



W.P.(MD) No.26791 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 01.09.2023

ORDERS PRONOUNCED ON : 03.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.26791 of 2019

and

W.M.P.(MD) No.23153 of 2019

A.John Kennedy

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep., by its Secretary,
Department of School Education,
Fort St. George, Chennai-09.
- 2.The Director of School Education,
College Road, Chennai-06.
- 3.The Director of Elementary Education,
College Road, Chennai-06.
- 4.The Chief Educational Officer,
Trichy District at Trichy.
- 5.The District Educational Officer,
Manaparai, Trichy District.



W.P.(MD) No.26791 of 2019

WEB COPY

6.The Block Educational Officer,
Manikandam, Trichy District.

7.The Correspondent,
Nehru Middle School,
Muthukulam, Trichy-620 009.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents to approve forthwith the appointment of the petitioner as BT Assistant in Science/Middle Grade Graduate Teacher in the 7th respondent school namely, Nehru Middle School, Muthukulam, Trichy w.e.f. 01.02.2003 and disburse all attendant benefits and allowances.

For Petitioner	:	Mr.S.Xavior Rajini
For RR1 to 6	:	Mr.V.Nirmal Kumar Government Advocate
For R7	:	No appearance

ORDER

The case of the petitioner is that he was appointed as B.T. Assistant in Science/Middle Grade Graduate Teacher in the 7th respondent-School on 01.02.2003. One M.Veerassamy, Secondary Grade Teacher in the



W.P.(MD) No.26791 of 2019

7th respondent-School, attained superannuation on 31.01.2003 due to voluntary retirement. The 1st respondent has issued G.O.Ms.No.79, School Education Department, dated 14.06.2002 upgrading the post of Secondary Grade Teacher as B.T.Assistant/Middle Grade Graduate Teacher post as and when they fell vacant. Accordingly, when previous Secondary Grade Teacher retired, his vacant post in the 7th respondent-School stood upgraded as B.T.Assistant/Middle Grade Graduate Teacher post and in the said vacancy, the petitioner was appointed on 01.02.2003. The 7th respondent submitted proposal to the 5th respondent to approve the appointment of the petitioner as B.T.Assistant in Science with effect from 01.02.2003 and to disburse gratuity towards payment of salary to the petitioner. The 5th respondent approved the appointment of the petitioner as Junior Grade B.T.Assistant in the 7th respondent-School with effect from 01.06.2003 instead of 01.02.2003 *vide* proceedings in R.C.No.9842/B4/2004, dated 04.01.2005 and placed him under consolidated pay of Rs.4,000/- per month. The State Government introduced consolidated pay as per G.O.Ms.No.100, School Education (Budge) Department, dated 27.06.2003 and G.O.Ms.No.4, School Education (X2) Department, dated 19.01.2004 stating that



W.P.(MD) No.26791 of 2019

appointments to various types of teaching posts should be deemed as Junior Grade appointments for a period of five years as per the respective dates of appointment and the Teachers would be paid only a consolidated pay.

2. It is the contention of the petitioner that as the appointment of the petitioner was made on 01.02.2003 in the vacancy arose on 31.01.2003, his appointment is not within the scheme of consolidated pay. The 7th respondent made several representations to the 5th respondent requesting to approve the petitioner's appointment as regular scale of pay instead of consolidated pay. However, the respondents placed the petitioner as B.T.Assistant in Science with effect from 01.06.2006 as per G.O.Ms.No.99 School Education (Budge-2) Department, dated 27.06.2006 and placed the petitioner under the Contributory Pension Scheme. The petitioner made several representations to the respondents from 08.02.2005 to 11.06.2019 requesting to approve his appointment as Middle Grade Graduate Teacher/B.T.Assistant in Science with effect from 01.02.2003 and disburse all monetary benefits accordingly. As there is no action on the part of the respondents, the petitioner is constrained to file this writ petition.



W.P.(MD) No.26791 of 2019

WEB COPY

3. A counter affidavit has been filed by the 5th respondent on behalf of the official respondents.

4. In the said counter affidavit, it is averred that the petitioner was appointed as B.T.Assistant in Science/Middle Grade Graduate Teacher in the 7th respondent-School on 01.02.2003 in the consolidated pay of Rs.4,000/- per month. It is also averred that in view of severe financial constraints among many economical measures, the Government in G.O.Ms.No.100, School Education Department, dated 27.06.2006, ordered consolidated pay instead of time scale of pay to Secondary Grade Teacher/B.T.Assistant/P.G.Assistant posts by redesigning the post. As the petitioner's appointment is within the scheme of consolidated pay, as such the petitioner is not eligible for regular time scale of pay admissible for Middle Grade Graduate Teacher/B.T.Assistant in Science.

5. Learned counsel for the petitioner contends that the petitioner was appointed as Middle Grade Graduate Teacher/B.T.Assistant in Science in the 7th respondent-School on 01.02.2003 in the vacancy arose due to the



W.P.(MD) No.26791 of 2019

retirement of the incumbent on 31.01.2003 and as per G.O.Ms.No.79, School Education Department, dated 14.06.2002, the respondents should place the petitioner in regular scale of pay in the post of Middle Grade Graduate Teacher/B.T.Assistant in Science with effect from 01.02.2003. But the 5th respondent should not place the petitioner under the consolidated pay, which would effect only from 01.06.2003.

6. Learned counsel further contends that as the petitioner was appointed on 01.02.2003 in the sanctioned post, he is entitled for Old Pension Scheme. Due to the erroneous action of the official respondents, the petitioner was thrown out from the pensionary benefits and it caused untold hardship and mental agony to the petitioner and accordingly, sought to allow the writ petition.

7. Learned Government Advocate appearing for the official respondents, basing on the averments made in the counter affidavit, would submit that as the petitioner was appointed on 01.02.2003 in the consolidated pay of Rs.4,000/- per month, the respondents rightly approved



W.P.(MD) No.26791 of 2019

the appointment of the petitioner with effect from 01.06.2003 only and accordingly, he was placed under Contributory Pension Scheme and the petitioner is not entitled for the Old Pension Scheme and sought to dismiss the writ petition.

8. This Court gave anxious consideration to the submissions made by the respective counsels and carefully examined the material available on record.

9. It is an admitted fact that the petitioner was appointed as B.T.Assistant in Science/Middle Grade Graduate Teacher in the 7th respondent-School on 01.02.2003 in the vacancy arose caused due to the retirement of the then incumbent on 31.01.2003. It is also an admitted fact that as per G.O.Ms.No.79, School Education Department, dated 14.06.2002, the Government ordered that the Secondary Grade Teacher posts arising due to retirement, death or resignation from 01.06.2002 shall be filled up by the Middle Grade Graduate Teachers and they may be paid the additional increment by the management. In view of the said Government Order, the

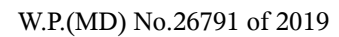


W.P.(MD) No.26791 of 2019

7th respondent appointed the petitioner on 01.02.2003 in the vacancy arose on 31.01.2003.

10. In the light of the factual position, in our view, there is no any justification to approve the appointment of the petitioner with effect from 01.06.2003 under consolidated pay. Admittedly, the Government introduced consolidated pay as per G.O.Ms.No.100, School Education (Budget) Department, dated 27.06.2003, which was issued subsequent to the date of appointment of the petitioner. As the petitioner has been working from 01.02.2003 and the proposals were sent by the 7th respondent for approval of his appointment to the 5th respondent on 03.02.2003, which were kept pending till 04.01.2005 with the 5th respondent, it cannot be a ground to deny approval of the petitioner's appointment from 01.02.2003.

11. It is very surprising to note the averments made in the counter affidavit that the petitioner was appointed on 01.02.2003 on consolidated pay of Rs.4,000/- per month in the 7th respondent-School. As and when G.O.Ms.No.100, School Education (Budge) Department, dated 27.06.2003



12. The view of this Court is fortified by the order of this Court
11.2006 in W.P.(MD) No.1664 of 2005. In the said case, the
therein has been appointed on 08.08.2002 in terms of G.O.Ms.No.
1 Education Department, dated 14.06.2002. But the respondents
approved the appointment with effect from 19.01.2004 on
fixed pay of Rs.4,000/- per month. While allowing the writ petition,
it directed the 3rd respondent therein to approve the appointment of



W.P.(MD) No.26791 of 2019

the petitioner from 08.08.2002, i.e., the date of appointment in accordance with G.O.Ms.No.79, School Education Department, dated 14.06.2002 and further directed to pass revised orders within a period of four weeks.

13. In an appeal preferred against the said order, a Division Bench of this Court, by its judgment dated 23.07.2008 in W.A.(MD) No.190 of 2007, denying the contentions of the appellants therein, held as extracted hereinunder:

“7.Considering the facts and circumstances of the case and upon hearing the learned counsel appearing for both what comes to be known is that admittedly, the date of appointment of the first respondent is 08.08.2002, and the same is not disputed. The first respondent having been appointed as early as on 08.08.2002, the appointment shall be approved in terms of the G.O.Ms.No.79 (School Education) Department dated 14.06.2002 and the first respondent is entitled to get time scale pay. Hence, we see no reason to interfere with the order passed by the learned Judge.”



W.P.(MD) No.26791 of 2019

WEB COPY

14. A Division Bench of this Court, while dealing with identical issue, by order dated 23.07.2008, in W.P.(MD) No.2474 of 2005, held as extracted hereinunder:

“7. Considering the facts and circumstances of the case and upon hearing the learned counsel appearing for both sides, this Court is of the view that the petitioner having been appointed as early as on 16.12.2002, the petitioner's appointment shall be approved in terms of G.O.Ms.No.79 (School Education) Department dated 14/6/2002 and the petitioner is entitled to get time scale pay.”

15. Learned Government Advocate appearing for the official respondents has placed reliance on the judgment dated 02.09.2021 in W.A.No.1463 of 2021 of this Court. Having gone through the said judgment, in the opinion of this Court, the said judgment is not applicable to the facts and circumstances of the present case.



W.P.(MD) No.26791 of 2019

WEB COPY

17. For the above mentioned reasons and in the light of the orders/judgment passed by this Court, which are stated *supra*, this Writ Petition is allowed with the following directions:

- i. The proceedings issued by the 5th respondent in R.C.No. 9842/B4/2004, dated 04.01.2005 is hereby set aside;
- ii. The 5th respondent is directed to approve the appointment of the petitioner from 01.02.2003 in accordance with G.O.Ms.No.79, School Education Department, dated 14.06.2002 and issue revised orders within a period of four weeks from the date of receipt of a copy of this order; and
- iii. The arrears of salary payable to the petitioner from 01.02.2003 after adjusting the salary paid to the petitioner on consolidated pay shall be calculated and paid within a period of two months from the date of receipt of a copy of this order.



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W.P.(MD) No.26791 of 2019

18. There shall be no order as to costs.

19. Consequently, connected miscellaneous petition is closed.

03.10.2023

Note: Issue order copy by 06.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Secretary to Government,
State of Tamilnadu,
Department of School Education,
Fort St. George, Chennai-09.
- 2.The Director of School Education,
College Road, Chennai-06.
- 3.The Director of Elementary Education,
College Road, Chennai-06.



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W.P.(MD) No.26791 of 2019

BATTU DEVANAND, J.

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Trichy District at Trichy.
- 5.The District Educational Officer,
Manaparai, Trichy District.
- 6.The Block Educational Officer,
Manikandam, Trichy District.

Pre-delivery Order made in
W.P.(MD) No.26791 of 2019

03.10.2023