



W.P.No.27231 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27231 of 2022
and
W.M.P.No.26424 of 2022

P.Sekar
S/o.Ponnan

...Petitioner

Vs

1. Government of Tamil Nadu
Represented by Principal Secretary to Government
School Education Department
Secretariat, Chennai-600 009.
2. The Director of School Education
DPI Campus
Chennai-600 006.
3. The Chief Educational Officer
Thiruvannamalai District.
Thiruvannamalai.
4. The District Educational Officer
Cheyyar
Thiruvannamalai District - 604 407.
5. The Headmaster
Government Hr. Sec. School, Korkai
Cheyyar
Thiruvannamalai District.

...Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of 3rd respondent in his proceedings in O.Mu.No.6640/A5/2016 dated 22.09.2016 and quash the same and consequently, direct the 3rd respondent to consider the claim of the fix pay of the petitioner in the same post of B.T. Assistant (Maths) duly taking into account of his last drawn pay in the post of B.T. Assistant at Rs.14710 + 4600 (GP) in the scale of pay of Rs.9300 - 34800 + 4600 GP and refix the scale of pay of the petitioner in the post of B.T. Assistant, accordingly, with effect from 16.03.2007 and to grant annual increment w.e.f 01.04.2007 with arrears of pay as per entitlement with interest for the delayed payment within a limited time frame.

For Petitioner : Mr.P.Murali
For Respondents : Mr.R.Neelakandan
Additional Advocate General VIII
assisted by
Mr.M.Alagu Gowtham
Government Advocate

ORDER

The petitioner was originally appointed as B.T Assistant in an aided school on 05.06.1997. Thereafter, when the Teachers Recruitment Board called for applications from candidates for appointment in the post



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of Teachers in Government School, he had participated in the selection process and became successful. He was accordingly, issued with the appointment order dated 14.03.2007, appointing him as B.T. Assistant in fifth respondent Government School. In view of the appointment, the petitioner was relieved from the aided school on 16.03.2007 and on the same day, he had joined fifth respondent Government school also.

2. While the petitioner was working in the aided school his last drawn pay was in the scale of Rs.14,710 + 4,600 grade pay - 19310. However, when he had joined the Government school as B.T. Assistant (Maths), he was in the pay scale of 9,300-34,800 + 4,600 grade pay. Thereafter, he has been consistently sending representations to the respondents seeking for fixation of his pay scale in Government school, on par with his last drawn pay in the aided school and in spite of the same, his representations had not been considered. Ultimately, on 22.09.2016, his request came to be rejected through the impugned order stating that there are no government orders or other regulations to fix the pay scale of petitioner in the Government school equal to that of his last drawn pay in the aided school.



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3. The learned counsel for petitioner placed reliance on Fundamental Rule 26(c) of Fundamental Rules of the Tamil Nadu Government and submitted that in view of this Rule, the petitioner would be entitled for pay protection as that of last drawn scale of pay in private aided school since there was no break in service from the date on which he was relieved from aided school till the appointment in Government School. He has also placed reliance on G.O.Ms.No.367, Department of Education Science and Technology dated 30.03.1984, which brings the aided school also under the purview of FR.26(c). In support of such a claim, the learned counsel for petitioner placed reliance on a decision of a learned single Judge of this Court dated 16.07.2019, made in W.P.No.32645 of 2018 ***[G.Rufus David Vs. Secretary to State Government, Department of Educational Officer and another]*** which was confirmed by an Hon'ble Division Bench of this Court in W.A.No.3868 of 2019 dated 16.10.2020, as well as by Hon'ble Supreme Court in SLA(C) No.5633 of 2021 dated 12.04.2021.

4. Per contra, learned Additional Advocate General, submitted that when a government servant who is already holding a post is appointed in



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the post of B.T. Assistant by direct recruitment, such an appointment is to be treated as a fresh appointment. With such a submission, he placed reliance on a decision of Hon'ble Division Bench in W.A.No.627 of 2022 dated 15.07.2022 [*S.K.Kannan Vs. Director of School Education and others*]. He has also submitted that the decision relied upon by the learned counsel for petitioner has also been discussed by Hon'ble Division Bench in *Kannan* case and therefore, the writ petition is liable to be dismissed.

5. FR.26(c) protects the last drawn pay of an employee in an erstwhile service, when he opts to join a Government service, provided there was no inordinate break in between these services. G.O.Ms.No.367, extends such a benefit to the last service rendered by the Government employee in a private aided institution also. Such a protection came up for consideration in various decisions and in the case of *G.Rufus David* supra, a learned single Judge had an occasion to hold that a teacher who had worked in aided school, would always like to migrate to Government service and would also be entitled for fixation of



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pay scale by taking into account the past service of such a teacher. The relevant portion of the order dated 16.07.2019 reads as follows:

'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. 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



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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.

12. In the above said circumstances, the impugned order passed by the second respondent/Chief Educational Officer, in his proceedings in Na.Ka.No.5953/A4/2018 dated 15.11.2018 is hereby set aside and there shall be consequential direction to the respondents to fix the pay of the petitioner, after taking note of his last pay drawn before his migration to the Government service, in terms of G.O.Ms.No.367, Education, Science and Technology



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Department dated 30.03.1984 and pay arrears of differential pay to the petitioner on such re-fixation.'

6. In the intra-court appeal preferred by Government, by order dated 16.10.2020 in W.A.No.3868 of 2019, the order of the learned single Judge came to be confirmed by placing reliance on G.O.Ms.No.367 with the following observations:

'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 re-fixation 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



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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 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.'

7. The SLA preferred by the Government against the aforesaid



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orders was rejected on 12.04.2021 in SLA(C).No.5633 of 2021. All these aforesaid extractions are self explanatory. Thus, the last drawn scale of pay by a teacher who had worked in an aided school, requires to be protected when he/she chooses to join the Government school, in view of FR.26(c) as well as G.O.Ms.No.367.

8. Learned Additional Advocate General had placed reliance on the decision of Hon'ble Division Bench of this Court in **Kannan** case and submitted that when the recruitment process of earlier service as well as present Government service are different, the same will not entitle the petitioner to seek for pay protection, on par with his last drawn pay scale in the aided school. He has also submitted that the decision relied upon by the learned counsel for petitioner has been dealt with in **Kannan** case and therefore, the writ petition is liable to be dismissed. This apart, in the counter affidavit filed by the respondents, a reference has also been made to G.O.Ms.No.1072, Personnel and Administrative Reforms (FR.III) Department dated 31.12.1986, in which it is ordered that when a Government servant officiating in a post, who has no substantive appointment, is discharged from service for want of vacancy, he shall on



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reappointment to the same post, draw the pay last drawn prior to his discharge from service. The Government order further reads that the period prior to the discharge from service shall count for the purpose of future increments in the time scale of pay in that post.

9. Though such a reference has been made to G.O.Ms.No.1072, counter affidavit proceeds to state that the amendment to the Fundamental Rules cannot be extended to the teachers employed in a Government Aided school and seek for pay protection. However, the counter affidavit has omitted to refer G.O.Ms.No.367, which extends such pay protection to Government employees by taking into account the last drawn scale of pay in aided school.

10. In **Kannan** case, the facts as revealed therein are that, the teacher was originally selected to the post of B.T. Assistant (Science) through Teachers Recruitment Board and thereafter got selected through the Teachers Recruitment Board for P.G. Assistant (Chemistry). Since both the services are completely different, a stand was taken by the Department that there was no possibility of re-fixation of pay scale based



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on the previous service. In this backdrop, Hon'ble Division Bench had held that since the teacher therein was appointed to the post of P.G. Assistant through direct recruitment and the subsequent appointment was through transfer of service and therefore, by placing reliance on service Rules, had held that the pay protection of earlier scale of pay, cannot be extended to the subsequent appointments. Though a reference has been made to the decisions relied upon by the petitioner, in the present case, there is no discussion or even reference to either FR.26(c) or G.O.Ms.No.367. The facts in the case of **Kannan** though may look similar to the facts in the present case have not been really dealt with by Hon'ble Division Bench in the line of grounds raised in the present writ petition. Appointment of a teacher by transfer and through direct recruitment have been distinguished by Hon'ble Division Bench. Hence, the ratio laid down in the decisions relied on by the learned counsel for petitioner may not be applicable to the present case.

11. Thus, when FR.26(c) read with G.O.Ms.No.367 guarantees for protection of last drawn pay in the scale of pay of Government servant in the earlier aided school, the reasoning adopted by respondents in the



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impugned order that there are no regulations governing the Government teacher for protection of his last drawn pay in his earlier employment in the aided school, cannot be sustained.

12. In the light of the aforesaid discussions, I do not find any justification in the reasoning adopted by respondents in the impugned order.

13. Accordingly, impugned order dated 22.09.2016 in proceedings O.Mu.No.6640/A5/2016 is quashed. Consequently, there shall be a direction to third respondent to pass appropriate orders, refixing the pay scale of the petitioner, by taking into account his last drawn pay in the post of B.T. Assistant in the aided school at Rs.14,710 + Rs.4,600 grade pay and consequently, grant the annual increments, together with arrears of pay. Such orders shall be passed at least within a period of eight weeks, from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

15.11.2023

Index: Yes
Speaking order



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Neutral Citation : Yes

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To

1. Government of Tamil Nadu
Represented by Principal Secretary to Government
School Education Department
Secretariat, Chennai-600 009.
2. The Director of School Education
DPI Campus
Chennai-600 006.
3. The Chief Educational Officer
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M.S.RAMESH,J.

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