can never be allowed. Hence there is no merits in the present writ petition and liable to be dismissed'

10. Therefore this Court is of the considered opinion that if the candidate has participated in the fresh recruitment process, the claim to re-fix the salary by taking the earlier employment is not legally sustainable and the claim ought to be rejected. Therefore, following the above said judgments of this Court, this writ petition stands dismissed. No costs.

21.09.2022

Index : Yes / No
Internet : Yes/ No



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S.SRIMATHY, J.

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