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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 24948 of 2019

and

W.M.P.(MD)Nos. 21533 of 2019

S.Murugesan

...

Petitioner

Vs.

1. The Director of School Education,
College Road,
Chennai – 600 006.
2. The Director of Elementary Education,
College Road,
Chennai – 600 006.
3. The Joint Director of Kallar Reclamation,
Madurai District – 625 020.
4. The District Educational Officer,
Melur,
Madurai District.
5. The Block Educational Officer,
Madurai East,
Madurai District.



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6. The Correspondent,
Dhanamani Vidyasalai Middle School,
Goripalayam,
Madurai – 625 002.

7. The Headmaster,
Government Kallar High School,
Ayyanarkulam – 625 537,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a *Writ of Mandamus*, directing the respondents to disburse forthwith the salary and allowances to the petitioner with effect from 14.06.2002 with all other attendant benefits in terms of the orders of this Court in W.P(MD)Nos.2322, 2323 of 2009 dated 24.11.2014.

For Petitioner : Mr.K.Ragatheesh Kumar, for
M/s.Issac Chambers

For R-1 to 5 & 7 : Mr.V.Om Prakash,
Government Advocate

ORDER

This writ petition is filed for *Writ of Mandamus* directing the respondents to disburse the salary and other allowances to the petitioner, with effect from 14.06.2002 with all other attendant benefits in terms of the orders of this Court in W.P(MD)Nos.2322, 2323 of 2009 dated 24.11.2014.



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2. The contention of the petitioner is that he was qualified to be appointed in the post of BT Assistant and based on the said qualification the petitioner was appointed by the 6th respondent school. However, the 6th respondent has appointed the petitioner as a Senior Grade Teacher, even though the petitioner was qualified as BT Assistant. As per G.O.Ms.No.559 (Education), dated 11.07.1995, the B.T qualified teachers cannot be appointed as Senior Grade post. But there were several appointments made by the private aided schools, however the government declined approval, aggrieved over the teachers filed several writ petitions. Thereafter, the government issued G.O.Ms.No.155 dated 03.10.2002 wherein the teachers appointed between 11.07.1995 to 19.05.1998 were granted some relief. In the present case the petitioner was appointed on 29.01.1999, hence the petitioner would not be coming under the purview to G.O.Ms.No.155 dated 03.10.2002. In the meanwhile, the government had issued G.O.Ms.No.79 School Education Department, dated 04.06.2002, wherein the Government has issued directions to upgrade the Secondary Grade Post to BT Assistant post whenever it becomes vacant. The petitioner is claiming to invoke the said G.O.Ms.No.79 and recognize the appointment atleast from the date of issuance of G.O.Ms.No.79 i.e. from 03.10.2002 and pay all the salary and other



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benefits to the petitioner. Since the respondents have not granted, the petitioner's school and similarly placed persons have approached this Court in W.P.(MD)No. 1764 of 2007 and this Court vide order, dated 07.12.2007 has allowed the writ petition and directed the respondents to upgrade the post as per G.O.Ms.No.79 and the teachers are eligible for the consequential benefits with effect from 04.06.2002.

3. It is seen based on the report of the Assistant Elementary Educational Officer, the respondents vide proceedings dated 29.07.2008 have recorded that 10 teachers were not working in the said place. However, after obtaining the order from the Court, following four persons seems to have been working, namely P.Alagumugam, S.Indirani and E.Pandiselvarani and S.Murugesan (the petitioner). As per the said order, the petitioner and the said three persons were placed under consolidated pay by the respondents. Therefore, the other two persons namely, S.Indirani and E.Pandiselvarani again had approached this Court in W.P(MD)Nos.2322 and 2323 of 2009 and the High Court vide order, dated 24.11.2014 has allowed the writ petition and has held as under:



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*“13. In the result, these writ petitions are allowed and the proceedings of the first respondent, dated 29.07.2008 and 30.10.2009 are set aside and the first respondent is directed to approve the appointment of the petitioners on regular time scale of pay of Rs.4625-125-7000 with effect from 14.06.2002 with entire consequential benefits. **The benefit of this order is applicable not only to the petitioners but also two other teachers covered under the impugned order.** The fifth respondent school management is directed to send due proposal in this regard to the first respondent through the second respondent within two weeks from the date of receipt of a copy of this order and the first respondent shall thereafter pass appropriate orders for sanctioning the appointment of the petitioners and others in the manner as indicated above and sanction and disburse the arrears of salary within four weeks thereafter.”*

4. In the above order it has been held that the order is applicable to S.Indirani and E.Pandiselvarani and also applicable to the other two persons, stated in the impugned order, which means it is applicable to the present petitioner namely S.Murugesan. Aggrieved over the said order, the respondents have preferred W.A.(MD)No.637 & 638 of 2015 and the same were dismissed,



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vide order, dated 02.12.2016. The learned counsel appearing for the respondents submitted that against which they have preferred a review petition in Rev.Pet. (MD)SR. No.13926 and 13927 of 2018 and it is only in SR stage.

5. The petitioner had separately filed W.P.(MD)No.271 of 2014 seeking salary and other benefits and the same withdrawn by the petitioner and the writ petition was closed as withdrawn with liberty to file a fresh petition, vide order, dated 23.02.2017. Though, the High Court has granted relief to the petitioner in W.P.(MD) Nos.2322 and 2323 of 2009 vide order, dated 24.11.2014, the respondents have filed to comply with the order and has not granted any benefits under G.O.Ms.No.79. Therefore, the petitioner had filed the present petition for Writ of Mandamus to implement the order.

6. The respondents have filed two counters. In the first counter the respondents have clearly stated that the petitioner is not covered under G.O.Ms.No.155. Also, the petitioner is not covered under G.O.Ms.No.150, since the petitioner's name is not found in the said G.O.Ms.No.150. To invoke G.O.Ms.No.79 for upgradation of the Secondary Grade Post as BT Assistant, the



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school has approached the concerned authorities for upgrading the post. Further the upgradation is not an automatic. In the second counter, the respondents have stated that, subsequently, the petitioner has resigned from the said post on 31.07.2008 and has joined in the Government Kallar Higher Secondary School, Vickiramangalam on 01.08.2008. Since he has resigned from the earlier post, the petitioner had forfeited the earlier service, since under pension rules “resignation forfeits past service. Therefore, the petitioner cannot claim any benefits for the earlier service.

7. After hearing rival submissions, this Court had given its anxious consideration. As far as the G.O.Ms.No.79 is concerned, even though the school has not approached the authorities for upgrading, there are several Court orders, wherein it is stated, that upgradation is automatic and formal order is not necessary. Therefore, this Court is of the considered opinion that the petitioner is entitled to upgradation of the said post him from the date of the G.O. Ms.No.79 from the 03.10.2002 onwards.



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8. As far as the plea of forfeiture is concerned, this Court is of the considered opinion once the employee has declared that the resignation is for the purpose to join another government service then the employer is bound to grant permission and the employer is not empowered to decline permission. This Court has elaborately considered the issue in the case of S.Krishnamurthy Vs. the Managing Director W.P.(MD)No.27352 of 2019 vide order dated 07.07.2023 has held as under:

“8. The next contention of the respondents is that the petitioner had submitted resignation and resignation would forfeit the past service. When the petitioner has sought permission to take up another post, the proviso to Rule 16 of the Tamil Nadu State Transport Corporation Pension Fund Rules would save the petitioner. Moreover, it cannot be considered that the petitioner has not taken any permission. If any employee is expressing and has openly declared that he is intended to taking up another job and resignation is submitted, then the respondents are not having any right to decline permission. The pension rules of the respondent corporation as well as the pension rules of the State Government only states that if another post is taken up based on the permission, then the past service will not be forfeited. The said rules are not empowering the employer to adjudicate and decline the permission. Once the resignation is submitted with a declaration to take up another post, then the respondents are bound to relieve and they cannot treat such application as resignation and decline permission. Therefore, the reasons cited by the respondents is not acceptable.”



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In the present case the petitioner had submitted resignation on 31.07.2008 and has joined in the Government Kallar Higher Secondary School, Vickiramangalam on 01.08.2008. While submitting the resignation the petitioner had declared that in order to join the Government Kallar school he had resigned. Further the petitioner was servicing in the Government Aided post once approval is granted under G.O.Ms.No.79. Thereafter the petitioner had joined the Government Kallar School. Since both the services ought to be considered as government service, then the petitioner is entitled to add both the services. Therefore, following the said judgment this Court is of the considered opinion that the petitioner is entitled for permission and on such permission the forfeiture will not arise. Hence on this ground also the petitioner is entitled to relief.

9. It is submitted by the respondents that the petitioner is on the verge of retirement. At this stage if the petitioner's service is taken from 04.06.2002, then the government would have financial constraints. This Court is of the considered opinion that the petitioner is entitled to be posted in the sanctioned post under G.O.Ms.No.79 notionally and only for the purpose of granting service benefits. Hence it is made clear that the petitioner is not entitled



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to any monetary benefits like salary etc. from 04.06.2002. But his service shall be taken from 04.06.2002 for the purpose of granting service benefits alone.

10. For the reasons stated supra the writ petition is allowed as stated supra and the respondents are directed to include the service of the petitioner from 04.06.2002 for the service benefits alone. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

14.06.2023

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Note: Issue order copy on 29.02.2024.



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 24948 of 2019**

14.06.2023