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W.A.No.1420 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1420 of 2023

and

C.M.P.No.13866 of 2023

1. Government of Tamil Nadu,
Rep. by Principal Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
2. The Director of State Education,
Research and Training Institute,
Chennai - 600 006.
3. The Joint Director of School Education (Personal),
Director of School Education,
Chennai - 600 006.
4. The Principal,
District Institute of Educational Research
and Training Institute,
Kaliampoondi, Utthiramerur Taluk,
Kancheeruram District - 603 402.

... Appellants

Vs.

S.S.Venkatesan

... Respondent



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Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 15.09.2022 passed by the learned Judge in W.P.No.21520 of 2019.

For Appellants	: Mr.Silambannan Additional Advocate General Assisted by Mrs.S.Anitha Special Government Pleader
For Respondent	: Mr.P.Murali

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal is directed against the order dated 15.09.2022 passed by the learned Judge in W.P.No.21520 of 2019.

2. The facts leading to the filing of the present appeal in a nutshell are as under:

2.1. The respondent was initially appointed as a B.T. Assistant (Maths) in P.U.Middle School on 08.03.2006 at Malayankulam, Uthiramerur Panchayat Union. His service was regularized in the said post with effect from 01.06.2006, and probation was declared on 31.05.2008. While working as such, he was selected by the Teachers Recruitment Board for the post of Lecturer through proceedings dated 04.01.2010. Pursuant to the same, the respondent was relieved from the



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post of B.T. Assistant, by the proceedings of the District Elementary Education Officer, Kancheepuram, in Na.Ka.No.109/A5/2010 dated 07.01.2010, and the proceedings of the Assistant Elementary Educational Officer, Uthiramerur No.28/A1/10 dated 11/01/2010. Thereafter, he joined the post of Lecturer on 12.01.2010 FN at District Institute of Education and Training Centre, Kaliyampoondi, Uthiramerur Taluk, Kanchipuram District.

2.2. Stating that the scale of pay of BT Assistant (Maths) Rs.9300-34800 is equivalent to the pay scale of the new post of Lecturer in DIET viz., Rs.9300-34800 (pay band 2), and hence, he is entitled to receive his last pay of Rs.13,670+ 4600 in the pay scale of Rs.9300-34800 + 4600 in the new post of Lecturer as per FR 26(c), the respondent preferred WP.No.21520 of 2019 to quash the order dated 06.03.2017 and direct the appellant authorities to consider the claim of pay of the respondent in the post of Lecturer taking into consideration his last drawn pay in the post of BT Assistant and re-fix his scale of pay in the post of Lecturer with effect from 12.01.2010 and grant annual increment with effect from 01.04.2010 with arrears of pay as per entitlement with interest for the delayed payment.

2.3. The learned Judge following a Division Bench Judgment of this court dated 16.10.2020 in WA No.3868 of 2019, allowed the aforesaid writ petition, by order dated 15.09.2022, the operative portion of which, reads as under:

"12.In view of the above, this writ petition is allowed by directing the second respondent to fix the pay of the petitioner in the post of



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Lecturer duly taking into account his last drawn pay in the post of B.T. Assistant at Rs.13,670/- + 4600 in the scale of pay of Rs.9300 - 34800 + 4600 (GP) with effect from 12.01.2010 and grant annual increment with arrears of pay as per entitlement within a period of twelve weeks from the date of receipt of a copy of this order."

Challenging the aforesaid order of the learned Judge, the appellants / Department have preferred the present writ appeal before this court.

3. According to the learned Additional Advocate General appearing for the appellants, vide proceedings dated 04.01.2010, the respondent was appointed as Lecturer (Maths) in the DIET, Kaliampoondi, on 12.01.2010 in the pay scale of Rs.9300-34800 GP 4600 and the Grade pay of Rs.4600 was subsequently, raised as Rs.4800 and thus, the respondent's pay scale is Rs.9300 – 34800 GP 4800. Therefore, it cannot be said that the respondent's pay scale in the post of BT Assistant and the new post of Lecturer is one and the same (i.e.) Rs.9300-34800 GP 4600. It is further submitted that the respondent was appointed to the post of Lecturer by the Teacher Recruitment Board through direct recruitment and he could be treated only as a fresh appointee. That apart, the appointment of the respondent in the DIET was governed by the *Adhoc* Rules for Tamil Nadu Teachers Educational Service notified in G.O.Ms.No.133, School Education Department, dated 14.06.2007, whereas the post of BT Assistant, in which, the respondent was previously working, was governed by the Tamil Nadu Elementary



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Educational Subordinate Service. Hence, the pay of the respondent has to be fixed only under FR 22B (6) and not under FR 26(c). Accordingly, the claim of the respondent for fixation of pay in the post of Lecturer in the light of last drawn pay in the post of BT Assistant at Rs.13,970 + 4600 (GP) in the scale of pay of Rs.9300 – 34800 + GP (4600), was rejected by the appellant authorities. However, the learned Judge erred in allowing the writ petition filed by the respondent in his favour, by the order impugned herein. Stating so, the learned Additional Advocate General submitted that the above said facts have not been properly appraised before the learned Judge and hence, the matter be remanded to the learned Judge for fresh consideration.

4. On the other hand, the learned counsel for the respondent submitted that the respondent joined the new post of Lecturer, without any break in service and his pay scale in both the earlier post of BT Assistant and the new post of Lecturer is one and the same and therefore, he is entitled to receive his last pay drawn in the post of B.T. Assistant i.e., Rs.13,670/- plus 4600/- (GP), in the new post of Lecturer. The learned counsel further submitted that after examining the facts and circumstances of the case, the learned Judge has passed the order impugned herein, which does not call for any interference at the hands of this court.



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5. Heard the rival submissions and also perused the materials available on record.

6. It is seen from the order dated 15.09.2022, which is impugned herein, that the learned Judge has merely followed the earlier decision dated 16.10.2020 of the Division Bench of this court in *WA No.3868 of 2019 [Secretary to Government and another v. G.Rufus David]* and allowed the claim of the respondent herein.

7. During the course of hearing, the learned Additional Advocate General appearing for the appellants has pointed out that the aforesaid Division Bench decision was not agreed upon by another Bench in its detailed *judgment dated 15.07.2022 passed in WA (MD) No.627 of 2022 [S.K.Kannan v. Director of School Education and others]*; and that, the stand of the appellants has not been properly placed before the learned Judge and hence, the matter be remanded to the learned Judge for fresh consideration. This court thus finds force in the contentions so made on the side of the appellant authorities.

8. Therefore, this court, without going into the merits of the case, sets aside the order impugned herein and remands the matter to the learned Judge for



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fresh consideration. The learned Judge is requested to consider and pass orders on the writ petition, on merits and in accordance with law, as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this judgment.

9. Accordingly, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
31.01.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 600 009.
- 2.The Director of State Education,
Research and Training Institute,
Chennai - 600 006.
- 3.The Joint Director of School Education (Personal),
Director of School Education,
Chennai - 600 006.
- 4.The Principal,
District Institute of Educational Research
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Kaliampoondi, Utthiramerur Taluk,
Kancheeruram District - 603 402.

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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