



W.P.No.3979 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.10.2023
Pronounced on	31.10.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

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A.Harikrishnan

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. by Principal Secretary,
to Government, School Education Department,
Secretariat, Chennai 600 009.

2.The Director of Elementary Education,
Chennai 600 006.

3.The District Educational Officer,
Arni, Tiruvannamalai District.

4.The Block Educational Officer,
Arni, Tiruvannamalai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in Pro.Na.Ka.No.3542/B2/2020 dated 19.11.2020 of the third respondent, quash the same and to regularise the period of service of the petitioner from 22.11.2011 to 02.11.2014 in a post of Graduate Teacher (BT Assistant) instead of Secondary Grade Teacher,



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refix his seniority in the post of Graduate Teacher and refix his pay in the post of Graduate Teacher for the said period and disburse the monetary benefits thereby with interest within a limited time frame.

For Petitioner : Mr.P.Murali

For Respondents : Mr.T.Arunkumar, Government Advocate

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records relating to the order in Pro.Na.Ka.No.3542/B2/2020 dated 19.11.2020 of the third respondent, to quash the same and to regularise the period of service of the petitioner from 22.11.2011 to 02.11.2014 in a post of Graduate Teacher (BT Assistant) instead of Secondary Grade Teacher and refix his seniority and pay in the post of Graduate Teacher for the said period and disburse the monetary benefits thereby with interest within a limited time frame.

2. Heard Mr.P.Murali, learned counsel for the petitioner and Mr.T.Arunkumar, learned Government Advocate appearing for the respondents.



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3. The brief facts of the case are as follows:

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The petitioner was initially appointed as a Secondary Grade Assistant in the Panchayat Union Middle School, Ramanathapuram, Polur Union, Tiruvannamalai District on 20.12.1999. He had completed his probation on 22.12.2001 and later promoted as B.T. Assistant with effect from 08.01.2007. In the seniority list, he was placed at Serial No.12 as on 01.01.2011. On 21.12.2011 the petitioner was reverted to Secondary Grade Teacher. Because the middle school in which he was serving was upgraded as high school and the post of Graduate Assistant was not available. The petitioner gave a representation on 26.11.2011 to permit him to continue as Graduate Assistant or revert any one who is junior most as a Secondary Grade Teacher instead of him. He also requested to either post him in a high school or in any upgraded school as B.T. Assistant. But the Government did not consider his request.

3.1. On 03.11.2014, the petitioner was re-promoted as B.T. Assistant with effect from 03.11.2014 and he was placed in the seniority list of 01.01.2015. The petitioner submitted his representation dated



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01.01.2015 to the respondents 3 and 4 to refix his seniority as on 01.01.2011 and to treat the period of service between 22.12.2011 to 03.11.2014 as Graduate Assistant. Since there was no response, the petitioner has filed a Writ Petition in W.P.No.16652 of 2015 to consider the said representation. The Court issued direction on 24.02.2020 to consider his representation. But the representation of the petitioner was rejected by the third respondent on 19.11.2020. Hence the petitioner has filed this Writ Petition.

4. The third respondent has filed a counter and in the counter, it is stated that while promoting the petitioner to the post of B.T. Assistant in the year 2007 it has been indicated that the promotion was purely temporary and it can be reverted to lower post without notice under Rule 8(a) of the Tamil Nadu State and Subordinate Service Rules and on reversion, he was awarded with selection grade in the reverted post and as such he is not eligible for the claim that to fix his pay in the B.T.Assistant post when he served in the post of Secondary Grade Teacher; the question of pay protection arises only when the Government



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Servant is transferred from one service to another service as per Rule 40-A of Tamil Nadu State and Subordinate Service Rules; but, the petitioner has not been transferred to any other service and hence protection of pay does not arise. Hence it is claimed that the impugned order passed by the third respondent is legal and in accordance with the existing rules.

5. The petitioner has been promoted as B.T. Assistant on 08.01.2007 and served in the said capacity till 23.12.2011 and has been reverted to the lower cadre of Secondary Grade Teacher in view of the upgradation of the said school as high school. Till such time, the school in which the petitioner worked is a middle school. Though the petitioner was re-promoted on 03.11.2014 to the post of B.T. Assistant, his seniority has not been granted as on 01.01.2011 and he was placed in the seniority as on 01.01.2015 which is subsequent to his 2nd promotion. Even though the petitioner has claimed that pay protection was available to the similar employees, it can be done only when there is a transfer of service. Such benefits have already been given to various persons by issuing Government Orders subsequent to the directions given by this Court.



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More or less similar facts of this case are seen to be involved in the writ petition in W.P.No.12333 of 2015 dated 24.04.2015 and in which, the pay protection has been ensured.

6. In the instant case, the petitioner who stood in the 12th position in the year 2011 in the seniority list, has been chosen to be downgraded as a Secondary Grade Teacher. Despite there are other juniors in the same cadre, the petitioner has been targeted. It is not known why the petitioner was targeted for reversion when there are very many juniors available. The petitioner's earlier request in this aspect was also not considered favourably and that is the reason why he had filed this Writ Petition.

7. In the impugned order also no reason has been stated justifying the downgradation of the petitioner though he stood as senior to many of the B.T. Assistants even in the 2011 seniority list. The petitioner was downgraded to the lower post for none of his faults. Since the matter is covered under various relevant judgments where pay protection has been given to similarly placed persons, I feel the benefit can be extended to



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the petitioner also by following the earlier judgments, more specifically the judgment passed in W.P.No.12333 of 2015 dated 24.04.2015. In the order passed in the said Writ Petition, it is observed as under:

"2. The petitioner was appointed as Secondary Grade Teacher in Government Aided School in 1973. He was promoted as Middle School Headmaster in 1995. The said school got upgraded as High School in 1999. Pursuant to the upgradation, the petitioner was absorbed in high school service as B.T. Assistant on 1.6.2001. Between 1999 and 1.6.2001, the petitioner was paid salary applicable to Middle School Headmaster and thereafter, he was paid B.T. Assistant Salary, which is lower to the scale of pay of Middle School Headmaster.

3. The grievance of the petitioner is that under similar cases, the Division Bench of this Court in W.A.No.210 of 2009, dated 30.4.2009, has issued a direction to protect the pay of scale of persons who were absorbed in the High School Service from the Elementary School Service. The said order was complied with by the Government by issuing Government Order in G.O.Ms.No.10 Education Department, dated 9.3.2012. Further it is brought to my



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notice that I have also quashed an order under similar circumstances in W.P.Nos.13469, 13470 of 2013 dated 4.6.2013. Another learned Judge has also passed an order dated 20.2.2014 in W.P.No.4737 of 2014 on similar lines. Hence, I am of the view that the respondents shall protect the pay of the petitioner in the post of Middle School Headmaster, while he continues in High School Service. Accordingly, the first respondent is directed to pass appropriate orders protecting the pay scale of the petitioner in the light of the order dated 30.4.2009, passed in W.A.No.210 of 2009 and G.O.Ms.No.10(4D) School Education (D-2) Department dated 9.3.2012, within a period of 12 weeks from the date of receipt of a copy of this order."

8. Since there cannot be any discrimination between two similarly placed persons, I feel the benefit of the above order should also be extended to this petitioner as well.

9. In the result, this Writ Petition is allowed and the order passed by the third respondent in Pro.Na.Ka.No.3542/B2/2020 dated 19.11.2020 is quashed and the respondents are directed to regularise the period of



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service of the petitioner from 22.11.2011 to 02.11.2014 in a post of Graduate Teacher (B.T. Assistant) instead of Secondary Grade Teacher and refix his seniority and pay in the post of Graduate Teacher for the said period and disburse the monetary benefits thereby with interest at the rate of 6% from the date of due till the date of payment within a period of four weeks from the date of receipt of a copy of this order. No costs.

31.10.2023

Index : Yes
Internet : Yes
Speaking
Neutral Citation : Yes
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R.N.MANJULA, J.

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To

- 1.The Principal Secretary,
School Education Department,
Secretariat, Chennai 600 009.
- 2.The Director of Elementary Education,
Chennai 600 006.
- 3.The District Educational Officer,
Arni, Tiruvannamalai District.
- 4.The Block Educational Officer,
Arni, Tiruvannamalai District.

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