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W.P.(MD)No.15004 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.15004 of 2017

K.Ganesan

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by the Secretary to Government,
School Education Department,
Fort St.George, Chennai 9.
- 2.The Director of Elementary Education,
College Road, Chennai 6.
- 3.The Direct Elementary,
Education Officer, Karur District.
- 4.Assistant Elementary School
Education Officer,
Office of Assistant Elementary School
Education,
Kulithalai, Karur District.
- 5.The Principal Accountant General,
Accountants and entailments,
No.361, Anna Salai,
Chennai.

... Respondents



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PRAAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 5th respondent made in Pen. 17/III/11713122/Rev/14-15, dated 05.09.2014 and to quash the same and consequently, to direct the 5th respondent to approve the proposal sent by the 4th respondent through its proceedings in Na.Ka.No.601/A2/2012, dated 19.05.2014, and thereby, to refix the salary of the petitioner in the cadre of Primary School Headmaster with effect from 01.09.2004 and also to refix the pension and other benefits and pay the same along with arrears to the petitioner.

For Petitioners : Mr.K.Govindarajan
For R1 to 4 : Mr.S.Kameswaran
Government Advocate
For R5 : Mr.P.Gunasekaran

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order dated 05.09.2014 passed by the 5th respondent and consequently to direct the 5th respondent to approve the proposal sent by the 4th respondent through its proceedings, dated



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19.05.2014, and thereby, to refix the salary of the petitioner in the cadre of Primary School Headmaster with effect from 01.09.2004 and also to refix the pension and other benefits and pay the same along with arrears to the petitioner.

2. The brief facts of the case are that the petitioner was serving as Headmaster at Purasampatty Elementary School. After serving in the said post, the petitioner sought transfer and he was transferred to Kulithalai Union. The said transfer is a request transfer. The respondents have categorically stated to the petitioner that Primary School Headmaster post is not available, therefore, the petitioner would be accommodated in the Secondary Grade Teacher post. The petitioner has accepted the same and served from 01.09.2004 to 31.01.2009, i.e., until his retirement. However, the petitioner has filed W.P.(MD)No.3507 of 2006, challenging the order, dated 07.03.2006, wherein the petitioner's salary was refixed and his scale of pay was reduced from Primary School Headmaster to

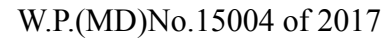


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Secondary Grade Teacher. After considering the case of the petitioner, this Court, vide order, dated 04.02.2013, has held that while passing transfer order, the respondents had not clarified the scale of pay that is applicable to the petitioner. Moreover, in a similar case, one Periyasamy was granted pay protection. Therefore, the petitioner is entitled to pay protection. The respondents have not filed any appeal and the same had attained finality. Relying on the said judgment, the petitioner is before this Court challenging the order passed by the 5th respondent.

3. The contention of the 5th respondent is that the petitioner has retired from service, hence any modification in salary after retirement then the appropriate authority is the Government. Since the Government has not passed any order directing the 5th respondent to grant pay fixation order. Moreover, the other 4th respondent is not empowered to pass such order and hence the proposal of the 4th respondent to grant pay protection was not declined. Even in the case of Periyasamy the government has



4. Therefore, this Court is inclined to remit the case to the 1st respondent to consider the claim of the petitioner in the light of the order, dated 04.02.2013 passed in W.P.(MD)No.3507 of 2006 and in the light of G.O.No.202, School Education (G2) Department, dated 24.09.2008. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

5. With the above said observation, the writ petition is disposed of.

No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No
Tmg

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S.SRIMATHY, JTmg

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