



W.P. No.28513 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**W.P. No.28513 of 2015
and
M.P.Nos. 1 & 2 of 2015**

L.John Mary

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai-600 009.

2. The Director of School Education
DPI Campus, College Road
Chennai-600 006.

3. The Chief Educational Officer
Nagercoil
Kanyakumari District.

4. The District Educational Officer
Kuzhithurai
Kanniyakumari District.

5. The Correspondent
Pious XI Higer Secondary School

Page No.1/7



W.P. No.28513 of 2015

Thoothoor

Kanniyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 1st respondent in Letter No. 1045/Nee. Va.1(2)/2015-2 dated 15.04.2015 and quash the same and consequently directing the respondents to pass appropriate orders for granting of pay fixation and pensionary benefits by considering the period of service rendered by the petitioner from 01.12.1989 to 30.09.1995 in the non sanctioned post in the 5th respondent school as per G.O.Ms.No.18 Education, Science and Technology Department dated 09.01.1997 in the light of the orders passed by this Honourable Court W.A.(MD).No.291 and 292 of 2008 and the subsequent government order issued in G.O (ID).No. 125 School Education Department dated 13.04.2010 with all consequential benefits, within a time frame to be fixed.

(Prayer amended vide order dated 09.02.2023 in W.M.P.No. 19000 of 2017 in W.P.No.28513 of 2015)

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.J.C.Durairaj

Additional Government Pleader for R1 to R4



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W.P. No.28513 of 2015

ORDER

This writ petition is filed seeking to quash the impugned proceedings dated 15.04.2015 and consequently to direct the respondents for grant of pay fixation and pensionary benefits by considering the period of service rendered by the petitioners from 01.12.1989 to 30.09.1995.

2. It is averred in the writ petition that the petitioner was appointed as Secondary Grade Teacher in the 5th respondent school on 01.12.1989 based on staff fixation order and students strength. The said appointment was made subject to approval by the department for sanctioning the post as per students strength. Subsequently, the petitioner was promoted to the post of B.T.Assistant on 15.02.1993 as Management staff. When the petitioner was awaiting orders for sanction, a vacancy arose to the post of B.T. Assistant due to retirement of incumbent and the petitioner was appointed as B.T.Assistant in the sanctioned post on 01.10.1995 and he was granted salary and other benefits only from 01.10.1995.



W.P. No.28513 of 2015

3. The learned counsel for the petitioner drawn the attention of this court to G.O.Ms.No. 18 Education, Science and Technology Department dated 09.01.1997, wherein, it is stated that service put in by the teacher in the unapproved post prior to appointment in the regular post can be considered as eligible service for the purpose of pay fixation and pension. The learned counsel further pointed out that this court in W.A.Nos. 291 and 292 of 2008 by order dated 26.06.2008 held that the teachers who were appointed based on students strength are entitled to the benefits per G.O.Ms.No. 18 dated 09.01.1997 and G.O.Ms.No.143 Education Department dated 30.01.1987. The learned counsel also submitted that SLP filed as against the above referred to Writ Appeal order has been dismissed by the Apex Court.

4. The learned Additional Government Pleader would submit that the management without vacancy and without Government sanction, issued appointment order to the petitioner and therefore, for fixation of salary and pensionary benefits, the first respondent may be directed to consider the representation of the petitioner.



W.P. No.28513 of 2015

WEB COPY 5. Heard both sides and perused the materials.

6. The appointment of petitioner is based on staff fixation. Staff fixation is arrived based on strength of the students. The petitioner was appointed in the 5 respondent school considering the students strength in the school and subject to approval by the department for the required number of posts. In the Recognised Private Aided Schools the teaching posts are being sanctioned based on the students strength as per the staff fixation order. The petitioner was appointed based on the student strength and thereafter, appointed in the post of B.T.Assistant. In such circumstances, the petitioner's period of appointment has to be reckoned from the date of her original appointment

7. For the above said reasons, the impugned order dated 15.04.2015 is set aside. The respondents are directed to regularise the services of the petitioner from the date of his original appointment and the petitioner is entitled for pensionary benefits alone based on the above said regularisation.



W.P. No.28513 of 2015

Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition is allowed on the above terms. No costs. Connected miscellaneous petitions are closed.

14.03.2023

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J.NISHA BANU,J.

Page No.6/7



WEB COPY



W.P. No.28513 of 2015

nvsri

To

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W.P. No. 28513 of 2015

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