



W.P.(MD)No.14797 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.14797 of 2021
and
W.M.P.(MD)No.11702 of 2021

S.Manjula

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. By its Principal Secretary,
School Education Department,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The Director of Elementary Education,
D.P.I. Campus,
College Road, Nungambakkam,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Dindigul,
Dindigul District.
- 4.The District Educational Officer,
Dindigul District,
Dindigul.

... 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 order passed by the fourth respondent in Na.Ka.No.1661/Aa4/2021, dated 01.07.2021, quash the same and direct the respondents to refix the salary of the petitioner in the pay scale of Rs.



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12850 + 4300 GP with effect from 15.07.2009 and pay all attendant monetary benefits to the petitioner.

For Petitioner : Mr.M.Saravanan
For Respondents : Mr.M.Sarangan
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the fourth respondent in Na.Ka.No.1661/Aa4/2021, dated 01.07.2021 and to direct the respondents to refix the salary of the petitioner in the pay scale of Rs.12850 + 4300 GP with effect from 15.07.2009 and pay all attendant monetary benefits to the petitioner.

2.The facts, which lead to the filing of the Writ Petition in brief is as follows:-

The petitioner was appointed as a Senior Grade Teacher in M.V.S. Primary School, Erumaikulam, Tirunelveli District, on 01.06.1995. Later, she was deployed to K.A.M.P. Meerania Middle School, Kalakkadu, on 31.10.2006, in view of the surplus Teachers in the erstwhile School, wherein she served. While so, the petitioner in the year 2009, came to be selected by the Teachers Recruitment Board for the post of Secondary Grade Teacher in the Government School, following which, she was relieved from K.A.M.P. Meerania Middle School, Kalakkadu, in the afternoon of 14.07.2009, enabling her to join Government service in the



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forenoon of 15.07.2009. Accordingly, the petitioner joined the Government service in the forenoon of 15.07.2009 as Secondary Grade Teacher in Maharajapuram Panchayat Union Middle School. Following which, her salary was fixed in the starting pay applicable to Secondary Grade Teachers, without permitting her to carry on the last drawn pay received by her in K.A.M.P. Meerania Middle School, Kalakkadu. In view of the same, the petitioner gave several representations to fix her salary as on 15.07.2009, by permitting her to carry on the last drawn pay received on 14.07.2009 by her in K.A.M.P. Meerania Middle School, Kalakkadu , and last of which, were made on 10.02.2015, 15.02.2016 and 23.02.2021. Pursuant to the same, on 01.07.2021, the impugned order rejecting the petitioner's claim came to be passed by the fourth respondent. Challenging the same, this Writ Petition came to be filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner's claim was rejected by the fourth respondent on the sole ground that she was relieved from the service of K.A.M.P. Meerania Middle School, Kalakkadu, in the afternoon of 14.07.2009 only on her resignation. Since she had resigned from the said post, she is not entitled to carry forward her last drawn pay as on 14.07.2009. However, the petitioner never resigned the post but in view of her selection by Teachers Recruitment Board to be appointed as a Secondary Grade Teacher in the Government School, she was relieved by the Management



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of K.A.M.P. Meerania Middle School, Kalakkadu. In view of the same, she is entitled to seek her salary to be fixed with effect from 15.07.2009, on the basis of her last drawn pay as on 14.07.2009.

4.Relying upon the counter affidavit submitted by the fourth respondent, the learned Additional Government Pleader submitted that before joining in the Panchayat Union Middle School, the petitioner was working in an aided School. The terms and conditions of Teachers service is entirely different from Government service. The Teachers in Government service are governed by Tamil Nadu Educational Subordinate Service whereas the Teachers in aided schools are governed by Service Rules as per the Tamil Nadu Recognized Private Schools Regulations Act, 1973 and Rules 1974 framed thereunder. The aided school Teachers cannot compare with those in Government service. The pay last drawn by the aided School Teachers cannot be protected while they join in Government service by their own willingness. The petitioner having relieved on her own willingness on 14.07.2009 and has joined the service of Panchayat Union Middle School with effect from afternoon on 15.07.2009. Her case was considered in terms of Para no.4 of G.O.Ms.No.992, School Education Department, dated 22.06.1979 and pressed for dismissal of the Writ Petition.



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5. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents and carefully perused the materials available on record.

6. In view of contention made by the learned Additional Government Pleader that the petitioner had been relieved from service of K.A.M.P. Meerania Middle School, Kalakkadu, on her resignation, the learned counsel for the petitioner placed before him the relieving order issued by the Correspondent, K.A.M.P. Meerania Middle School, Kalakkadu, on 14.07.2009, facilitating the petitioner to join Government service.

7. A careful perusal of the same would reveal that the petitioner was relieved from the service of the aforesaid School facilitating her to join the service of Maharajapuram Panchayat Union Middle School, on her own violation. The said relieving order do not reflect the submission of any resignation as contended by the learned Additional Government Pleader, as found in the impugned order.

8. This Court has dealt with the similar case in the case of ***D.Narayanasamy v. The Director of Elementary Education and others*** in ***W.P.No.8970 of 2021***, by its order dated 06.11.2023 and the same was allowed and the relevant portion of the same to the facts and circumstances of the case is extracted as follows:-



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"9..... So far as the case involved in the judgment cited by the learned Additional Government Pleader, the petitioner got recruited by transfer from the post of B.T. Assistant to the post of P.G. Assistant. In the case on hand, the petitioner shifted from aided school to Government school by 'recruitment through transfer' but to a similar post I.e., B.T. Assistant. Hence, the position of law has to be followed only by taking cue from the judgment of the Division Bench held in W.A.No.3868 of 2019.

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."

9.In yet another case in the case of **R.Lily Therasa v. The Principal Secretary to Government and others in W.P.No.12804 of 2023 and batch**, this Court by its order dated 14.03.2024, has decided in similar lines and the relevant portion of the same is extracted as follows:-

"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 period of 10



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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. 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



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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.

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 :~

?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



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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 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



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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 grounds, has rightly allowed the writ petition filed by the respondent and we see no reason to interfere with the same.

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



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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."

10. Fully fortified by the aforesaid judgments, even in the instant case, the petitioner was appointed as a Secondary Grade Teacher at the first instance in an aided School, following which being selected by the Teachers Recruitment Board, for the post of Teacher in Panchayat Union Middle School, she was relieved from the service of erstwhile aided School on her own volition for the purpose of joining the service of Government School. G.O.Ms.No.992, Education Department, dated 22.06.1979, has made it clear that the past service rendered by the Teacher prior to his/her resignation from one Management School or from a Panchayat Union Middle School or from a Municipal School are normally taken into account for the period of 10 years service for grant of Grade. Therefore, the writ petitioner who was appointed in aided School, is entitled for benefit of refixation of her appointment to the post of BT Assistant in Government service on the basis of last drawn pay drawn by her in the post, served in the aided School. Accordingly, the impugned order is quashed and the respondents are directed to refix the salary of



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the petitioner in terms of last drawn pay drawn by her in the post served in K.A.M.P. Meerania Middle School, Kalakkadu, with effect from 15.07.2009 and to pay attendant and monetary benefits within a period of 12 weeks from the date of receipt of copy of this order.

11. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Principal Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Secretariat,
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- 2.The Director of Elementary Education,
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L.VICTORIA GOWRI, J.

Mrn

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