



W.P.(MD)No.17562 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P (MD)No.17562 of 2016

and

W.M.P (MD) No.12695 of 2016

P.Chellappa

: Petitioner

Vs.

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 6.

2.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

3.The Assistant Elementary Educational Officer,
O/o. the Assistant Elementary Educational Officer,
S.Pudur – 630 410, Sivagangai District.

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order in Na.Ka.No.105/A1/2016 dated 13.06.2016 on the file of the third respondent and quash the same as illegal and consequently for a direction, directing the third respondent to grant annual increment to the Petitioner in the post of Secondary



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Grade Teacher for the year 2015 and consequently to issue salary fixation order in the post of B.T.Assistant in Mathematics along with other consequential monetary benefits within the time period stipulated by this Court.

For Petitioner : Mr.S.Rajasekar
for M/s.T.Lajapathy Roi Associates
For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

The present writ petition has been filed questioning the proceedings of the third respondent in Na.Ka.No. 105/A1/2016, dated 13.06.2016 and for a consequential direction to grant annual increment to the petitioner in the post of Secondary Grade Teacher for the year 2015 and to issue salary fixation order in the post of B.T.Assistant in Mathematics along with other consequential monetary benefits.

2. The case of the petitioner is that he was appointed as Secondary Grade Teacher at Panchayat Union Middle School, Kondapalayam, Sivagangai District and he was promoted as B.T.Assistant (Maths) on 03.11.2014 at Panchayat Union Middle School, K. Puthupatti, S.Pudur Union, Sivagangai District.



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2.1. As per Fundamental Rule 22 b (i), the petitioner is eligible for annual increment in the post of Secondary Grade Teacher for the year 2015 and his salary in the post of B.T.Assistant should be fixed only after providing him the annual increment.

2.2. The petitioner had sent several representations to the third respondent to fix his salary in the Post of B.T.Assistant after providing him the annual increment for the year 2015. But no action had been taken till date. He had also sent another representation dated 19.03.2015 and the same was not considered.

2.3. Thereafter, the petitioner had sent a representation dated 17.07.2015 to the first respondent stating the above representations. The second respondent had issued an proceedings dated 12.03.2015 in which, it was stated that the proposal for fixation of the salary of the petitioner in the post of B.T.Assistant should be sent through the Headmaster of S.Pudur Panchayat Union Middle School, K.Puthupatti, Sivagangai District, to the third respondent. However, the said representation was also not considered.



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2.4. Thereafter, the petitioner filed a Writ Petition in W.P. (MD).No.5919 of 2016 before this Court. This Court, by order dated 24.03.2016, directed the respondents to consider the representation of the petitioner dated 17.07.2015 and to pass orders on merits and in accordance with law, within a period of two months from the date of receipt of a copy of that order.

2.5. Despite the specific directions issued by this Court vide its order dated 24.03.2016, the third respondent has not passed any orders. As a result of which, the petitioner issued contempt notice and thereafter, the third respondent had issued proceedings in Na.Ka.No. 105/A1/2016 dated 13.06.2016, rejecting the claim of the petitioner without any valid reasons.

3. Challenging the impugned proceedings dated 13.06.2016, the petitioner has come up with the present writ petition.

4. The learned Counsel for the petitioner submitted that as per the proceedings of the Secretary to Government, Personnel and



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Administrative Reforms (FR.I) Department, dated 22.10.1990, the officer shall exercise option for pay fixation either under FR 22-B with effect from the date of first promotion or after drawal of next increment in the lower post, within one month from the date of first promotion/appointment by transfer.

5. The learned Counsel further submitted that as per the letter No.6750/FR.1/95-1, Personnel and Administrative Reforms (FRI) Department, despite the specific instructions given in the earlier letter dated 22.10.1990, instances have been brought to the notice of Government that the instructions issued in Government letter are not followed by the concerned authorities, while issuing orders of initial appointment/appointment by transfer, which has resulted in Government Servants not deriving full benefit of the option available for the fixation of pay on promotion.

6. The learned Counsel for the petitioner submitted that as per the District Elementary Educational Officer proceedings vide Na.Ka.No.1866/A3/2014, dated 01.11.2014, the petitioner was promoted as B.T.Assistant (Mathematics) in Panchayat Union Middle School,



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K.Pudupatti, S.Pudur Union, Sivagangai District. He further submitted that based on the proceedings of the Chief Educational Officer, Sivagangai dated 21.02.2016, the District Elementary Educational Officer, Sivagangai, vide proceedings in O.Mu.No.625/A5/2015 dated 02.03.2015, has requested the petitioner to send the pay fixation proposal to his Office through the Headmaster of the School. In turn, the petitioner has also sent a representation dated 19.03.2015 to the Assistant Elementary Educational Officer/third respondent herein requesting him to fix the salary along with the early increment with effect from 01.01.2015. However, the same was rejected by the Assistant Elementary Educational Officer/third respondent by the proceedings dated 13.06.2016, which is impugned in the writ petition.

7. It is also the grievance of the petitioner that one Kasi Viswanathan, who was also a similarly promoted person on 01.11.2014 along with the petitioner, had been granted the benefit of pay fixation. Further in the grievance day register, the said Kasi Viswanathan had exercised his option belatedly on 06.12.2014, i.e., belatedly after a lapse of one month. However, he has been granted the benefit of pay fixation.



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8. Per contra, the learned Government Advocate would submit that according to the Fundamental Rules 22 (B) (ii), “for fixation of pay on the date of promotion or appointment to the higher post in the manner as provided in rule 22 (1) (a) (i) or rule 22 (1) (b) (i) and re-fixation of pay under this rule on the date of accrued of next increment in the time scale of pay of the lower post Such option shall be exercised within a period of one month from the date of promotion or appointment. The option once exercised shall be fixed in the manner as provided in clause (ii) above next increment shall be allowed on completion of required qualifying period of one year with effect from the date of re-fixation of salary”.

9. The petitioner has not made any representation to fix his salary within a period of one month from the date of his initial promotion or appointment. The petitioner had joined in the promotional post as B.T. Assistant on 03.11.2014 and as per FR 22-B, he should have exercised his option on or before 03.12.2014, i.e, within one month from his promotion. However, the petitioner had not exercised his option and made representation only on 19.03.2015, which is belated one and



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against the time stipulated under FR-22B.

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10. The learned Government Advocate further contended that the representation of the petitioner dated 18.11.2014 for fixation of pay was not sent through the proper channel, i.e., through the Headmaster of his working School at K.Pudhupatti and the same was also not received by the respondents so far and thereby, the alleged representation is not a genuine one. The petitioner filed W.P.(MD).No. 5919 of 2016 before this Court to direct the respondents to grant annual increment to him in the post of Secondary Grade teacher for the year 2015 and to issue the salary fixation in the post of B.T.Assistant (Mathematics) by considering his representation of the petitioner dated 17.07.2015. Thereafter, the impugned proceedings dated 13.06.2016 was passed by the third respondent in accordance with law.

11. Insofar as the grant of pay fixation to the said Kasi Viswanathan, the learned Government Advocate submitted that the petitioner was promoted on 01.11.2014 along with three others but, out of three, only one person, namely, Kasi Viswanathan alone exercised his option within a time stipulated and his request was considered, whereas,



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the petitioner has not applied in time and therefore, the time scale was not fixed from the date of his promotion.

12. Heard the learned Counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

13. The main grievance of the petitioner is that the annual increment was not granted to the petitioner in the post of Secondary Grade Teacher for the year 2015 as per the proceedings of the Secretary to Government, Personnel and Administrative Reforms (FR.I) Department, dated 22.10.1990 and the salary was not also fixed in the post of B.T.Assistant (Mathematics) on par with the another candidate namely, Kasi Viswanathan.

14. **It is pertinent to extract the letter No.72188/FR. 1/90-2, Personnel and Administrative Reforms (FR.I) Department, dated 22.10.1990, in which, it is categorically provided as follows:**

*“According to proviso (5) under
Fundamental Rule 22-B, option for the purpose of*



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fixation of pay under FR 22-B shall be exercised within one month from the date of initial appointment/promotion. Instances have been brought to the notice of the Government that in some departments officers who were not aware of the above provision and failed to exercise their option in time, resulting in monetary loss to the individual. The Accountant General has therefore suggested that in the promotion/appointment orders, indication may be given to the officers to exercise their option for pay fixation within one month.”

15. The Fundamental Rule 22 b (i) provides as follows:-

“If appointed to officiate in a permanent or temporary post. (i) and the appointment involves the assumption of duties or responsibilities of greater importance than those attaching to his permanent post, shall have his initial pay fixed subject to the provisions of rule 35 as in sub-clause (1) of clause (a). They pay of such a Government servant shall be re-fixed under that



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sub-clause on an enhancement in the substantive pay as a result of increment or otherwise, from the date of such enhancement as if he was appointed to officiate in that post on that date, where such re-fixation is to his advantage”

16. Thereafter, the Government of Tamil Nadu through its Secretary has issued an Letter No.6750/FR.1/95-1, Personnel and Administrative Reforms (FRI) Department, Secretariat, Chennai -9, dated 30.01.1995, in which, it was categorically stated as follows:-

“2. In spite of the specific instructions, instances have been brought to the notice of Government that the instructions issued in Government Letter cited are not followed by the concerned authorities, while issuing orders of initial appointment/appointment by transfer, which he resulted in Government Servants not deriving full benefit of the option available for the fixation of pay on promotion. I am therefore, directed to request you to ensure that the instructions issued in the Government Letter cited



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are followed scrupulously, while issuing orders of initial promotion/appointment by transfer. Failure to follow the above instructions will be viewed seriously by the Government. Hence the second respondent & 3 ought to have indicated the option available in the promotion order issued to me and the third respondent should have granted annual increment in the post of Secondary Grade Teacher for the year 2015 and thereafter should have fixed the Scale of Pay in the post of B.T.Assistant. But without considering all these factors, the third respondent has passed the Impugned Order.”

17. Admittedly, in the present case, the petitioner was promoted as B.T.Assistant (Mathematics) on 01.11.2014. The condition for the purpose of fixation of pay should be exercised within a period of one month from the date of initial appointment/promotion i.e., on or before 01.12.2014, whereas, the petitioner had exercised his option for pay fixation only on 06.12.2014, which is after the period of one month. The claim of the petitioner was rejected solely on the ground that he had exercised the option belatedly on 06.12.2014 which is against the



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Fundamental Rule 22(B).

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18. It is pertinent to note that one Kasi Viswanathan, who was similarly promoted along with the petitioner herein on 01.11.2014 had also exercised his option only on 06.12.2014, i.e., belatedly after the due date of 01.12.2014 with a delay of five days.

19. On a perusal of the grievance day register, which is annexed in the typed set of paper in page No.4, it is clear and evident that the said Kasi Viswanathan had exercised his option belatedly on 06.12.2014. A copy of the same was enclosed in the typed set of papers filed by the learned Government Advocate appearing for the respondents. The petitioner as well as Kasi Viswanathan promoted on the same day i.e., on 01.11.2014 and the option was exercised by both of them belatedly on 06.12.2014. However, the said Kasi Viswanathan had been granted the benefit of pay fixation whereas, the petitioner had not been extended with the benefit of pay fixation, which is discriminatory and violative of Article 14 of the Constitution of India.

20. The main contention of the learned Government



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Advocate for the respondents is that the petitioner has given the representation belatedly only on 06.12.2014 but whereas the petitioner had also given the representation on 18.11.2014 which has also been recommended and forwarded by the Headmaster of the Panchayat Union Middle School, K. Puthupatti, S.Pudur Union, Sivagangai District. Moreover, the aforesaid copy of the representation dated 18.11.2014 was enclosed in the typed set of papers filed by the learned Government Advocate appearing for the respondents and not by the petitioner on 24.03.2017. Hence, this Court is unable to understand the contention of the learned Government Advocate that the representation dated 18.11.2014 of the petitioner is a bogus representation when the said representation has been recommended and forwarded by the concerned School Headmaster and the same was received by the Office of the third respondent. Therefore, it is crystal clear and evident that the above representation is not a bogus representation as contended by the learned Government Advocate appearing for the respondents.

21. Hence, considering all the facts and circumstances of the case and also taking into consideration the aforesaid



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Fundamental Rules, I am of the considered view that the writ petitioner is entitled for annual increment in the post of Secondary Grade Teacher for the year 2015 and his salary in the post of B.T.Assistant should be fixed only after providing him the annual increment.

22. **In the result, the writ petition is allowed.** The impugned proceedings of the third respondent dated 13.06.2016 is hereby quashed. The third respondent is directed to grant annual increment to the petitioner in the post of Secondary Grade Teacher for the year 2015 and issue salary fixation order in the post of B.T.Assistant in Mathematics along with other consequential monetary benefits within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

13.09.2024

Index : Yes / No

Internet : Yes / No

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J.SATHYA NARAYANA PRASAD, J.

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To

- 1.The Director of Elementary Education,
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