



W.P.(MD)No.20720 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.20720 of 2021

T.Elango

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Secretariat, Chennai-9.

2. The Director of Elementary Education,
DPI Compound, College Road,
Chennai-6.

3. The Chief Education Officer,
O/o. the Chief Educational Officer,
Collectorate Campus, Thandhoni-malai,
Karur.

4. The District Elementary Education Officer,
O/o. the District Elementary Educational Officer,
Collectorate Campus, Thandhoni-malai,
Karur.



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5. The Zonal Education Officer,
O/o. Zonal Education Officer,
Aravakurichi, Karur.

6. Senthilkumar,
Head Master,
Panchayat Union Primary School,
Arangapalayam,
Aravakurichi Block,
Karur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certorified Mandamus, to call for the records in Na.Ka.No.669/A1/2018 dated 30.07.2018 on the file of 5th respondent in pursuant of the proceeding in Na.Ka.No.2127/A4/2013 dated 11.04.2017, on the file of the 4th respondent and direct the 4th respondent to refix the pay scale of the petitioner on par with the 6th respondent herein.

For Petitioner : Mr. V.Raghavachari

For Respondents : Mr.V.Om Prakash
Government Advocate



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ORDER

The petitioner, who is now working as Headmaster was initially appointed as Secondary Grade Teacher on 16.07.2004. His service was also regularised from the said date. Aggrieved by the same, the petitioner approached this Court in an earlier occasion by filing writ petition in W.P.No. 13931 of 2009 seeking a writ of mandamus to direct the respondents 1 and 2 therein to regularise the service of the petitioner with effect from 03.01.2002 and to fix the scale of pay and pay arrears to the petitioner. The said writ petition was partly allowed by the learned Single Judge of this Court by an order dated 06.04.2011 directing the respondents 1 and 2 to regularise the petitioner's service with effect from 03.01.2002 only for the limited purpose of fixing seniority and promotion and not for any monetary benefits. The said relief was granted to the petitioner taking into consideration the fact that the person who was enrolled with the concerned Employment Exchange subsequent to the petitioner was appointed and regularised with effect from 03.01.2002. Thus, it is clear that this Court having come to a conclusion that the petitioner was denied the benefit for which he is otherwise entitled, partly



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allowed the writ petition.

2. However, the petitioner aggrieved by the non-granting of the monetary benefits, filed a writ appeal before this Court in W.A.No.1769 of 2011. The said writ appeal came to be dismissed on 22.12.2011 holding that the petitioner is not entitled to the monetary benefits on the principle of 'no work-no pay'. Pursuant to the said orders, the service of the petitioner was regularised in the cadre of Secondary Grade Teacher with effect from 03.01.2022. However, his pay is fixed only from the date of his actual appointment with effect from 28.09.2004. Aggrieved by the same, the petitioner made a claim of fixation of his pay with effect from 03.01.2002. The said claim of the petitioner was rejected by the respondent by passing the impugned order dated 09.01.2017. Aggrieved by the same, the petitioner approached this Court by way of filing this writ petition.



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3. The respondent filed counter affidavit contending that the service of the petitioner was regularised with effect from 03.01.2002 only by virtue of the order passed in W.P.No.13931 of 2009 wherein this Court specifically directed that the said regularisation is only for the purpose of fixing seniority and promotion and without any monetary benefit. Therefore, the learned Government Advocate supported the impugned order.

4. This Court carefully considered the submissions made on either side and perused the materials placed on record.

5. This Court having taken note of the grievance of the petitioner, partly allowed the writ petition in W.P.No.13931 of 2009 directing the respondents to regularise the petitioner's service with effect from 03.01.2002 instead of 28.09.2004 and accordingly the service of the petitioner was regularised with effect from 03.01.2002. However, the pay was fixed with effect from 28.09.2004. No doubt, this Court restricted the benefit of



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regularisation only to the extent of promotion and seniority. But the said observation was made in the context of the concession made by the petitioner not to make a claim for monetary benefit for the period between 03.01.2002 and 28.09.2004 by virtue of his retrospective regularisation of the service. The claim of the petitioner for regularisation of his service with effect from 03.01.2002 was upheld by this Court. The concession made by the petitioner is only not to claim monetary benefit by virtue of the regularisation, ie., with effect from 03.01.2002. The petitioner is deprived of his legal entitlement for fixation of pay on regularisation with effect from 03.01.2002 though the service was regularised by virtue of the orders passed by this Court. It is not understandable as to how the petitioner can be deprived of the benefit of fixation of pay by duly taking into account the service that was already regularised in his favour with effect from 03.01.2002. In the instant case, the said benefit was denied to the petitioner only by placing reliance on the order passed by this Court in W.P.No.13931 of 2009. Except the said order, there is no other legal denial for granting the said benefit to the petitioner. No doubt, the said order is clear that the regularisation is only for the purpose of



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seniority and promotion without any monetary benefit. However, the Hon'ble Division Bench on an appeal filed by the petitioner against the order passed in W.P.No.13931 of 2009, denied the monetary benefits on the principle of 'no work- no pay'.

6. The learned counsel for the petitioner has made it clear before this Court that the petitioner is not claiming any monetary benefits for the said period, but only claiming for the fixation of pay with effect from 03.01.2002. The pay of the petitioner is originally fixed from the year 2004. But the petitioner has not raised any dispute about the fixation of pay immediately. Thereafter, he raised such dispute for the first time on 17.07.2018 by filing the writ petition for consideration of his claim of pay fixation, ie., after long lapse of time. Thus, there is a delay on the part of the petitioner seeking for rectifying the error in his fixation of pay.

7. Be that as it may, this Court, having taken note of the totality of the circumstances, is of the considered view that the petitioner cannot be



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denied the benefit of fixation of pay from the date of his regularisation, ie., 03.01.2002, as there is no specific denial of such relief by this Court in W.P.No.13931 of 2009. As already noted above, the Hon'ble Division Bench declined the monetary benefits on the principle of 'no work-no pay' only.

8. In the light of the above, the writ petition is disposed of directing the respondents to count the service rendered by the petitioner from 03.01.2002 for the purpose of fixation of pay and accordingly, re-fix the pay of the petitioner. However, it is made clear that the petitioner shall not be entitled for any monetary benefits consequent upon such re-fixation.

9. Taking into consideration the fact that the petitioner has not made any claim till 07.07.2018 for fixation of his pay, this Court is not inclined to grant monetary benefits consequent upon the re-fixation of pay till 07.07.2018 and accordingly, the respondents are directed to pay the arrears of pay consequent upon the pay re-fixation pursuant to this order with effect from 07.07.2018 as expeditiously as possible, at any rate, within a period of



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three months from the date of receipt of a copy of this order. No Costs.

20.03.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

PJL

To

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MUMMINENI SUDHEER KUMAR, J.

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