



W.P.No..40996 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.02.2023
Pronounced on	15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.40996 of 2016
and
W.M.P.Nos.9474 & 35002 of 2016

S.Latha

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by its Principal Secretary,
School Education Department,
Secretariat, Chennai-600 009.

2.The Director,
Elementary Education Department,
College Road, Chennai-600 006.

3.The District Elementary Educational Officer,
Salem District,
Salem.

4.The Additional Asst. Elementary Educational Officer,
Salem Municipal Corporation,
Salem, Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the impugned order dated 09.11.2016 in Na.Ka.No.1192/A2/2016 passed by the fourth respondent and quash the same, consequently, direct the fourth respondent to implement the



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pay fixation order of the petitioner dated 29.07.2016 passed by the fourth respondent.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.K.H.Ravikumar, GA

O R D E R

The petitioner was originally appointed as a Junior Secondary Grade Teacher in an Aided Elementary School, Ammapet, Salem. Her services therein was regularized on 01.06.2006 in a regular time scale of pay. On 23.07.2009, the petitioner had resigned and was relieved from the services, since she was selected for a Government post in a Panchayat Union Elementary School, Vinayagam Patty, Salem Rural, Salem, wherein she had joined on the next day i.e., on 24.07.2009. Though the petitioner was entitled for calculation of her services and pay protection in the earlier service in the Aided School, the respondents have taken a stand that the petitioner would be allowed only a minimum time scale of pay applicable to the Government School, since she had resigned from her service. Accordingly, the earlier orders of calculating the services of 10 years for the purpose of fixation of the selection Grade of Pay was cancelled and the petitioner was directed to remit the excess amount of



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Rs.7,88,170/-. Challenging this proceeding, the present Writ Petition has been filed.

2. Heard Mr.M.R.Jothimanian, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate appearing on behalf of the respondents.

3. The reasoning adopted by the respondents cannot be sustained in view of the protection granted to the petitioner under FR 22(B) of the Tamil Nadu Fundamental Rules, as well as by the various orders of this Court. In one such order passed in the case of **G. Rufus David Vs. The Secretary to State Government, Department of School Education, Chennai & Another** passed in **W.P.No.32645 of 2018 dated 16.07.2019**. This proposition was upheld in the following manner:-

"9.This Court, after considering the arguments of both sides, is unable to appreciate the stand of the respondents that the petitioner is not entitled to fixation of proper pay scale on par with other similarly placed teachers only because of the fact that he had, on his own wish, went to Government service, after rendering 14½ years of continuous service in aided schools.



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This Court is unable to comprehend such objection being raised, that too, seriously by the Government. Any teacher, who worked in aided school, would always like to migrate to Government service for betterment of their service benefits and career. Such option exercised by the petitioner cannot be put against him and on that basis, the denial of pay scale on par with other similarly placed teachers, would be grossly discriminatory and would cause grave injustice to the interest of the petitioner. In fact the improper fixation of pay scale, without taking into account the past service of the petitioner in the aided schools, would amount to violation of equality clause enshrined in Article 14 of the Constitution of India.

10. In fact while rejecting the claim of the petitioner, the Authorities have not taken into consideration the contents of G.O.Ms.No.367, Educational, Science and Technology Department dated 30.03.1984. According to the said Government Order, the appointment of Higher Grade teacher in upgraded post of Secondary Grade Teacher, is also entitled to fixation of pay under FR 22(B) and the benefit of the orders referred to in paragraph (1) of the Government Order would also be extended to these appointments as well. Unfortunately, it appears



that the Authority has not applied his mind properly with reference to the contents of the said Government Order and has simply denied only on specious reasoning that the petitioner has migrated to Government Service on his own wish. This Court is unable to find such reasoning has any meaning at all with relation to the claim of the petitioner herein. On the whole, it appears that the basis of the rejection is wholly unjustified, not acceptable and the same has to be rejected outright.

11. Therefore, this Court is of the view that the petitioner is entitled to proper fixation of pay on the basis of his last pay drawn, before his appointment in Government service.

4. The aforesaid order of the learned Single Judge was upheld by a Hon'ble Division Bench in its order dated 16.10.2020 as follows:-

"10. In fact while rejecting the claim of the petitioner, the Authorities have not taken into consideration the contents of G.O.Ms.No.367, Educational, Science and Technology Department dated 30.03.1984. According to the said Government Order, the appointment of Higher Grade teacher in upgraded post of Secondary Grade Teacher, is also entitled to fixation of pay under FR 22(B) and the benefit of the orders



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referred to in paragraph (1) of the Government Order would also be extended to these appointments as well. Unfortunately, it appears that the Authority has not applied his mind properly with reference to the contents of the said Government Order and has simply denied only on specious reasoning that the petitioner has migrated to Government Service on his own wish. This Court is unable to find such reasoning has any meaning at all with relation to the claim of the petitioner herein. On the whole, it appears that the basis of the rejection is wholly unjustified, not acceptable and the same has to be rejected outright."

5. The further appeal by the Department, before the Hon'ble Supreme Court of India in S.L.P. (c) No.5633 of 2021 was dismissed on 12.04.2021.

6. Thus, the very reasons adopted by the respondents that the past services of the petitioner in the Aided School, cannot be taken into account for the purpose of granting the service benefits, on the ground that the petitioner had resigned from the post, is erroneous.



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7. This apart, the entire proceedings of the respondents in attempting to revise the pay scale of the petitioner has been done without any show cause notice, extending an opportunity to the petitioner and thus, the order is also opposed to the well laid principles of natural justice.

8. The learned Government Advocate submitted that, since no show cause notice has been issued prior to the impugned order, they may be given an opportunity to call for the petitioner's objections and thereafter take a final decision.

9. In the light of the submissions made, the impugned order of the fourth respondent in Na.Ka.No.1192/A2/2016 dated 09.11.2016, is hereby ordered to be treated as a 'show cause notice' issued to the petitioner herein. The petitioner is granted liberty to render his explanation to the said order dated 09.11.2016, within a period of 15 days from the date of receipt of a copy of this order. On receipt of such representation, the respondents shall consider it, on its own merits and in accordance with the observations and findings rendered by this Court and pass appropriate orders, within a period of 30 days from the date of receipt of the petitioner's representation. Accordingly, the Writ Petition



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stands partly allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

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Index : Yes
Order : Speaking
Neutral Citation : Yes

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Note:Issue order copy on 17.03.2023



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To

- 1.The Principal Secretary,
Government of Tamil Nadu
School Education Department,
Secretariat, Chennai-600 009.
- 2.The Director,
Elementary Education Department,
College Road, Chennai-600 006.
- 3.The District Elementary Educational Officer,
Salem District,
Salem.
- 4.The Additional Asst. Elementary Educational Officer,
Salem Municipal Corporation,
Salem, Salem District.



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M.S.RAMESH,J.

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ORDER MADE IN

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