



W.A(MD) No.554 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 07.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

W.A(MD) No.554 of 2019

A.Rajan

... Appellant

Vs

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai.
- 2.The Director of School Education,
D.P.I.Campus, Chennai.
- 3.The Chief Educational Officer,
Kanyakumari.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.
- 5.The Bishop and the Manager of R.C.School,
Kottar Diocese, Bishop's House,
Nagercoil, Kanyakumari District.
- 6.The Correspondent,
St.Joseph's Hr.Sec.School,
Mulagumoodu, Kanyakumari District.

... Respondents



W.A(MD) No.554 of 2019

PRAYER: Writ Appeal filed under Clause 15 of Latters Patent, praying this Court to set aside the Order dated 19.03.2018 in W.P.(MD)No.8520 of 2012.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.M.Siddharthan
Additional Government Pleader
for R1 to R4
: Mr.I.G.....
for M/s.Isaac Chambers

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

The appellant herein joined the sixth respondent school as PG Assistant (Tamil) on 10.06.1981. By then, the High School had been upgraded as Higher Secondary School. But the higher secondary stream had not come under the regime of aid. The appellant was getting his salary not out of the State aid but only from the school management. The school management filed writ petition and pursuant to the interim direction given therein, aid was ordered to be granted with effect from 31.07.1983 onwards. Aid was received by the school for a period of two years. That interim direction was however not subsequently extended.



W.A(MD) No.554 of 2019

The writ petition came to be disposed of in the year 1991 and direction was given to the Government for considering the case of the school. Pursuant to the direction so given, the higher secondary section of the school was also granted aid with effect from 01.06.1991. The petitioner reached the age of superannuation on 31.05.2014. The request made by the petitioner was to include the period from 10.06.1981 to 31.07.1983 and the period from 31.10.1985 to 01.06.1991 as pensionable service. The petitioner's request was not considered by the Government. Hence, he filed W.P.(MD)No.8250 of 2012. The writ petition was dismissed on 19.03.2018. Challenging the same, this intra-court appeal has been filed.

2.The question that calls for consideration is whether the order dismissing the writ petition is well founded. It is beyond dispute that for the period now sought to be included as pensionable service, the salary was paid only by the private school management and not out of State aid. The said period therefore cannot be reckoned as pensionable service.

3.The appellant's counsel relies on the order dated 26.06.2008 made in W.A.Nos.291 & 292 of 2008 filed by the two other similarly



W.A(MD) No.554 of 2019

placed teachers employed in the very same school. It is well settled that on the basis of an erroneous order, a similarly placed cannot seek conferment of the said benefit. The Full Bench decision of the Madras High Court reported in **2021 (1) CWC 705 (State Vs. S.Rajaram)** held as follows:-

“19. It is well settled that Article 14 of the Constitution of India cannot be invoked for perpetuating illegality. A wrong order passed in one case cannot be made the basis for compelling a Public Authority to pass similar order in any other case. Even if the State implements an erroneous order passed by the Court, it cannot be precluded from challenging a similar order passed in another case, simply because Appeal was not preferred in the earlier case (Paragraph No.17 in State of *Madhya Pradesh Vs. Ramesh Chandra Bajpai 2009 (13) SCC 635*)”

The learned Judge while dismissing W.P.(MD)No.8520 of 2012 had held as follows:-

“5.The pension rules are to be applied only in respect of the Government servants or to the services to the post in connection with the affairs of the State. This being the rule, the appointment initially made by the management is to be construed as private appointment and the same cannot be defined as the appointment made by the State. Soon after the appointment is approved by the competent authority the teacher becomes Government employee, for the purpose of availing service benefits, including the pension and other terminal benefits.



W.A(MD) No.554 of 2019

6. Such being the principles to be followed, this Court is of an opinion that services rendered as employee of the management, the services cannot be taken into consideration for the purpose of reckoning the qualifying services in order to settle the terminal and pensionary benefits. It is made clear that the pension and terminal benefits ought to be settled with effect from the date of grant of approval of appointment by the competent authorities of the department. Thus, the writ petitioner has not made out any ground for the purpose of granting the relief as such sought for in this writ petition.”

4.The reason given by the learned single Judge is fully justified.

Interference with the said order is not warranted. The Writ Appeal is dismissed. No costs.

(G.R.S., J.) (R.P., J.)
07.11.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
rmi



W.A(MD) No.554 of 2019

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

rmi

To

- 1.The Principal Secretary,
Department of School Education,
Fort St.George, Chennai.
- 2.The Director of School Education,
D.P.I.Campus, Chennai.
- 3.The Chief Educational Officer,
Kanyakumari.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.

W.A(MD) No.554 of 2019

07.11.2024