



W.P.No.20331 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:28.06.2023

Delivered on: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.20331 of 2019

R.Subhavasamalar

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary to Government
Education Department
Secretariat, Chennai-9

2.The Director of School Education
College Road, Chennai-6

3.The District Educational Officer
Kallakurichi

4.The Block Educational Officer
Sankarapuram
Villupuram District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the 3rd respondent in Na.Ka.



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No.692/ Aa1/ 2019 dated 25.04.2019 and quash the same and consequently direct the respondents to count the service of the petitioner rendered in the Good Sheppard Primary School Gurukilambur as Secondary Grade Teacher from 22.03.1999 to 14.07.2009 for the purpose of re-fixation of scale of pay.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.D.Gopal , Govt.Advocate

ORDER

The petitioner seeks issuance of Writ of Mandamus to direct the respondents to count her services as Secondary Grade Teacher at Good Shepherd Primary School, Gurukilambur from 22.03.1999 to 14.07.2009 for the purpose of re-fixation of her scale of pay.

2. The case of the petitioner is that she passed her D.Ted in 1989 and registered herself with the District Employment Exchange. She was appointed as Secondary Grade Teacher on 22.03.1999, which came to be approved by the District Elementary Educational Officer, Thiruvannamalai by proceedings dated 12.11.1999, however with effect from 22.03.1999. On completion of 10



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years of service the petitioner was sanctioned Selection Grade increment also.

Subsequently, the petitioner was posted as Secondary Grade Teacher at P.U.Middle School, Lakkinayakanpatti, Sankarapuram Union. The petitioner was relieved from Good Shepherd Primary School on 14.07.2009 and she joined the P.U.Middle School. However, her grievance is that though she joined as Secondary Grade Teacher in the P.U.Middle School, her pay was lesser than what she was receiving earlier and citing G.O.Ms.No.536 dated 13.04.1996 and G.O.Ms.No.1580 dated 18.10.1969, the petitioner contended that she was entitled to the last drawn pay. Reliance is also placed on G.O.Ms.No.15 dated 04.01.1971 and G.O.Ms.No.1072 dated 31.10.1996 to contend that even an employee without substantive appointment, on being discharged from service, on reappointment to the same post would be entitled to the pay last drawn prior to discharge from service and the period prior to discharge from service shall be taken for the purposes of future increments in the time scale of pay of that particular post. However, the respondents treated the petitioner as fresh appointee and her pay scale was reduced. The petitioner also cites instances where similarly placed teachers were given



3. Heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mr.D.Gopal, learned Government Advocate for the respondents.

4. The learned counsel for the petitioner would rely on various G.O's passed touching the subject matter and also the judgment of the Division Bench of this Court in W.A.No.1832 of 2018, wherein this Court, placing reliance on Tamil Nadu Fundamental Rule 26, held that the Government servant who had earned three annual increments in the post of Steno-Typist Grade III in the Registration Department cannot be placed in the minimum scale of pay in the same post, after induction into Rural Development and Panchayat Raj Department. In the said case, reliance was also placed on F.R.22-B which entitles a Government servant for fixation of pay last drawn in the Government department and further held that previous service of the Government was not erased of fully, especially when the said Government servant/appellant's earned leave in the former department was taken into



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account in the subsequent department where he was posted. Learned counsel would also place reliance on another Division Bench judgment of this Court in W.A.No.3131 of 2019, wherein the Division Bench took note of the fact that in very many matters, despite the consistent view taken by this Court with regard to services rendered by a teacher under whatever category it may be, the same ought to be taken into account for conferring selection and special grades scales of pay.

5. Learned counsel for the petitioner would rely on the decision of this Court in W.P.No.6714 of 2018 dated 08.12.2022 and W.P.No.17326 of 2018 dated 14.06.2022, wherein this Court held that when the 10 years service rendered by the petitioner was taken into account for conferring selection grade and denying counting the said service when it came to fixing the scale of pay was against the rule and consequently this Court held that the petitioner was entitled to revision of scale of pay.

6. Per contra, learned Government Advocate appearing for the



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respondent Mr.D.Gopal, placed reliance on the following judgments:

- 1.W.A.No.1793 of 2019 dated 27.03.2019
- 2.W.A.No.1118 of 2019 05.03.2021
3. W.P.Nos. 5674 and 5675 of 2014 dated 08.07.2022

7. In the first referred case, the Division Bench referring to R.23 of Tamil Nadu Pension Rules, 1978 held that Government servant who resigned from service was not entitled to pension and such resignation would entail forfeiture of past service.

8. In W.A.No.1118 of 2019, the Division Bench has held that the Government servant therein, after his appointment with the Education Department, not being relieved from the Social Welfare department, without waiting for any orders from the Social Welfare department, conferring pay protection joined the Education Department and under such circumstances, held that the Government servant was not entitled to the benefits of G.O.Ms.No.1580 dated 18.10.1969 and G.O.Ms.No.2357 dated 27.12.1983.



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9. In the third referred case in W.P.Nos.5674 and 5675 of 2014 dated 08.07.2022, the learned single Judge of this Court referring to the fact of the said case that the petitioners had resigned on their own volition and joined as fresh candidates, could be treated only as fresh candidates. R.241 of the T.N State and Sub-Ordinate Service Rules was referred to hold that the reappointment would be treated as if it is a first appointment to such service and the concerned Government servant shall not be entitled to count any portion of his previous service for any benefit or concession. Learned Government Advocate would therefore place reliance on these three judgments to contend that the petitioner was disentitled to count his earlier service and that the law in this regard is very clear.

10. This Court has heard the arguments of the learned counsel for the petitioner as well as the learned Government Advocate, besides also perusing the records and also the judgments on which reliance is placed by the counsel on either side.



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11. It is an admitted case that the petitioner was originally serving as a Secondary Grade Teacher at Good Shepherd Primary School, Gurukilambur where she was also sanctioned selection grade increment with effect from her first date of appointment viz., 22.03.2009. Subsequently, she was relieved from the said school on 14.07.2009 to enable her to join the P.U. Middle School, Lakkinayakanpatti. In all the cases referred to by the counsel for the respondents, it was a case where the petitioners therein had voluntarily resigned from service and thereafter joined the new post. Under such circumstances, this Court held that such petitioners were not entitled to the service rendered by them in the earlier post being counted for the purpose of refixation of pay scale. Infact, this Court draws a distinction between resignation and being relieved.

12. In the present case admittedly, the petitioner was only relieved from her post as Secondary Grade teacher at Good Shepherd Primary School, Gurukilambur to enable to her join P.U. Middle School at Lakkinayakanpatti. Therefore, all the decisions relied on by the learned Government Advocate for



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the respondents would not apply to the facts of the present case.

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13. In so far as the decision relied on by the counsel for the petitioner in W.P.No.32645 of 2018, learned single Judge of this Court held, placing reliance on G.O.Ms.No.367, Education, Science and Technology Department dated 30.03.1984, that a Higher Grade Teacher who was appointed in a upgraded post of Secondary Grade teacher was entitled to fixation of pay under FR.22-B, rejecting the argument of the Government, that the petitioner migrated to Government service on her own wish. The said order was challenged by the State before the Hon'ble Division Bench in W.A.No.3868 of 2019 and the Hon'ble Division Bench, in and by judgment dated 16.10.2020, confirmed the order of the learned single Judge and held that the services rendered by a Government servant in the same service or another service by recruitment or by transfer is entitled to be counted for re-fixation of pay, also taking into account past service rendered by such Government servant. The State took up the matter to Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) No.5632 of 2021 and the Hon'ble Supreme Court dismissed



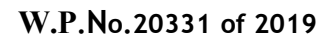
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the Special Leave Petition on 12.04.2021.

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14. This is a case where the petitioner did not resign from service but she was only relieved from her post to enable her to join another school. The other Division Bench judgment relied on by the petitioner in W.A.No.1852 of 2018 dated 04.12.2018 was also a case where this Court held that the Government servant cannot be denied the due scale of pay. Infact, the said judgment was also challenged before the Hon'ble Supreme Court, unsuccessfully in Civil Special Leave Petition (Civil) Diary Nos.26973 of 2019 dated 16.08.2019.

15. As rightly pointed out by the counsel for the petitioner that even where the Government servant was officiating in a particular post without any substantive appointment to the said post even then, on reappointment, such Government servant would be entitled to the pay last drawn prior to discharge from service and also be entitled for his services prior to his discharge from service to also count for the purpose of future increment in the time scale of



16. The only argument of the Government Advocate appearing for the



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respondents is that the petitioner's appointment will have to be treated as a fresh appointment and under such circumstances he would not be entitled to the relief as prayed for in the Writ Petition. However, this argument cannot be accepted for the simple reason that it is not a case of resignation of the petitioner from her post in the earlier school but only a case of being relieved. Therefore, there is a clear distinction between the two and viewed from this angle, the contention of the respondents has to be rejected.

17. In fine, the Writ Petition is allowed and the petitioner is entitled to the relief as prayed for. No costs. Considering that the petitioner seeks counting of her service rendered as a Secondary Grade teacher between the year 1999 and 2009, the respondents shall pass orders within a period of four weeks from the date of receipt of a copy of this order.

21.07.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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Education Department
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Pre-delivery order in
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