



W.P.No.8970 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.8970 of 2021
and W.M.P.Nos.9485 & 13013 of 2021

D.Narayanasamy

...

Petitioner

/vs/

1. The Director of Elementary Education,
DPI Campus,
College Road, Chennai – 600 009.

2. District Educational Officer,
Vellore District.

3. Block Educational Officer,
Vellore Rural Block.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the Second Respondent dated 03.03.2021 and quash the same consequently direct the respondents to continue to pay salary as per the fixation by the Second Respondent dated 28.02.2011.



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For Petitioner ... Ms.Dakshayani Reddy
Senior Counsel
for Ms.Suneetha
For Respondents ... Mr.T.Arunkumar
Additional Govt. Pleader

ORDER

This Writ Petition has been filed to quash the order dated 03.03.2021 passed by the Second Respondent and consequently to direct the respondents to continue to pay salary as per the fixation made by the Second Respondent dated 28.02.2011.

2.1 The petitioner was originally appointed as B.T.Assistant (Mathematics) at a Government aided school on 02.12.1997. As the post was a sanctioned one, the appointment of the petitioner was approved and he was receiving the salary from the grant in aid of the Government. The petitioner continued to work in the said school till 01.01.2009. The petitioner got selected through Teachers Recruitment Board as B.T.Assistant (Mathematics) and he was appointed in the Government School and joined duty on 02.01.2009 without any break in service. Subsequently the petitioner was transferred to his present station at Sathuvachari Panchayat Union Middle School.



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2.2 The petitioner was fixed with the scale of pay based on his last drawn salary in the aided school as on 01.01.2009 vide proceedings of the Assistant Elementary Officer (presently re-designated as Block Education Officer) vide proceedings dated 28.07.2011. All of a sudden, without notice, the proceedings dated 30.07.2013 and 21.10.2013 were issued to the petitioner cancelling the fixation of pay as per the proceedings dated 28.07.2011 and reducing the pay of the petitioner from Rs.13,900/- to Rs.9,300/- with effect from 02.01.2009. The petitioner's pay was fixed afresh in the new post without giving any pay protection for the past services rendered by him in the aided school in the minimum pay scale.

2.3 In the Writ Petition filed by the petitioner in W.P.No.31114/2013, this Court set aside the impugned order and remanded the matter back to the respondent with a direction to give reasonable opportunity to the petitioner. Subsequently, show cause notice was given to the petitioner on 09.02.2021. The second respondent passed the impugned order dated 03.03.2021 stating that the second respondent has passed an order without



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properly considering the rules applicable to the case of the petitioner. The petitioner has filed this present Writ Petition seeking to quash the orders of the second respondent dated 03.03.2021 and consequently to direct the respondents to continue to pay salary as per the earlier fixation made by the second respondent dated 28.02.2011.

3. Ms.Dakshayani Reddy, the learned Senior Counsel for the petitioner submitted that the petitioner is protected under G.O.Ms.No.992, Education Department dated 22.06.1979 and G.O.Ms.No.1296, Department of Education, Science & Technology dated 19.06.1982. Reliance was placed on the judgment of the Division Bench of this Court dated 16.10.2020 made in W.A.No.3868 of 2019.

4. However, Mr.T.Arunkumar, the learned Additional Government Pleader relied on the judgment of the Division Bench of this Court in W.A.(MD)No.627 of 2022 and submitted that '*transfer*' and '*recruitment by transfer*' are entirely two different concepts; since the petitioner's case is '*recruitment by transfer*' and not mere '*transfer*', it is right on the part of



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the second respondent to pass the impugned order stopping the re-fixation of scale and fix the scale from the date of his appointment in the Government school and also for recovery.

5. Since the petitioner has relied on G.O.Ms.No.992, Education Department dated 22.06.1979 and G.O.Ms.No.1296, Department of Education, Science & Technology dated 19.06.1982, which were passed to ensure the past services rendered by a teacher prior to his resignation from management school. G.O.Ms.No.1296 dated 19.06.1982 is more relevant and it is applicable to the case of the petitioner. The said Government Order speaks about the migration of teachers from one management to another management, which is inclusive of shifting from an aid school to a Government School. It is submitted that the said Government Order is applicable only for a Secondary Grade Post and not for B.T.Assistants. The logic of the said Government Order has to be understood in a better manner than interpretation of the words employed in it. Among the schools managed by local panchayats and municipality there can be frequent changes between one management to another management on transfer or



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otherwise. In such condition, they are entitled to the minimum time scale of pay of the respective posts if they are appointed in the said post.

6. Though G.O.Ms.No.1296 dated 19.06.1982 speaks about the selection grade post, it is equally applicable for the change in management occurred at the levels of B.T.Assistant and P.G.Assistant also. In the case of the petitioner, his appointment to the Government School has been considered as a fresh appointment and petitioner is not entitled to fixation of pay afresh by considering his appointment in the Government school as the first appointment. This will naturally go against the very principle of pay protection when a teacher get shifted from one management to another management in the same cadre.

7. In the judgment relied by the learned Senior Counsel for the petitioner held in W.A.No.3868/2019, it has been made categorically clear that if the recruitment is made by 'transfer', the person concerned is entitled to re-fixation of pay. In this regard, I feel it is worthwhile to extract relevant portion of the said judgment:



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“14. It is evident from the aforesaid order passed by the Government that the service rendered by a Government servant, in the same service or to another service by method of recruitment by transfer, is entitled for refixation of pay. In Para No. 2 of the above Government Order, it has been clearly stated that the above order will be applicable to the staff employed in all recognised schools under the management of aided agencies and local bodies. Therefore, the respondent/writ petitioner, who was appointed earlier in an aided school, is entitled for the benefit of re-fixation on his appointment to the post of B.T.Assistant in Government Service. Therefore, as per the order passed by the Government, mentioned supra, the service rendered by the respondent-writ petitioner in an Aided School shall be counted for the purpose of fixation of his pay on his appointment to the post of B.T. Assistant. The appointment of the respondent/writ petitioner to the post of B.T. Assistant is by way of transfer of appointment and he cannot be treated as a fresh appointee in the post of B.T. Assistant. This is also in tune with Rule 3(I)(IV) of the Special Rules for Tamil Nadu Educational Subordinate Service. In such circumstances, it cannot be contended by the appellants that the respondent's appointment as B.T. Assistant is as per his own wish and he is not entitled for protection of his pay. When the appellants have decided to count the past service of the respondent/writ petitioner for the purpose of conferment of pensionary benefits on his retirement, equally, the same yardstick has to be resorted to by the appellants for re-fixation of his pay during the course of his service as B.T.Assistant. It is to be noted that, as on 02.01.2009, when the respondent/writ petitioner was relieved, his Basic Pay was Rs.16,650 along with admissible Grade Pay. However, on his appointment to his higher post as B.T. Assistant, his pay was fixed only as Rs.14,630/- with applicable pay. On appointment to a higher post, the respondent-writ petitioner cannot be deprived of re-fixation of pay, taking into account the past service rendered in



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the Aided School. The learned Single Judge also, on appreciation of the above factual as well as legal grounds, has rightly allowed the writ petition filed by the respondent and we see no reason to interfere with the same.”

8. However the learned Additional Government Pleader placed reliance on W.A.No.627 of 2022 which involves ‘*recruitment by transfer*’ from one post to another post i.e. B.T.Assistant to P.G.Assistant, by considering the appointment to the post of P.G.Assistant is a fresh appointment. The petitioner has not given with pay protection but his pay was fixed at the starting pay of P.G.Assistant. In the said judgment it is held as under:

“25. The Hon'ble Supreme Court in a judgment reported in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others) in Paragraph Nos.14 and 15 has held as follows:

“14.Transfer and recruitment by transfer are entirely two different concepts. No doubt transfer can be from one category to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra-category and inter-category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class to another class or from one service to another. If it is a transfer simpliciter it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.

15.Transfer in relation to service simply means a change of a place of employment within an organization. Such transfer being to a



similar post in the same cadre and therefore, obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter, to a different service altogether. Once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in change of place of employment and therefore, there is no termination of lien (see.V.Jagannadha Rao Vs.State of A.P and B.Thirumal V.Ananda Sivakumar) ”

26.We are not in agreement with the judgment of the Division Bench in W.A.No.3868 of 2019 dated 16.10.2020 for the following reasons:

*(i).The judgment of the Hon'ble Supreme Court reported in **in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others)** as referred supra has not been taken into consideration. (ii).Rule 2(b)(ii) of Special Rules for Tamil Nadu Higher Secondary Educational Service relating to 50% reservation for direct recruitment has not been brought to the notice of the Division Bench. (iii).Rule-8 relating to fixation of two different periods of probation for the candidates selected through direct recruitment and transfer of service has not been brought to the notice of the Division Bench. ”*

9. The learned counsel for the petitioner tried to distinguish the



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factual situation involved in the judgment relied by the learned Additional Government Advocate and the petitioner. So far as the case involved in the judgment cited by the learned Additional Government Pleader, the petitioner got recruited by transfer from the post of B.T.Assistant to the post of P.G.Assistant. In the case on hand, the petitioner shifted from aided school to Government school by 'recruitment through transfer' but to a similar post i.e. B.T.Assistant. Hence the position of law has to be followed only by taking cue from the judgment of the Division Bench held in W.P.No.3868/2019.

10. Hence the petitioner is entitled to get his pay re-fixed by taking into account of his past services rendered in the aided school by giving the benefit of pay protection. The second respondent without taking into consideration of the factual difference between the judgment cited by the petitioner and the judgment relied by the Government had passed the impugned order. Hence the petitioner is entitled to get the relief as prayed.

11. In the result, this Writ Petition is allowed and the order passed by



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the Second Respondent dated 03.03.2021 is hereby quashed and the respondents are directed to continue to pay salary as per the fixation by the Second Respondent dated 28.02.2011. No costs. Connected miscellaneous petitions are closed.

06.11.2023

Index: Yes
Speaking order
Neutral Citation : Yes
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To:

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College Road, Chennai – 600 009.
2. District Educational Officer,
Vellore District.
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R.N.MANJULA ,J.

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