



W.P.No..19636 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.02.2023
Pronounced on	15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.19636 of 2016
and
W.M.P.Nos.16996 & 16997 of 2016

S.Panduranga Rao

... Petitioner

Vs.

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 2.The District Educational Officer,
North Chennai,
Egmore, Chennai-600 008.
- 3.The Treasury Commissioner,
Panagal Building,
Saidapet, Chennai-600 015.
- 4.The Pay & Accounts Officer,
Officer of Pay & Accounts,
Singaravelar Maligai,
Chennai-600 001.
- 5.The Correspondent,
Dr.G.M.T.T.V. Higher Secondary School,
108, Amman Koil Street,
Kondithoppu,
Chennai-600 079.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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praying to issue a Certiorarified Mandamus, calling for the records relating to the proceedings issued by the third respondent in O.Mu.No.45709/15/D2 dated 29.03.2016 and to quash the same and consequently direct the third and fourth respondents to pay salary to the petitioner in the post of B.T. Assistant in the scale of pay as fixed as per the proceedings of the second respondent issued in Na.Ka.No.2144/Aa2/2015 dated 17.06.2015, from the date of promotion to the post of B.T. Assistant (Tamil) with all consequential and other attendant benefits including arrears of salary with interest, within a time frame as fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondent : Mr.T.Chezhiyan, AGP
Nos.1 to 4

For Respondent-5 : No Appearance

O R D E R

The petitioner, while holding the post of Junior Assistant, was promoted to the vacant sanctioned post of B.T. Assistant Tamil on 22.05.2015 in accordance with Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The order of promotion was approved by the second respondent on 17.06.2015 and his scale of pay to the post of B.T. Assistant was fixed at Rs.9300-34,800+GP 4600/-. Based on the objections of the audit department, it



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was claimed that the petitioner is not entitled for pay protection under FR 22(B) of the Fundamental Rules of the Tamil Nadu Government. Challenging such proceedings dated 29.03.2016, the present Writ Petition has been filed.

2. Heard Mr. S.Nedunchezhiyan, learned counsel for the petitioner and Mr. T.Chezhiyan, learned Additional Government Pleader appearing on behalf of the respondents 1 to 4.

3. In the impugned order, it is stated that since the appointment of the petitioner to the post of B.T. Assistant is from Tamil Nadu Ministerial Service, the protection under FR 22(B), would not be applicable to him.

4. Fundamental Rule 22B of the Tamil Nadu Government provides that, when a Government servant holding a post in a substantive or officiating capacity is appointed in a substantive capacity to another post, his initial pay in the level of the higher post in the pay matrix shall be fixed by granting one increment in pay in the level of the lower post and he shall be placed at a cell equal to the pay so arrived at in the level of the higher post in the pay matrix of the higher post. If the pay



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so arrived at in the level in the lower post after granting one increment is lower than the minimum pay or the first cell in the level of the higher post, the initial pay shall be fixed at minimum pay or the first cell of the level of higher post.

5. While the learned counsel for the petitioner submitted that the petitioner was not appointed to the post of B.T. Assistant Tamil, but was promoted from the post of Assistant and therefore entitled for pay protection, the learned Additional Government Pleader submitted that such pay protection would not be available to fresh appointments made from Tamil Nadu Ministerial Service.

6. Under G.O.(Ms) No.175, School Education Department dated 19.07.2007, the Government has ordered for appointment from the post of non teaching staff, to the teaching staff. Under Section 48 of the Tamil Nadu School Educational Sub-ordinate Services, one of the mode of appointment to the post of a Graduate Teacher is through recruitment by Transfer from the post of Junior Assistant in School Education Department in the Tamil Nadu Ministerial Service. In G.O.15, Education Department, dated 04.01.1971, it was ordered that principles enunciated in the provisions of the Fundamental Rules in the matter of



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fixation of pay on protection should be made applicable to the teachers of the Aided Secondary School also.

7.The entire foundation of the rejection order of the respondents, vests upon their claim that the petitioner was freshly appointed to the post of a Graduate Teacher and not by way of promotion. This seems to be a factual mistake. The petitioner's order of appointment dated 22.05.2015 is produced before this Court, which clearly evidences that the petitioner was only promoted as B.T. Assistant Tamil with effect from 01.06.2015 in the place of a sanctioned vacancy, who was earlier promoted as a P.G. Assistant Tamil. This promotional order was also approved by the second respondent herein on 17.06.2015, with effect from 01.06.2015, by fixing the scale of pay of the petitioner at Rs.9300-34,800+GP 4600/-.

8. The entire mischief arose owing to the audit objections which claim that the petitioner was only "appointed" to the post of B.T. Assistant and "not promoted". Such a claim is a misnomer since the order of appointment, as well as the approval order, is one of promotion only and not a fresh appointment.



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9. If that be so, the petitioner would be entitled for pay protection under FR 22(B), in view of the applicability of such Fundamental Rules to the teachers of the Aided Secondary School also in view of G.O.(Ms) No.15, dated 04.01.1971. This proposition is supported by a decision of this Court in the case of ***P.R. Subramanian & 7 others Vs. The Government of Tamil Nadu rep. by its Secretary to Government, School Education Department, Chennai & 2 Others in W.P.No.21768 of 2009 dated 28.09.2021*** in the following manner:-

"9. The premise upon which F.R.22B operates is that, where a Government servant holding a post in a substantive or officiating capacity, in this case a HSS HM, is promoted or appointed in another substantive or officiating post carrying duties and responsibilities of greater importance than those attached to the post held previously by him, his initial pay in the level of the higher post in the pay matrix shall be fixed by granting one increment in his pay in the level of the lower post.

...

13. A perusal of the functions of HSS HM as



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compared with those of the D.E.O. makes it clear that the scope and functionalities of the role played by a D.E.O. in the cause of Education within a District is far greater and more onerous than that of a HSS HM. It is to address precisely such a situation that F.R. 22 B provides for an increment in the first place, as a D.E.O, would assume far greater responsibilities but continue with the same scales of pay as a HSSHM. In my view, to deny the increment provided under the Regulations, would be a travesty of justice.”

10. The aforesaid extract is self explanatory. As such, the entire cases of the objections raised by the respondents herein, that the petitioner was freshly appointed, cannot be substantiated.

11. In view of the above reasonings, the impugned order dated 29.03.2016 on the file of the third respondent, is quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, re-fixing the petitioner's scale of pay in accordance with the proceedings of the second respondent in Na.Ka.No.2144/Aa2/2015 dated 17.06.2015, from the date of promotion to the post of B.T. Assistant (Tamil), together with all consequential and attendant benefits. Such orders, shall also include



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disbursement of any amounts that may have been recovered from the petitioner pursuant to the impugned order. The respondents shall endeavour to pass such orders, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

15.03.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

Note:Issue order copy on 17.03.2023



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To

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M.S.RAMESH,J.

DP

ORDER MADE IN

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