



W.P.No.12804 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.12804, 12806, 12808, 12809, 12811, 19914, 19919, 19942,
19947, 19952, 19956, 23279, 25111, 26707, 27810, 27817, 27825,
27828, 27831, 27836 of 2023

and

W.M.P.Nos.19265, 19266, 19274, 19275, 22820, 22821, 24541, 27310,
27314, 27317, 27320, 27324 & 27328 of 2023

W.P.No.12804 of 2023:-

R.Lilly Therasa

...Petitioner

-Vs-

1. The Government of Tamilnadu
Represented by the Principal
Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009.
2. The Director of Elementary Education,
Chennai – 600 006.
3. The District Elementary Educational Officer,
Cuddalore.
4. The Block Educational Officer,
Kattumannarkoil,
Cuddalore District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to count the service of the petitioner from 01.06.2004 to 29.02.2008 as qualifying service for pension along with her regular service from 01.03.2008 in government school to refix her pay from the date of her initial appointment, till date.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mrs.S.Mythreye Chandru
Special Government Pleader

COMMON ORDER

These writ petitions have been filed for direction directing the respondents to count the petitioners' service rendered in the aided school for the fixation of special grade pay/selection grade pay in the post of B.T. Assistant. Some of the writ petitions have been filed challenging the order of rejection thereby rejected the request made by the petitioners to count their service rendered in the private aided school for fixation of selection/special grade scale of pay in their respective posts.



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2. The petitioners were initially appointed as B.T. Assistant in various private aided school and they were appointed in the sanctioned post. Their respective schools are religious minority institutions, receiving teaching grant from the government of Tamil Nadu. After rendering some period of service, they were selected by the Teachers Recruitment Board for appointment to the post of B.T. Assistant in various subjects. Accordingly, they were appointed as B.T. Assistant in their respective government schools. In fact, all the petitioners had obtained necessary permission from their previous aided schools and immediately after their resignation on the next day, they had joined in their respective government schools. Their resignation were also duly approved by the concerned District Educational Officer. Thereafter, their appointment were duly regularized by the authority concerned in the post of B.T. Assistant.

3. The Government of Tamil Nadu grants same scale of pay to the teachers working in the government aided private school as that of government school teachers. In fact, the Hon'ble Supreme Court of India



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held that the teachers working in the private aided school are entitled for same scales of pay as that of the government school teachers. However, while fixing the scale of pay, the petitioners were not considered for their same scale of pay which was fixed while they were in private aided school. The service rendered by the B.T. Assistant in government school as well as the private school are one and the same and similar post.

4. Further the Rule 23 of the Fundamental Rules says that even resignation from one post with a view to join in another post in other department in the service of the State government, does not entail forfeiture of past service. As per the government order in G.O.Ms.992 Educational Department dated 22.06.1979, service in the aided school can be taken into account for the purpose of selection grade of pay, after appointment in the government service. Further the government order in G.O.Ms.No. 1296, Education Department dated 19.06.1982, has approved the proposal of the Director of School Education and directed that selection grade B.T. Assistant, if they migrate from one management to another management i.e., from Panchayat Union School to Municipal School or from a government school to another school or from aided



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school to another management or vice versa, be allowed minimum time scale of pay of selection grade if they are appointed in the same post.

5. In view of the above, the petitioners submitted their respective representation seeking counting of their service rendering in the post of B.T. Assistant in the aided private school for fixation of selection grade scale of pay in the post of B.T. Assistant and also grant arrears of salary including increments. Further, the said request was rejected for some of the petitioners and some of the requests are pending without passing any order insofar as other petitioners. Hence, they approached this Court by way of these writ petitions.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. Similar issued was dealt with by this Court in W.P.No.7453 of 2016 and ordered as follows :-

“9. G.O.Ms.No.992, dated 22.06.1979 orders that the services rendered by a Teacher in an aided school, on resignation, should be counted for the required



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period of 10 years of service, for the purpose of granting selection grade in that post excluding the period of break, if any. Likewise, G.O.Ms.No.1296, dated 19.06.1982 orders that when the Secondary Grade Teachers migrate from an aided school to the Government school, they are allowed the minimum of the time scale of pay of Selection Grade/Secondary Grade post, if they are appointed in a Secondary Grade post.

10. When the aforesaid two Government Orders specifically entitles the Secondary Grade Teacher to seek the benefit of past services, the reasoning adopted by the respondents in their impugned order that there are no Government Orders governing the issue, is baseless. On this ground also, the petitioner is entitled to succeed.

11. For all the foregoing reasons, the impugned orders dated 30.04.2015 and 07.08.2015 are quashed. Consequently, there shall be a direction to the respondents to pass appropriate orders, fixing the selection grade scale of pay by counting the service rendered by the petitioner in the post of Secondary Grade Teacher from 24.02.1998 to 21.07.2009 and to fix the petitioner's pay at Selection Grade Secondary Grade Teacher at the initial stage of Rs.15230 + 4300 GP in the scale of pay of Rs.9300-34800 as on 22.07.2009, together with arrears of salary including increments.



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Such orders shall be passed atleast within a period of four weeks from the date of receipt of a copy of this order.”

8. Similarly another writ petition was allowed by this Court in W.P.No.32645 of 2018 by an order dated 16.07.2019 and aggrieved by the said order, the government filed appeal in W.A.No.3868 of 2019 and the Hon'ble Division Bench of this Court dismissed the appeal and confirmed the order passed by the learned Single Judge of this Court. In fact, it is also confirmed by the Hon'ble Supreme Court of India in S.L.P.(C) No.5633 of 2021.

9. On perusal of the counter filed by the District Educational Officer and on the submission made by the learned Additional Advocate General revealed that the petitioners had resigned their respective posts and thereafter they had joined in the government schools. In fact, their resignation were duly approved by the District Educational Officer. After joining in the government school, their probation period was declared by the Chief Educational Officer. The service rules governing the government aided minority school teachers are entirely different. They



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governed under the Private School Regulations Act and Rules. Further, the petitioners were directly recruited to the post of B.T. Assistant by participating in the process of selection and the time scale of pay applicable to their respective post has been fixed.

10. Insofar as the fixation of pay of the petitioners in the government school teachers by direct recruitment, the note (6) of the Fundamental Rule 22(b) will apply and the government orders referred by the petitioners are not applicable to them. The learned Additional Advocate General relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***S.K.Kannan Vs. The Director of School Education and Ors*** in ***W.A(MD)No.627 of 2022*** dated 15.07.2022, in the matter of incentive claim of the similarly placed persons. However, the said order relates to transfer of service and therefore, the said judgment is not applicable to the case on hand.

11. The relevant portion of the government order in G.O.Ms.No.992 Education Department dated 22.06.1979, is read as follows :-



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“4. The Government, have carefully examined and have decided that the relevant panchayat Union Council Establishment Rules and the relevant Tamilnadu Municipal Educational Service Rules be amended suitably to ensure the past services rendered by teacher prior to his/her resignation from one management school or from a panchayat Union school or from a Municipal School are taken in to account for the period of 10 years of service required for grant of grade. Pending issue of amendment to the panchayat union Establishment Rules and the Tamil Nadu Municipal Rules, the Government Direct that the services rendered by a teacher under all kinds of managements viz. Government panchayat, Municipal, Corporation and aided agencies and also in under the control of Director of Backward Classes of Harijan and Tribal Welfare prior to his/her resignation, termination, transfer or migration should be counted for the required period of 10 years of service for the purpose granting selection grade in that post excluding the period of breaks if any.”

12. That apart, the petitioners were retransmitted to the government school from their respective private school. Accordingly, they were relieved from their private aided school and joined in the



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government school as B.T. Assistant. It is also relevant to extract the portion of the judgment rendered by the Hon'ble Division Bench of this Court in **W.A.No. 3868 of 2019** dated 16.10.2020, in the case of the **Secretary to State Government and anr Vs. G.Rufus David.**, as follows:-

“14. It is evident from the aforesaid order passed by the Government that the service rendered by a Government servant, in the same service or to another service by method of recruitment by transfer, is entitled for re-fixation of pay. In Para No. 2 of the above Government Order, it has been clearly stated that the above order will be applicable to the staff employed in all recognised schools under the management of aided agencies and local bodies. Therefore, the respondent/writ petitioner, who was appointed earlier in an aided school, is entitled for the benefit of re-fixation on his appointment to the post of B.T.Assistant in Government Service. Therefore, as per the order passed by the Government, mentioned supra, the service rendered by the respondent-writ petitioner in an Aided School shall be counted for the purpose of fixation of his pay on his appointment to the post of B.T. Assistant. The appointment of the respondent/writ petitioner to the post of B.T. Assistant is by way of transfer of appointment and



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he cannot be treated as a fresh appointee in the post of B.T. Assistant. This is also in tune with Rule 3(I)(IV) of the Special Rules for Tamil Nadu Educational Subordinate Service. In such circumstances, it cannot be contended by the appellants that the respondent's appointment as B.T. Assistant is as per his own wish and he is not entitled for protection of his pay. When the appellants have decided to count the past service of the respondent/writ petitioner for the purpose of conferment of pensionary benefits on his retirement, equally, the same yardstick has to be resorted to by the appellants for re-fixation of his pay during the course of his service as B.T. Assistant. It is to be noted that, as on 02.01.2009, when the respondent/writ petitioner was relieved, his Basic Pay was Rs.16,650 along with admissible Grade Pay. However, on his appointment to his higher post as B.T. Assistant, his pay was fixed only as Rs.14,630/- with applicable pay. On appointment to a higher post, the respondent writ petitioner cannot be deprived of re-fixation of pay, taking into account the past service rendered in the Aided School. The learned Single Judge also, on appreciation of the above factual as well as legal grounds, has rightly allowed the writ petition filed by the respondent and we see no reason to interfere with the same.



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13. Therefore, the petitioners who were earlier appointed in the aided school are entitled for the benefit of re-fixation of appointment to the post of B.T. Assistant in the government service. The service rendered by them in a aided school shall be counted for the purpose of fixation of pay on their appointment in the post of B.T. Assistant and their appointment in the government school cannot be treated as a fresh appointment in the post of B.T. Assistant. The above order was also confirmed by the Hon'ble Supreme Court of India in S.L.P.No.5633 of 2021 by an order dated 12.04.2021.

14. On the basis of the dictum laid down by the Hon'ble Division Bench of this Court, various similar orders have been passed by this Court. In W.P.No. 7453 of 2016 by an order dated 09.01.2023, this Court held as follows :-

“7. A co-joint reading of the aforesaid decisions would substantiate that when an employee of an aided school resigns from the post for the purpose of joining another Government service, he would be entitled for all the service benefits that he had carried in the erstwhile school. Consequently, he would also be entitled for revision of the pay scale in the new school by counting the past services.”



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15. Further as per Rule 23(1) of the Tamil Nadu Pension Rules, resignation from a service or post entails forfeiture of past service. But the proviso says that resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the government where service qualifies. As far as the petitioners are concerned, they were resigned from their earlier service and they were reappointed to the government school in the same post. Therefore, their resignation shall not entail forfeiture of their past service.

16. In view of the above discussions, the impugned order of rejection passed by the third/fourth respondent cannot be sustained and liable to be quashed. Accordingly, all the impugned orders dated 08.08.2019, 08.04.2022, 17.05.2022, 21.06.2022(2 Nos.), 17.02.2023, 02.03.2023(4 Nos.), 11.05.2023, are hereby quashed. The respondents are directed to count the petitioners' respective service rendered in the post of B.T. Assistant in their respective private aided school for fixation of selection grade of pay in the post of B.T. Assistant and fixed their



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initial pay on their respective last drawn pay and disburse the arrears of salary including the increments within a period of twelve weeks from the date of receipt of a copy of this Order.

17. With the above directions, all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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1. The Principal
Secretary to Government,
Government of Tamilnadu
School Education Department,
Secretariat, Chennai – 600 009.
2. The Director of Elementary Education,
Chennai – 600 006.
3. The District Elementary Educational Officer,
Cuddalore.
4. The Block Educational Officer,
Kattumannarkoil,
Cuddalore District.



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G.K.ILANTHIRAIYAN. J,

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