



W.P.(MD)No.13031 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.09.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.13031 of 2018

C.Amirthavalli

... Petitioner

/Vs./

1.The Director of School Education,
College Road, Chennai - 9.

2.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

3.The District Educational Officer,
Tenkasi, Tirunelveli District,
Tirunelveli.

4.The Secretary,
Grama Committee Higher Secondary School,
Venkatesapuram,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 3rd respondent dated 02.05.2018 in O.Mu.No.1434/A1/2018 and quash the same as illegal and consequently



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direct the respondents to disburse the yearly increment by re-fixing the pay in the ratio of 4500-1000-7000 and basic pay as Rs.5250/- from 01.07.2003 to till date.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.T.Amjad Khan (R1 to R3)

Government Advocate

ORDER

This Writ Petition has been filed challenging the order dated 02.05.2018 passed by the third respondent rejecting the proposal of the fourth respondent School to regularize the services of the petitioner as per the original pay scale fixed and the original appointment order issued in the year 1996.

2. Originally, the petitioner was appointed as Secondary Grade Teacher by the fourth respondent School in the year 1996 and the said appointment was also approved by the third respondent in the very same year. Since the petitioner was not qualified for the subject post, G.O. (Ms).No.155, School Education Department, dated 03.10.2002 was issued directing the similarly placed persons like that of the petitioner to



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undergo Child Psychology Training. The petitioner had also underwent the said Training and thereafter, the fourth respondent School sent another proposal to the third respondent in accordance with the Government Order in G.O.(Ms).No.155, School Education Department, dated 03.10.2002 seeking approval from the third respondent.

3. The third respondent once again approved the appointment of the petitioner as Secondary Grade Teacher in the year 2005 based on the successful completion of Child Psychology Training by the petitioner as per G.O.(Ms).No.155, School Education Department, dated 03.10.2002 referred to supra. However, the third respondent has revised the pay scale of the petitioner in the year 2005, which is lesser to the pay scale which she was drawing prior to the year 2005. The petitioner claims that she has been repeatedly requesting the fourth respondent School to get her pay scale revised as per her original drawn salary prior to the re-approval granted by the third respondent in the year 2005.

4. A fresh proposal was sent by the fourth respondent School to the third respondent requesting for refixation of pay scale in favour of the



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petitioner in accordance with the last drawn salary received by her prior to the year 2005. The same has been rejected under the impugned order holding that only in accordance with the conditions contained in the Government Order in G.O.(Ms).No.155, School Education Department, dated 03.10.2002, the pay band of the petitioner was not revised and she is not entitled for the same as per the proposal submitted by the fourth respondent School in the year 2018.

5. A counter affidavit has been filed by the third respondent reiterating that the petitioner is not entitled for revision of her pay band as per her original drawn salary prior to 2005 as per the Government Order in G.O.(Ms).No.155, School Education Department, dated 03.10.2002. They have also reiterated that only in accordance with the terms and conditions of the Government Order, which has been upheld by the Division Bench of this Court, the pay band was not revised in favour of the petitioner as sought for by the fourth respondent School in their proposal submitted in the year 2018.



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6. The learned counsel appearing for the petitioner drew the attention of this Court to the Order of the learned Single Judge of this Court, dated **16.08.2012** passed in ***W.P.(MD).No.6505 of 2007*** in the case of ***Pallivasal Higher Secondary School Vs. The Director of School Education, College Road, Chennai-6 and others*** and would submit that there cannot be two approvals for the post of Secondary Grade Teachers and therefore, even though the third respondent had reapproved the petitioner as Secondary Grade Teacher in the year 2005 due to passing of the Government Order in G.O.(Ms).No.155, School Education Department, dated 03.10.2002, the pay band of the petitioner ought not to have been revised to a lesser scale, since the petitioner was appointed as Secondary Grade Teacher in the year 1996 itself and approved by the third respondent in the very same year by his proceedings.

7. The learned counsel appearing for the petitioner also drew the attention of this Court to the Division Bench Judgment of this Court dated **17.08.2006** passed in ***W.A.(MD).No.231 of 2006*** in the case of ***the Government of Tamil Nadu and others vs. A.Suganthi Victoria*** and would submit that since the pay scales of the similarly placed persons as



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that of the petitioner were not disturbed, there cannot be any discrimination.

8. The learned counsel appearing for the petitioner would also submit that in the counter affidavit filed by the third respondent with regard to the allegations that the pay scales of the similarly placed Teachers as that of the petitioner were not disturbed, the third respondent has not denied those allegations in their counter affidavit.

9. The learned Government Advocate appearing for the official respondents drew the attention of this Court through a Division Bench Judgment of this Court dated **22.12.2022** passed in **WA(MD)No.450 of 2022** in the case of ***S.Tamilarasi vs. The State of Tamilnadu and Others*** and would submit that the third respondent has rightly rejected the request of the fourth respondent school on the ground that the petitioner has not fulfilled her eligibility criteria for getting regularization in the cadre of secondary grade teacher. According to him, as per the aforesaid Division Bench judgment, it is clear that the question of regularization would arise only if the basic qualification is fulfilled by the candidate.



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10. As seen from the impugned order, the contentions of the petitioner as raised in this writ petition have not been considered. It is an admitted fact that the petitioner was appointed as secondary grade teacher in the year 1996 itself. It is also an admitted fact that only after the date of the said appointment, a regulation as per G.O.(Ms).No.155, School Education Department, dated 03.10.2002 that similarly placed persons as that of the petitioner will have to undergo Child Psychology Training has been introduced. The petitioner had also underwent the said training. The school, subsequent to petitioner completing the training, had also submitted a proposal with the respondents seeking for re-approval of the petitioner's appointment to the post of secondary grade teacher.

11. The learned counsel appearing for the petitioner had relied upon the judgment of the learned Single Judge of this Court in the case of *Pallivasal Higher Secondary School* referred to supra that there cannot be two approvals. According to him, since the petitioner was already approved to be appointed as secondary grade teacher in the year



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1996 itself, the petitioner's request for refixation of the scale of pay drawn by the petitioner prior to 2005 ought to have been accepted, as there cannot be two approvals, as per the decision rendered by the learned Single Judge of this Court referred to supra.

12. The learned counsel appearing for the petitioner would also submit that similarly placed persons as that of the petitioner were allowed to retain the same scale of pay as was fixed to them prior to the approval granted by the respondents subsequent to the completion of Child Psychology Training. He would submit that despite a categorical statement having been made in the affidavit filed in support of this writ petition that similarly placed persons got benefit of the same, it has not been denied in the counter affidavit filed in this writ petition. Even though the learned Government Advocate appearing for the official respondents by relying upon the Division Bench Judgment of this Court dated 22.12.2002 passed in WA.No.450 of 2022, submitted that the question of regularization would arise only if the basic qualification is fulfilled by the candidate, the Division Bench has not discussed the issue involved in this writ petition, where the petitioner's appointment was



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earlier approved in the year 1996 itself, though a request for re-approval was submitted by the school, after the petitioner had completed her Child Psychology Training.

13. The issue requires further consideration and the contentions of the petitioner as raised in this writ petition have not been considered under the impugned order and the decisions relied upon by the learned counsel appearing for the petitioner as referred to supra wherein certain proposition of law has been laid down have not been considered.

14. For the foregoing reasons, this Court is of the considered view that the impugned order passed by the third respondent has to be quashed and the matter has to be remanded back to the third respondent for fresh consideration on merits and in accordance with law, within a time frame to be fixed by this Court.

15. Accordingly, this writ petition is allowed and the impugned order dated 02.05.2018 passed by the third respondent is hereby quashed and the matter is remanded back to the file of the third respondent. The



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third respondent is directed to pass final orders on merits and in accordance with law, after giving due consideration to the contentions raised by the petitioner in this writ petition as well as the decisions relied upon by the learned counsel appearing for the petitioner referred to supra, within a period of three months from the date of receipt of a copy of this order. No costs.

02.09.2024

Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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Order made in
W.P.(MD)No.13031 of 2018

Dated:
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