



W.P.(MD).No.13460 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.13460 of 2024
and WMP(MD) No.11870 of 2024

Paul Valanarasu

... Petitioner

Vs

1. The District Elementary Educational Officer,
O/o. the District Elementary Educational Office,
Paramakudi, Ramanathapuram District.
2. The Block Educational Officer (BEO - 2),
O/o. the Block Educational Officer (BEO - 2),
Paramakudi Block, Ramanathapuram District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Na.Ka. No.546/A4/2024, dated 15.03.2024 on the file of the respondent No.2 and to quash the same as illegal and consequentially for a direction to the respondent No.1 and 2 to refix the scale of pay of the petitioner by taking into account the last pay drawn by the petitioner in the post of Secondary Grade Teacher in the Aided Schools, in the RC Susai Higher Secondary School, Kalugumalai, from the period 01.08.2001 to 14.06.2007 and RC Primary School, Meenampatti, Sivakasi,



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from the period 15.06.2007 to 11.01.2010 within the time period stipulated by this Court.

For Petitioner : Mr. T.Aswin Raja Simman

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard Mr.T.Aswin Raja Simman, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

2.This Writ Petition has been filed challenging the impugned proceedings in Na.Ka. No.546/A4/2024, dated 15.03.2024 on the file of the respondent No.2 and consequentially to direct the respondent No.1 and 2 to refix the scale of pay of the petitioner by taking into account of the last pay drawn by the petitioner in the post of Secondary Grade Teacher in the Aided Schools.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.



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4. The petitioner, who has been appointed as a Secondary Grade Teacher in a Private Aided School, viz., RC Susai Higher Secondary School, Kalugumalai on 01.08.2001, has resigned the said post on 14.06.2007 and joined in another Private Aided School, viz., RC Primary School, Meenampatti, Sivakasi from 15.06.2007 and he was working in the said School till 11.01.2010. The petitioner's earlier service in the Private aided Schools have been approved with effect from the date of his appointment in the respective Schools.

5. Now the petitioner claims that his salary has to be refixed by taking into account of his earlier service that he rendered from 01.08.2001 to 11.01.2010. So far as the petitioner is concerned, he has been transferred from one Management to other Management i.e., Private Management to Government Management and hence, he claims that he is entitled to get the pay re-fixation benefit also.

6. The learned Additional Government Pleader appearing for the respondents submitted that pursuant to his earlier service rendered in Private



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Aided Schools, the petitioner can get benefits of Selection Grade and Special Grade, but, his salary cannot be revised by considering his past service.

7.The learned Additional Government Pleader has also cited a decision of Division Bench of this Court in W.A(MD). No. 1805 of 2023. In the said case, it is seen that the petitioner therein has claimed Selection Grade and Special Grade by reckoning his services rendered in the Private School, prior to his appointment in the Government School. Though it is seen in the order that the petitioner therein has been selected by Teachers Recruitment Board as Physical Educational Teacher, the post if any held by him in any private aided School is not known.

8. Hence, I didn't find suitability of the above decision to be applied to the present case. The relevant decision applicable to the case of the petitioner would be the decision in W.A. No. 3868 of 2019, dated 16.10.2020. By following the said decision, several writ petitions filed on similar lines have been also disposed. This Court has also dealt with the same issue in W.P.No. 8970 of 2021, in which, the following observations have been made.



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“6. Though G.O.Ms.No.1296 dated 19.06.1982 speaks about the selection grade post, it is equally applicable for the change in management occurred at the levels of B.T.Assistant and P.G.Assistant also. In the case of the petitioner, his appointment to the Government School has been considered as a fresh appointment and petitioner is not entitled to fixation of pay afresh by considering his appointment in the Government School as the first appointment. This will naturally go against the very principle of pay protection when a teacher get shifted from one management to another management in the same cadre.

7. In the judgment relied by the learned Senior Counsel for the petitioner held in W.A.No.3868/2019, it has been made categorically clear that if the recruitment is made by ‘transfer’, the person concerned is entitled to refixation of pay. In this regard, I feel it is worthwhile to extract relevant portion of the said judgment:

“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 refixation 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



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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 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



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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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10. Hence the petitioner is entitled to get his pay re-fixed by taking into account of his past services rendered in the aided School by giving the benefit of pay protection. The second respondent without taking into consideration of the factual difference between the judgment cited by the petitioner and the judgment relied by the Government had passed the impugned order. Hence the petitioner is entitled to get the relief as prayed.

11. In the result, this Writ Petition is allowed and the order passed by the Second Respondent dated 03.03.2021 is hereby quashed and the respondents are directed to continue to pay salary as per the fixation by the Second Respondent dated 28.02.2011. No costs. Connected miscellaneous petitions are closed.

9. Since the petitioner is also similarly placed as that of the petitioners in the above case, the same logic applicable to him and hence, the petitioner is also entitled to get the similar relief.

10. In the result, this Writ Petition stands allowed and the impugned proceedings in Na.Ka. No.546/A4/2024, dated 15.03.2024 is hereby



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set aside and the respondents 1 and 2 are directed to refix the scale of pay of the petitioner by taking into account of his last pay drawn in the post of Secondary Grade Teacher in the Aided Schools within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

1. The District Elementary Educational Officer,
O/o. the District Elementary Educational Office,
Paramakudi, Ramanathapuram District.
2. The Block Educational Officer (BEO - 2),
O/o. the Block Educational Officer (BEO - 2),
Paramakudi Block, Ramanathapuram District.



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R.N.MANJULA, J.

PNM

**ORDER IN
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