



WP(MD) No.17782 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.17782 of 2024

S.Wilson

... Petitioner

Vs.

1.The Chief Educational Officer,
Tirunelveli District.

2.The Headmaster,
Bharathiyar Government Higher Secondary School,
Veeravanallur,
Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to pay Rs.29,720/- from 24.11.2012 on the basis of the last pay drawn with all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.M.Siddharthan

Additional Government Pleader



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ORDER

The present writ petition has been filed seeking direction to the respondents to pay Rs.29,720/- from 24.11.2012 on the basis of the last pay drawn with all consequential benefits.

2. Heard Mr.V.Panneer Selvam, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

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

4. The petitioner was originally appointed as Physical Education Teacher on 17.07.1998 in Amir Jamal Higher Secodnary School, at Ilayankulam, Tirunelveli District. Therafter he was awarded seletion grade in the year 2008. As per seniority, he was appointed as Physical Education Teacher in the Government Higher Secondary School, Chettikulam on 24.11.2012 and he joined on the same day without any break in service. At the time of releiving, the petitioner received



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monthly salary of Rs.29,720/- and after joined in the Government Higher Secondary School, Chettikulam, he received a salary of Rs.15,330/-. Thereafter, the petitioner made request to the respondents to refix the scale of pay on the basis of the last pay drawn. But there is no response from the respondents. Hence, this petition.

5. Reliance was placed in the judgment rendered by this Court in W.P.No.8970 of 2021 dated 06.11.2023, wherein, it is held as under :

"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



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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 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.”



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9. The learned counsel for the petitioner tried to distinguish the factual situation involved in the judgment relied by the learned Additional Government Advocate and the petitioner. 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.P.No.3868/2019.

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."

6. In the case on hand, the entitlement of the petitioner to get pay in accordance with the last pay drawn in the aided school has been reduced. Similarly placed persons like the petitioner has been given the



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benefit of refixation by taking into account of their past services rendered in the aided school by giving the benefit of pay protection.

7. Following the same, this Court directs the first respondent to pass final orders on merits and in accordance with law on the petitioner's representation dated 21.03.2024 requesting to refix the scale of pay on the basis of the last pay drawn within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is **disposed of**. No costs.

31.07.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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R.N.MANJULA, J.

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Order made in
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