



W.P.(MD)No.16686 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16686 of 2024 &
W.M.P.(MD)No.14441 of 2024

M.J.Coxton Jerald Titus

... Petitioner

vs.

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

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

3.The District Educational Officer (Elementary),
Karur, Karur District.

4.The Block Educational Officer,
Karur Block,
Karur District.

... Respondents

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.2094/A1/2023 dated



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15.05.2024 on the file of the fourth respondent and quash the same as illegal and consequently for a direction to the respondents to re-fix the scale of pay of the petitioner by taking into account the last pay drawn by the petitioner as on 17.12.2012 in the post of Secondary Grade Teacher 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.T.Amjadkhan
Government Advocate

ORDER

Heard Mr.T.Aswin Raja Simman, learned counsel appearing for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this writ petition to quash the impugned order of the fourth respondent in Na.Ka.No.2094/A1/2023 dated 15.05.2024 and consequently direct to the respondents to re-fix his scale of pay by taking into account his last pay drawn as on 17.12.2012 in the post of Secondary Grade Teacher in the aided School and disburse the



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arrears of differential pay and other consequential benefits to him within a stipulated time.

3. The petitioner who was working as Secondary Grade Teacher on and from 07.09.2006 at CSI Primary School, Kuzhithalai, which is a Government aided School was subsequently transferred to SPG Primary School during the year 2009, from where, he was transferred to CSI Primary School, Karur. While so, the petitioner got selected in the recruitment of Secondary Grade Teachers done by the Teachers Recruitment Board and got appointed in the Panchayat Union Middle School, Nochipalayam, Karur on 18.12.2012. The petitioner was relieved on 17.12.2012 and he joined duty in the Government School on 18.12.2012. Despite the petitioner has got continuity of service, his service was not considered for fixing his pay and his pay has been fixed on par with the pay eligible to the fresh appointees.

4. Mr.T.Aswin Raja Simman, learned counsel appearing for the petitioner submitted that the petitioner by participating in the selection



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process of the Teachers Recruitment Board came to be appointed in the Government School. The post occupied by the petitioner in the earlier Private Schools and the Government School is one and the same and there is no break in service as well and hence, the petitioner is entitled to pay protection.

5. In this regard, the position is no more a *res integra* as it has been decided in various writ petitions including the orders passed by this Court in W.P.(MD)No.12804 of 2023 and batch dated 14.03.2024, wherein it is held as under.

"9. On perusal of the counter filed by the District Educational Officer and on the submission made by the learned Additional Advocate General revealed that the petitioners had resigned their respective posts and thereafter they had joined in the government schools. In fact, their resignation were duly approved by the District Educational Officer. After joining in the government school, their probation period was declared by the Chief Educational Officer. The service rules governing the government aided minority school teachers are entirely different. They governed under the Private School Regulations Act and Rules. Further, the petitioners were directly recruited to the post of B.T. Assistant by participating in the process of selection and the time scale of pay applicable to their respective post has been fixed.

10. Insofar as the fixation of pay of the petitioners in the government school



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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 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.”



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6. The Division Bench of the Principal Seat of this Court had also dealt with the same issue in ***W.A.No.3868 of 2019*** in the case of ***1.The Secretary to State Government, Department of School Education, Fort St.George, Chennai and another vs. G.Rufus David*** and passed an order on 16.10.2020 by making the following observations.

"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 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



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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."

7. In fact, the above order has been challenged by way of an Special Leave Petition, wherein, the Apex Court had also confirmed the writ appeal. In view of the settled legal position said in the above Judgments, the petitioner is entitled to the relief as prayed for.

8. Accordingly, the writ petition is **allowed** and the impugned order of the fourth respondent in Na.Ka.No.2094/A1/2023 dated 15.05.2024 is quashed. The respondents are directed to pass orders to re-



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fix the petitioner's scale of pay by taking into account his last pay drawn as on 17.12.2012 in the post of Secondary Grade Teacher in the aided School and to disburse the arrears of differential pay and other consequential benefits to him 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.

24.07.2024

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

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To
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- 1.The Principal Secretary to Government
School Education Department,
Secretariat, Chennai - 600 009.
- 2.The Director of Elementary Education,
DPI Campus,
Chennai - 6.
- 3.The District Educational Officer (Elementary),
Karur, Karur District.
- 4.The Block Educational Officer,
Karur Block,
Karur District.



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R.N.MANJULA, J.

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