



W.P.No.10226 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.10226 of 2016

and

W.M.P.No.9071 of 2016

Rajasuriyan

....Petitioner

Vs.

1. The State of Tamilnadu rep.,
By its Secretary to Government,
Education Department, Fort, St. George, Chennai

2. The Director of Elementary Education,
College Road, [Nungambakkam, Chennai-9](#).

3. The District Elementary Education Officer,
Thiruvannamalai District, Thiruvannamalai.

4. The Assistant Elementary Education Officer,
Jawadhu Hills, Thiruvannamalai District.

....Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of



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India praying for issuance of a Writ of Certiorarified mandamus, to call for the records of the third respondent in A. Thi. Mu. No.4958/B3/15 dated 29.10.2015 and fourth respondent in O.Mu. No.227/A1/2015 dated 31.12.2015 and to quash the same with consequential direction to the third and fourth respondents to grant the benefit of pay fixation as well as future increments by counting the entire period of previous service rendered by the petitioner from 23.02.2001 to 15.12.2009.

* * *

For Petitioner : Ms.K.Jenitha

For Respondents
1 to 64 :Mr.P.Rajarajeswari
Government Advocate

ORDER

The petitioner has approached this Court by way of this writ petition seeking to quash the orders passed by the third respondent dated 29.10.2015 and the fourth respondent dated 31.12.2015 and consequently direct the respondents 3 and 4 to grant the benefit of pay fixation as well as future increments by counting the entire period of



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services rendered by the petitioner from 23.02.2001 to 15.12.2009.

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2. The facts are briefly set out herein below.

(i) The petitioner was appointed as secondary grade teacher on 23.02.2001 in St.Joseph Higher Secondary School, Athipet. The said School was a Government aided school and the service condition of the petitioner was governed by the Tamil Nadu Education Service Rules and his salary was paid by the Government. Thereafter, the petitioner was selected as per his seniority, by the Teachers Recruitment Board as a secondary grade teacher by proceedings of the second respondent. On 16.12.2009, the petitioner had joined the Panchayat Union Middle School, Kottukaranpatti, Othangarai Panchayat Union, Krishnagiri District without any break in service. The petitioner would submit that he was relieved from the services of his previous school by getting proper approval.



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(ii) The petitioner on 01.07.2014 was transferred from Panchayat Union Primary School, Uthangarai Block, Krishnagiri District to Panchayat Union Middle School, Dhaniyar, Jawadhu Hills Block, Thiruvannamalai District by the order of the third respondent. The Government had issued a G.O.Ms.No.992, Education Department dated 22.06.1979 to award selection grade to the teachers under all kinds of management by counting of services rendered in the same post under all kinds of management that included not only the Government local bodies but also the aided agencies. The petitioner was accordingly awarded selection grade with effect from 2011 and the provident fund was also ordered to be continued in the old full pension scheme. However, the petitioner's past services rendered was not counted for the purpose of pay fixation and increment. The



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petitioner had given a representation to the third respondent on 23.04.2015. The third respondent without application of mind had rejected the application and the fourth respondent had simply confirmed the proceedings of the third respondent. The petitioner had also contended that, with reference to similarly placed persons, the Government had counted their past services. Therefore the petitioner has come forward with the above writ petition.

3. The petitioner had relied upon the judgment of the Division Bench of this Court in an unreported judgment in ***W.A.No.3868 of 2019 [The Secretary to State Government Vs. G.Rufus David]*** where the Division Bench had observed that from a reading of G.O.Ms.No.367, Education, Science and Technology Department, dated 30.03.1984, it is evident that the services rendered by a Government Servant in the same service or in another service by method of recruitment is entitled to re-fixation of pay. The Bench had



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ultimately dismissed the writ appeal filed by the Government.

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4. The respondents have filed a counter affidavit inter-alia denying the claim of the petitioner and stating that the appointment of the petitioner through the teachers recruitment board was a fresh appointment and not a continuation of the earlier service rendered in the aided school. They would contend that the writ petition had submitted his resignation to the aided school and thereafter, joined duty in the Panchayat Union school. Therefore, by no stretch of imagination can it be stated that the present service is a continuation of the earlier service. The appointment order issued to the petitioner contained the conditions of service, pay and scale of pay. Further, the respondents have contended that the petitioner has come to Court after over 7 years from the date on which he has been receiving the old scale of pay.



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5. Heard the learned counsels and perused the materials available on record.

6. In the judgment relied upon by the petitioner, it was a case of appointment by transfer which is not the case in this writ petition. The judgment relied on by the petitioner's counsel has been considered and distinguished by another judgment of the Division Bench of the Madurai Bench of the Madras High Court in ***W.A.(MD).No.627 of 2022 [S.K.Kannan Vs- The Director of School Education and others]*** where the learned Judges has observed in paragraph 30 as follows:

“30. The petitioner having participated in the direct recruitment process and got appointment cannot turn around and contend that he was appointed



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by transfer of service from the post of B.T.Assistant to the post of P.G.Assistant. The continuous usage of the old Service Register of the petitioner, even after being appointed as P.G.Assistant will not confer any right to get pay protection. The fact that there was no break in service also will not convert a direct recruitment into an appointment by transfer of service. Hence, the contentions on the side of the learned counsel for the appellant are not legally sustainable.”

They had also distinguished the judgment of the earlier Bench of this Court passed in W.P.No.3868 of 2019 dated 16.10.2020 in paragraph 26 as follows:

“26. We are not in agreement with the judgment of



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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 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.



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7. In the case on hand, the writ petitioner was originally appointed as a secondary grade teacher in an aided institution. Thereafter, the petitioner was selected as per the State seniority by the Teachers Recruitment Board through the employment exchange and he was appointed as a secondary grade teacher. Consequently, he had resigned from the aided school. The petitioner's subsequent appointment is a fresh appointment and therefore, the judgment passed in W.P.No.3868 of 2019 dated 16.10.2020 would not be applicable.

8. In the light of the subsequent judgment of the Division Bench of the Madurai Bench of the Madras High Court in ***W.A.(MD).No.627 of 2022***, the petitioner cannot seek to have the previous services rendered in the aided school attached to the present post which he has got through direct recruitment. Therefore, the Writ Petition is



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dismissed. There shall be no order as to costs. Consequently,
connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes

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P.T.ASHA, J.

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