



W.P.(MD)No.14833 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.14833 of 2024 &
W.M.P.(MD)No.12995 of 2024

N.Kumaresan

... Petitioner

vs.

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus, Chennai - 6

3.The Chief Educational Officer
Sivagangai,
Sivagangai District.

4.The District Educational Officer (Secondary)
Sivagangai, Sivagangai District.

5.The Headmaster,
Government Higher Secondary School,
Anumanthakudi - 630 303,
Sivagangai District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.342/A4/2023 dated 21.02.2023 on the file of the respondent No.3 and the consequential impugned order in Na.Ka.No.43/2023 dated 18.04.2023 on the file of the respondent No.5 and quash the same as illegal and consequently direct the respondents to refix the scale of pay of the petitioner by taking into account the last pay drawn by the petitioner as on 20.09.2011 in the post of B.T.Assistant (Mathematics) in the Aided School and disburse the arrears of differential pay and other consequential benefits to the petitioner 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 appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents.



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2. The petitioner who worked as a B.T. Assistant (Mathematics) in a Government aided School and subsequently appointed in a Government School in the same post on and from 21.09.2011, has filed this petition seeking to quash the impugned order of the third respondent in Na.Ka.No.342/A4/2023 dated 21.02.2023 and the consequential impugned order of the fifth respondent in Na.Ka.No.43/2023 dated 18.04.2023 and consequently to direct the respondents to refix his scale of pay by taking into account the last pay drawn by him as on 20.09.2011 in the post of B.T. Assistant (Mathematics) in the Aided School and disburse the arrears of differential pay and other consequential benefits within a stipulated time.

3. Mr.T.Aswin Raja Simman, learned counsel appearing for the petitioner submitted that there is no break-in-service as the petitioner was relieved from the aided School on 20.09.2011 and he immediately joined in the Government School on 21.09.2011 itself. Hence, the petitioner is entitled to pay protection. However, while fixing the pay of the petitioner in the Government School, his appointment was considered as a fresh



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appointment and the benefit of his past services rendered in aided School were not considered.

4. In this regard, the Headmaster of the Government Higher Secondary School, Anumanthakudi, Sivagangai, had given a letter dated 10.01.2022 and that was returned by the third respondent stating that as per the Government Order in G.O.Ms.No.536, Education and Public Health Department, dated 13.04.1966, the petitioner is not entitled for pay protection by taking into consideration of his past services in the aided School.

5. Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents submitted that in an earlier Judgment dated 01.07.2022 rendered in W.A(MD)No.627 of 2022, the Division Bench of this Court after elaborate discussion has rejected a similar issue.

6. On perusal of the Judgment dated 01.07.2022 in W.A. (MD)No.627 of 2022, it appears that the issue involves direct recruitment



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of the appellant to the post of P.G. Assistant and the past services of the appellant was in respect of B.T. Assistant and hence the relief sought by the appellant therein was refused.

7. Similar issue has already been dealt with by this Court in various writ petitions including the writ petition in W.P.(MD)No.13460 of 2024, dated 24.06.2024 wherein reference was made to earlier Judgment dated 16.10.2020 in W.A.No.3868 of 2019 and earlier order dated 06.11.2023 in W.P.No.8970 of 2021, which assume much relevance to the issue involved herein. Since the petitioner in W.P.(MD)No.13460 of 2024 has been holding the post of Secondary Grade Teacher in the aided School, his appointment in the Government School in the same post is considered as a transfer of appointment and a case of change in Management.

8. An appeal preferred by the Government authorities on a similar issue in W.A.No.3868 of 2019 was dismissed by the Judgement dated 24.06.2024 and the respondent therein by name G.Rufus David was



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given with a benefit of Rule 3(I)(IV) of the Special Rules for Tamil Nadu Educational Subordinate Service for granting pay protection. For the sake of clarity, the relevant post of the Judgment is extracted hereunder.

"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 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



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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."

9. Since the facts involved in this case is also as that of the facts of the above writ appeal, the same logic is applicable to the present case



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and the petitioner is entitled to get the similar relief.

10. In view of the above observations, the writ petition is **disposed of** and the impugned order of the third respondent in Na.Ka.No. 342/A4/2023 dated 21.02.2023 and the consequential impugned order of the fifth respondent in Na.Ka.No.43/2023 dated 18.04.2023 are quashed. The respondents are directed to pass orders re-fixing the scale of pay of the petitioner by taking into account his last pay drawn as on 20.09.2011 in the post of B.T. Assistant (Mathematics) in the Aided School within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

08.07.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To
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School Education Department,
Secretariat,
Chennai - 600 009.
- 2.The Director of School Education,
DPI Campus, Chennai - 6
- 3.The Chief Educational Officer
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R.N.MANJULA, J.

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