



W.P.No.2565 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.2565 of 2024 and
W.M.P.Nos.2814 & 2816 of 2024

Helen Arokiamary

...Petitioner

-Vs-

1. The Government of Tamilnadu
Rep. By its Secretary,
The Department of School Education,
Fort St., George, Chennai-600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
3. The District Educational Officer (Elementary),
The Office of the District Educational Officer (Elementary),
Kanchipuram-631 501.
Kanchipuram.
4. The Block Educational Officer,
The Office of the Block Educational Officer,
Walajabad-631 605,
Kanchipuram.



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5. The Correspondent,
R.C.Elementary School,
Jayakondam,
Perambalur District-621 802.

6. The Headmaster,
Panchayat Union Primary School,
Venpakkam, Panruti PO,
Walajabad TK,
Kanchipuram-631 604

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings dated 11.05.2023 in Na.Ka.No.803/A1/2023 on the file of the 4th respondent and quash the same, directing the respondents 1 to 4 to re-fix the Scale of Pay of the petitioner as Secondary Grade Assistant in the 5th respondent aided school with all service and monetary benefit.

For petitioner : Mr.Father Xavier Arul Raj
Senior Counsel for
M/s.Father Xavier Associates

For respondents 1 to 4 : Mrs.S.Mythreye Chandru,
Special Government Pleader.



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ORDER

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This writ petition has been filed challenging the order passed by the 4th respondent dated 11.05.2023 thereby rejected the request made by the petitioner to take into account the recognized service rendered by the Secondary Grade Assistant in the 5th respondent aided school .

2. Initially, the petitioner was appointed in the 5th respondent's aided school as Secondary Grade Assistant with effect from 15.12.2000 in the vacancy arising out of resignation of one Mrs.Savariammal. Her appointment was also duly approved by the District Elementary Educational Officer, Ariyalur. At this juncture, after a period of nine years the petitioner was called for certificate verification by the Teacher Recruitment Board by its proceedings dated 14.05.2009. She was provisionally selected for te appointment to the post of Secondary Grade Teacher. Accordingly, the 3rd respondent by its proceedings dated 14.12.2009 and appointed the petitioner as Secondary Grade Teacher. Immediately, the petitioner was relieved from the 5th respondent school on 15.12.2009. On the very next day she had joined on 16.12.2009. Her scale of pay was fixed at Rs.5200-20200-2800.



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Thereafter, the petitioner was transferred to the Panchayat Union Primary School, Koothirambakkam in the year 2017. However, the petitioner's earlier service of nine years in the 5th respondent's school was not taken into consideration while fixing her scale of pay. The petitioner's last drawn pay on the date of relieving on 15.12.2009 was a Gross Amount of Rs.18,526/- in the Pay Scale of Rs.5200-20200-2800 with a Basic Pay of Rs.13,910/-. However, when the petitioner joined in the Panchayat Union Primary School, Chittrappalayam, Konganapuram Union, Salem District on 16.12.2009. Her pay was a Gross Amount of Rs.10,620/- in the Pay Scale of Rs.5200-20200+GP 2800 and with a Basic Pay of Rs.8000/-. The respondents failed to take into account the petitioner's service of 9 years rendered in the 5th respondent's aided school. Therefore, the petitioner submitted a representation and the same was rejected on the ground that she resigned her post in the aided school and then joined in the government school. She is not entitled to pay protection. In this regard, already similarly placed persons were approached this Court in W.P.No.6714 of 2018. This Court passed an order dated 08.12.2022 and held that fundamental Rule 22B of TamilNadu Government provides that when a



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Government servant holding a post in a substantive or officiating capacity is appointed in a substantive capacity to another post, his initial pay in the level of the higher post in the pay matrix shall be fixed by granting one increment in pay in the level of the lower post and he will be placed at a cell equal to the pay so arrived at in the level of the higher post in the pay matrix of the higher post. If the pay so arrived at in the level in the lower post after granting one increment is lower than the minimum pay or the first cell in the level of the higher post. Therefore, set aside the order and directed to re-fix the petitioner's scale of pay on the basis of last pay drawn. It is also relevant to extract the relied upon judgement of this Court in the case of ***G.Rufus David Vs The Secretary to State Government, Department of School Education, Chennai & Another*** passed in W.P.No.32645 of 2018 dated 16.07.2019. This proposition was upheld in the following manner:-

"9. This Court, after considering the arguments of both sides, is unable to appreciate the stand of the respondents that the petitioner is not entitled to fixation of proper pay scale on par with other similarly placed teachers only because of the fact that he had, on his own wish, went to Government Service, after rendering 14 ½ years of continuous service in aided schools. This Court is unable to comprehend such objection being raised, that too, seriously by the Government. Any teacher, who worked in aided school, would always like to migrate to Government Service for betterment of their service benefits and carrier. Such option exercised by the petitioner cannot be put against him and on that basis, the denial of pay



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scale on par with other similarly placed teachers, would be grossly discriminatory and would cause grave injustice to the interest of the petitioner. In fact the improper fixation of pay scale, without taking into account the past service of the petitioner in the aided schools, would amount to violation of equality clause enshrined in Article 14 of the Constitution of India.

10. In fact while rejecting the claim of the petitioner, the Authorities have not taken into consideration the contents of G.O.Ms.No.367, Educational, Science and Technology Department dated 30.03.1984. According to the said Government Order, the appointment of Higher Grade Teacher in upgraded post of Secondary Grade Teacher, is also entitled to fixation of pay under FR 22(B) and the benefit of the orders referred to in paragraph (1) of the Government Order would also be extended to these appointments as well. Unfortunately, it appears that the Authority has not applied his mind properly with reference to the contents of the said Government Order and has simply denied only on specious reasoning that the petitioner has migrated to Government Service on his own wish. This Court is unable to find such reasoning has any meaning at all with relation to the claim of the petitioner herein. On the whole, it appears that the basis of the rejection is wholly unjustified, not acceptable and the same has to be rejected outright.

11. Therefore, this Court is of the view that the petitioner is entitled to proper fixation of pay on the basis of his last pay drawn, before his appointment in Government Service."

3. The above judgment is squarely applicable to the case on hand.

Admittedly, the earlier service of the petitioner was duly approved by the concerned authority. She had resigned her earlier post on 15.12.2009 and joined in the next post on 16.12.2009 itself, in the same Secondary Grade Teacher without any braking of service. Therefore, the respondents ought to



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have taken into account of her earlier service of nine years rendered in the 5th respondent's school while fixing the scale of pay of the petitioner.

4. In view of the above the order passed by the 4th respondent cannot be sustained and liable to be quashed. Accordingly, order passed by the 4th respondent in Na.Ka.No.803/A1/2023 dated 11.05.2023 is quashed. The respondents are directed to refix the scale of pay of the petitioner by taking into account of her earlier service rendered in the 5th respondent's school as Secondary Grade Assistant with all service and monetary benefits within a period of twelve weeks from the date of receipt of copy of this order.

5. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index : Yes/No
Internet: Yes/No
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To

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