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Writ Appeal No.3540 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.3540 of 2019 &
CMP Nos.22751 & 26013 of 2019**

- 1.The State of Tamil Nadu
Rep., by its Secretary Education Dept.,
Fort St., George, Chennai – 600 009.
 - 2.The Director of School Education,
DPI Compound, College Road,
Chennai – 600 006.
 - 3.The Joint Director of School Education,
DPI Compound, College Road,
Chennai – 600 006.
 - 4.The Chief Educational Officer,
South Chennai, Chennai – 600 015.
 - 5.The District Educational Officer,
Chennai (East), Choolaimedu High Road,
Choolaimedu, Chennai – 600 094.
- ... Appellants

Vs

- 1.Mrs.Jamunarani



Writ Appeal No.3540 of 2019

2.M.Priya Vaishnavi
3.M.Gopala Krishnan

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4.The Secretary and Correspondent,
Muthialpet Higher Secondary School,
No.167, (Old No.83),
Thambu Chetty Street,
Chennai – 600 001.

... Respondents

PRAYER Writ Appeal filed under Clause 15 of Letter Patent against the order dated 22.09.2017 made in W.P.No.12800 of 2010.

For Appellants : Mr.R.Kumaravel AGP

For Respondents : Mr.C.Johnson for RR 1 to 3

JUDGMENT

(Judgment of the Court was made by R.SURESH KUMAR.,J.)

This Appeal has been directed against the order passed by the Writ Court dated 22.09.2017 made in W.P.No.12800 of 2010.

2. The first respondent in the Writ Petition namely V.Mohandoss (who later died on 14.08.2016) was working as Physical Education Teacher in the fourth respondent school which was originally a High School and subsequently upgraded to Higher Secondary School from the academic year



1978-79 by issuance of the policy decision taken by the Government.

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3. At the time of up-gradation, since there was no Post Graduate qualified Physical Education Teacher, the existing incumbents were directed to handle the classes of +1 and +2 also. Accordingly the erstwhile incumbent one Mr.Swaminathan, was holding the post as Physical Director which was a sanctioned post for every Higher Secondary School based on the students strength by virtue of G.O.No.720, Education Department, dated 28.04.1981, under which Special Rules for Tamil Nadu Higher Secondary Services has been arrayed.

4. The said Swaminathan on superannuation retired from service on 31.05.1996 and the post he held become vacant. Therefore, in the vacancy, the fourth respondent school management under the method of recruitment by way of transfer as contemplated under the Special Rules, had appointed the said V.Mohandoss as Physical Director w.e.f., 06.06.1996 by the appointment order dated 03.05.1996.



5. The said appointment had been sent for approval to the ap-
pellant Department, though they approved his appointment, had taken a
stand that such an approval of the said V.Mohandoss was only in the post of
Physical Education Teacher that is the post originally available in the fourth
respondent school and not as a Physical Director.

6. In this context, there is a conclusion in the nomenclature as
handled by the appellant Department as they stated that there are two grades
in Physical Director post that is Grade I and Grade II.

7. In that context with the impression that there has been two grades
that is Grade I & Grade II Physical Director, the appellant Depart-
ment took a stand that the appointment given to the said V.Mo-
handoss was only in Physical Director Grade I, which was the post hitherto
held by the said Swaminathan, who only caused the vacancy by his superan-
uation on 31.05.1996. Therefore, in such post, if Mohandoss is appointed,
he can only be treated as a Grade II Physical Director accordingly
even though his appointment was approved, he is entitled to claim the salary



only for Physical Director Grade II that is according to the appellant Department is equivalent to the erstwhile Physical Education Teacher of the High School.

8. Because of this stand taken by the appellant Department, the actual pay has not been fixed, correspondingly on superannuation of the said Mohandoss, pension also had not been calculated and paid.

9. Therefore, the said Mohandoss approached the Writ Court by filing a Writ of Mandamus seeking to consider his representation dated 08.05.2010, with reference to his earlier representations of the year 2002 etc., by upgrading the petitioner, that is Mohandoss's position as Grade I Physical Director w.e.f., 06.06.1996 and allowing him to get all attendant benefits within a reasonable time.

10. The said Writ Petition having been considered was allowed by the learned Single Judge through the impugned order dated 22.09.2017. As against which, the present appeal has been directed.



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11. Assailing the said order of the learned Single Judge which is impugned herein, Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellants/Government would submit that insofar as the post wherein one Mr.Swaminathan was working in the fourth respondent school is concerned, it was only a Physical Education Teacher post. After the school was upgraded as Higher Secondary School in the year 1978-79 and after issuance of the Special Rules in the year 1981, insofar as the Higher Secondary School is concerned, the post of Physical Director was sanctioned. In this context, he would further submit that, in respect of high school which were upgraded as a Higher Secondary School, normally based on the students strength, if there are three posts of Physical Education Teachers are available in such high school one among the three can be upgraded as Physical Director.

12. This kind of Government orders time and again issued since in G.O.No.73, School Education Department dated 19.03.2010, and G.O.4D.No.25, dated 30.11.2011, such kind of up-gradation should be made



upgrading the Physical Education Teacher post into Physical Director.

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13. Since such an upgradation has not been made in respect of the fourth respondent school and the post wherein the said Swaminathan was working only as a Physical Education Teacher and since he handled the classes of +1 and +2, additional induction pay alone had been paid. Therefore, if at all any additional pay has to be paid to the Mohandoss, he is entitled to get only such an additional induction pay and not the pay of Physical Director in the Tamil Nadu Higher Secondary Education Service. Therefore on that ground only the approval that was given to one Mohandoss is only with respect to Physical Director Grade II and not Physical Director Grade I. Therefore, such a pay meant for Physical Director Grade I cannot be calculated and be paid to the said Mohandoss, correspondingly he is also not entitled to get such enhanced pension. Therefore, the stand taken by the appellant Government, since has not been considered in proper perspective by the learned Single Judge and the learned Single Judge has gone into extent of giving direction to the appellants/respondents to upgrade the post and treat him as Physical



Writ Appeal No.3540 of 2019

Director Grade I w.e.f., 06.06.1996, and accordingly, the pension arrears that is enhanced pension arrears shall be calculated and be paid to the legal heirs of the said Mohandoss, who had been subsequently impleaded as co-petitioners in the said Writ Petition and therefore, that approach of the learned Single Judge is erroneous one and hence, the learned Additional Government Pleader seeks indulgence of this Court.

14. Heard Mr.C.Johnson, learned counsel appearing for the re-pondents 1 to 3. Insofar as the fourth respondent is concerned, since it has been upgraded in the year 1978. Therefore at that time, the incumbent, who worked in the capacity as a Physical Education Teacher was directed to handle the classes of +1 & +2 and subsequently, only the Special Rule had come into effect in the year 1981. Thereafter, since the Physical Director was only a sanctioned post which was held by the said Swaminathan, he was given induction pay and therefore, after his retirement, it cannot be stated that subsequent incumbent like Mohandoss who has been appointed by way of transfer as per the method to be adopted as per G.O.No.720, that he is also entitled only for getting the induction pay and not the pay



equivalent to the Physical Director post.

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15. Therefore, he would submit that, as far as the appointment of the said Mohandoss is concerned, he was appointed only in the Physical Director post and therefore, approval ought to have been made only in that line and based on which his position can be considered only as a Physical Director of the Higher Secondary School for which the school was having an enough strength of nearly about 850 students and the minimum strength that was required to have a Physical Director post is only 400. Therefore, in all sources, the contention raised by the appellant Government cannot be countenanced, he contended.

16. We have considered these submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

17. As has been pointed out by the learned counsel appearing for the contesting respondents, the post of Physical Education Teacher was ori-

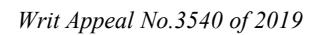


Writ Appeal No.3540 of 2019

ginally available in the fourth respondent school, when it was func-
tioning as a High School. The moment the school was upgraded as Higher
Secondary School, the Special Rule for Tamil Nadu Higher Second-
ary School Education Services alone would apply.

18. In this context, if we look at the said Rule as issued by the Gov-
ernment in G.O.Ms.No.720, Education Department, dated 28.04.1981, the
post of Physical Director is only a sanctioned post for the Higher Sec-
ondary School. After the said Special Rule has been brought in, in
annexure 5, clause iv, set of teachers and therefore, qualification in a
Higher Secondary School has been given, which is form part of Tamil Nadu
Recognised Private Schools Regulation Rule 1974, wherein in serial No.5,
the post of Physical Director and Physical Directors in Higher Secondary
Schools have been given. To hold such post, the qualification that was
prescribed is A.M.P.Ed degree or equivalent or a diploma equivalent to
M.P.Ed., degree.

19. Therefore, to hold the post of Physical Director in Higher



degree or M.P.Ed., degree.

eligible to hold the post of Physical Director.

lant State.

where there are three Physical Education Teachers already been



Writ Appeal No.3540 of 2019

sanctioned and are working, among the three, one can be upgraded as Physical Education Grade II.

23. Merely because such a concession had been given for the school having the strength of not less than 400, where the Physical Education Teacher post among the three, one can be upgraded as Grade II, it cannot be equated with the Physical Director post, which is the only available sanctioned post in any Higher Secondary School as per the Special Rules.

24. Therefore, insofar as the fourth respondent is concerned admittedly it has become Higher Secondary School from the beginning that is from 1978, no doubt the post that has to be upgraded or sanctioned where erstwhile incumbent Swaminathan was working must be taken only as a Physical Director post.

25. In that post, the said incumbent Swaminathan since retired on 31.05.1996, and in the vacancy caused, Mohandoss was appointed w.e.f.,



Writ Appeal No.3540 of 2019

06.06.1996. Therefore, from the date, he was holding the post of Physical Director of the fourth respondent school as he was having such a qualification to hold such post.

26. Therefore, in that post, till his superannuation and after superannuation since he was not given even the enhanced pension by calculating his services as Physical Director of Higher Secondary School and based on such pay scale, his pension since has not been calculated and paid, he had approached the Writ Court by filing the Writ of Mandamus as stated supra, which was considered and allowed by the learned Single Judge through the impugned order.

27. During the pendency of the Writ Petition, the said Mohandoss died, his legal heirs that is respondents 1 to 3 have been impleaded who are the contesting respondents herein.

28. Therefore, at no stretch of imagination, it can be stated that the



Writ Appeal No.3540 of 2019

post held by the said Mohandoss was only the post of either Physical Education Teacher or Physical Director Grade II.

29.If it is a post of Physical Director since it is the only post that can be sanctioned or that must have been sanctioned in a Higher Secondary School as per Rule, the post held by him can only be construed for all practical purposes as Physical Director.

30.Therefore, in that capacity what was the pay payable to the teacher should have been fixed atleast notionally and based on which the revised pension be calculated and accordingly the pension till his life time of the said Mohandoss and the family pension after his demise to the widow of the said Mohandoss has to be calculated and be paid.

31.Therefore, insofar as the said direction that has been given by the learned Single Judge is concerned, it does not warrant any interference and therefore, we feel that this Writ Appeal can be disposed of with the following order:-



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Writ Appeal No.3540 of 2019

That there shall be a direction to the appellants to treat the said Mohandoss as had been working in Physical Director post w.e.f., 06.06.1996 till his superannuation at the fourth respondent school and accordingly his pay shall be calculated for the post of Physical Director notionally and based on such calculation his pensionary benefit shall be calculated which shall be paid with arrears as well as the family pension to the eligible widow of the deceased teacher and all such benefits shall be calculated and be paid to the present respondents, who are the legal heirs of the deceased teacher within a period of twelve (12) weeks from the date of receipt of a copy of this order.

32. With these directions, the Writ Appeal is dismissed. Consequently connected Miscellaneous Petitions are closed. However, there shall be no orders as to costs.



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Writ Appeal No.3540 of 2019

(R.S.K.,J.)

(K.B., J.)

29.08.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
pbn

To

The Secretary and Correspondent,
Muthialpet Higher Secondary School,
No.167, (Old No.83),
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WEB COPY



Writ Appeal No.3540 of 2019

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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Writ Appeal No.3540 of 2019

29.08.2023

17/17