



W.P.(MD)No.8236 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.8236 of 2018

and

W.M.P.(MD)No.7813 of 2018

J.Micheal Skylop Singh,
Secondary Grade Teacher,
Panchayat Union Middle School,
Pulivalam,
Thirumayam Block,
Pudukkottai District.

... Petitioner

Vs.

1. The Secretary to Government,
Department of School Education,
State of Tamil Nadu,
Fort St.George,
Chennai- 600 006.
2. The Director of Elementary Education,
College Road,
Chennai - 600 006.
3. The District Elementary Educational Officer,
Pudukkottai District.



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4. The Additional Assistant Elementary Educational Officer,
Thirumayam,
Pudukkottai District.

5. The Headmaster,
Panchayat Union Middle School,
Pulivalam,
Thirumayam Block,
Pudukkottai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the third respondent herein in O.Mu.No.2041/A3/2017 dated 06.06.2017 quash the same and further direct the respondents herein to count the petitioner's Secondary Grade Teacher service period from 06.10.2008 to 10.12.2012 in St.Micheal's Private Aided Middle School, Rajavoor as qualifying service for all purposes including pay fixation and as well as for future increments and consequently, re-fix the petitioner's pay from 17.12.2012 onwards and disburse the monetary benefits.

For Petitioner : Mr.E.V.N.Siva

For Respondents : Mrs.K.Christy Theboral
Addl. Govt. Pleader for R1 to R4

R5 - Unserved



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ORDER

This Writ Petition has been filed to call for the records of the impugned proceedings issued by the third respondent in O.Mu.No. 2041/A3/2017 dated 06.06.2017, quash the same and direct the respondents to count the petitioner's Secondary Grade Teacher service period from 06.10.2008 to 10.12.2012 in St.Micheal's Private Aided Middle School, Rajavoor as qualifying service for all purposes including pay fixation and as well as for future increments and consequently, re-fix the petitioner's pay from 17.12.2012 onwards and disburse the monetary benefits.

2. The case of the petitioner is that the petitioner was working as Secondary Grade Teacher in Panchayat Union Middle School, Pulivalam, Thirumayam Block, Pudukkottai District from 17.12.2012 onwards as per the proceedings of the District Elementary Educational Officer, Pudukkottai, dated 11.12.2012. Before entering into Government Service, he had put in service as Secondary Grade Teacher in St.Micheal's Private Aided Middle



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School, Rajavoor, Kanyakumari District from 06.10.2008 to 10.12.2012.

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However, the earlier service rendered in the Private School from 06.10.2008 to 10.12.2012 was not taken into consideration along with the present service as qualifying service for all purposes including pay fixation and for future increments. Hence, he made representations dated 02.04.2016, 18.05.2017 and 01.06.2017 to the respondents to count the service period from 06.10.2008 to 10.12.2012 rendered in St.Micheals Private Aided School as qualifying service and the same were rejected. Aggrieved by the same, the petitioner has filed a Writ Petition before this Court in W.P. (MD)No.13778 of 2017. This Court, by order dated 26.07.2017, directed the respondents 2 and 3 to consider the petitioner's representation dated 01.06.2017 within a period of eight weeks. But, till date, no order was passed. Hence, the petitioner has filed Contempt Petition in Cont.P.(MD)No. 34 of 2018. When the Contempt Petition was taken up for hearing, the learned Government Advocate produced a copy of the proceedings issued by the third respondent dated 06.06.2017 rejecting his claim on the ground that there was a break in service from 11.12.2012 to 16.12.2012. Challenging the same, the present Writ Petition has been filed.



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3. The learned counsel appearing for the petitioner would submit that the petitioner's request was rejected on the ground that there was a break in service from 11.12.2012 to 16.12.2012.. However, in the present case, for all practical purpose, the earlier service rendered in the Private School has to be taken into consideration for monetary benefits along with the present service rendered by the petitioner, which has not been considered by the respondents is not sustainable Accordingly, he prayed for appropriate orders.

4. Per contra, the learned Additional Government Pleader appearing for the official respondents would submit that the issue that arises in the present Writ Petition, is no longer *res integra* and the same was decided by the Hon'ble Apex Court in the case of ***Palure Bhaskar Rao and others Vs. P.Ramaseshaiah and others*** reported in ***(2017) 5 SCC 783***, which was followed by the Hon'ble Division Bench of this Court in W.A.(MD)No.627 of 2022, dated 15.07.2022. He further submitted that initially the petitioner was appointed in the Aided School under the Tamil



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Nadu Recognized Private School Regulation Rules, 1974 and thereafter he participated in the selection process to the post of Secondary Grade Teacher through Teachers Recruitment Board. Subsequently, he has successfully selected in the post of Secondary Grade Teacher in the Panchayt Union Middle School, Pulivalam, Pudukkottai District and resigned his earlier post. Hence, there was a break in service and it has not been converted into direct recruitment by way of transfer. Hence, the claim made by the petitioner is not sustainable one. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner's earlier service in the Aided School was belatedly approved and the petitioner has participated in the Teachers Recruitment Board and thereafter he secured job as Secondary Grade Teacher in the Panchayt Union Middle School, Pulivalam, Pudukkottai District.



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7. The short issue that arises in the present Writ Petition is whether the petitioner is entitled for calculation of the past service rendered in the Aided School upon his resignation and newly entered into service in the Teachers Recruitment Board. However, the very same issue came up for consideration before before this Court in W.A.(MD)No.627 of 2022, wherein, the Hon'ble Division Bench of this Court held that *'the past service rendered in the Aided School as Secondary Grade Teacher will not be entitled to calculate in the Government Service subsequent to his resignation'*. The relevant portion of the judgment in W.A.(MD)No.627 of 2022 is extracted hereunder:

“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.



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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.



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(Emphasis added)

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



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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.

*27.In view of the above said circumstances, we respectfully follow the judgement of the Hon'ble Supreme Court reported in **in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others)**.*

*28. The petitioner has referred to the dismissal of SLP (Civil).No.5633 of 2021 dated 12.04.2021 which challenged the Division Bench judgment in W.A.No.3868 of 2019. A perusal of the order of Hon'ble Supreme Court reflects that the Special Leave Petition has been dismissed without assigning any reasons. The Hon'ble Supreme Court in a judgment reported in **(2019) 4 SCC Page 376 (Khoday Distilleries Limited (Now known as Khoday India Limited) and others -Vs- Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator)** in Paragraoh No.26.2 has held as follows:*



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“26.2. We reiterate the conclusions relevant for these cases as under (Kunhayammed case, SCC P.384).

“(iv).An order refusing special leave to appeal may be a non-speaking order of a speaking one. In either case, it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v). If the order refusing leave to appeal is a speaking order i.e.gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not



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amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi). Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii). On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC”

8. The aforesaid decision is squarely applicable to the case on hand. Hence, applying the ratio laid down by the Hon'ble Division Bench, following the decision of the Hon'ble Apex Court, the prayer sought for by the petitioner cannot be granted.



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9. Accordingly, this Writ Petition is dismissed. No Costs.

Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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2. The Director of Elementary Education,
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