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W.A No. 1825 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-04-2025

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A No. 1825 of 2023

T. Gladis Bagavathi Bai
H-1, Police Quarters, Thiruneermalai
Road, Kundrathur, Kanchipuram District,
Chennai 600 069

... Appellant

Vs

1. The State Of Tamil Nadu
Rep by its Secretary to Government, School
Education Department, Secretariat,
Chennai - 600 009.
- 2.The District Educational Officer,
No. 5, Riverside Street, Kamaraj Nagar, Avadi,
Chennai - 600 071.
- 3.Panchayat Union Middle School
Rep by its Head Master, Sembedu,
Tiruvallur - 601 103.

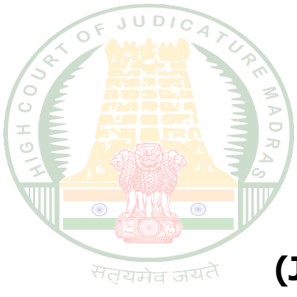
... Respondents

PRAYER

Writ Appeal under Clause 15 of the Letters Patent to set aside the order dated 27.01.2021 in WP.No.1618 of 2021.

For Appellant : Mr. V.L. Akshai Sajin Kumar

For Respondents : Mr.J.C. Durairaj,
Additional Government Pleader



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J U D G M E N T

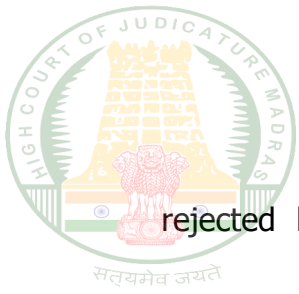
(Judgment of the Court was delivered by R.Suresh Kumar J.)

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This intra Court appeal has been filed against the order passed by the learned Writ Court dated 27.01.2021 in WP.No.1618 of 2021.

2. The appellant was the writ petitioner. She was working in a private aided school and therefore her salary was paid by the Government aid. Subsequently, she participated in the selection process for Government school appointment and after she got selected, she was appointed at the Panchayat Union Middle School, Sembedu, Tiruvallur District on 23.07.2009. She got relieved from the private aided school on the previous day and joined the third respondent Panchayat Union Middle School on the very next day ie., 24.07.2009 without any break in service.

3. After having joined in the Panchayat Union Middle School, the petitioner/appellant had sought for continuity of service and pay protection, but that was refused by the order of the District Elementary Educational Officer, dated 14.12.2009. Again when the petitioner/appellant has sought for such a relief, it was



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rejected by order dated 01.12.2020 passed by the District Educational Officer.

Therefore, challenging the said order the writ petition was filed.

4. Learned Writ Court, having heard the said writ petition was of the view that, only on her own volition, the petitioner/appellant has left the services and joined Government School service. Therefore, it cannot be treated as transfer in service and hence pay protection cannot be sought for by the petitioner/appellant. In that view of the matter, the Writ Court rejected the writ petition by dismissing the same by order dated 27.01.2001, which is impugned herein.

5. Heard Mr.V.L.Akshai Sajin Kumar, learned counsel for the appellant and Mr.J.C.Duraiaraj, learned Additional Government Pleader for the official respondents.

6. Learned counsel for the appellant has straight away invited our attention to the Division Bench judgment of this Court in the matter of **Secretary to the Government, Department of School Education and Another -vs- G.Rufus David** made in W.A.No.3868 of 2019 dated 16.10.2020 and would submit that, the



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issue has been discussed exhaustively by the said Division Bench and ultimately it

was held in Para 14 that the teacher who hitherto had served in a Government aided private school and subsequently joined in the Government School without any break in service would be entitled to pay protection. Based on this proposition, the learned counsel for the appellant would contend that the appellant/petitioner also since had been working in a private aided school and without any break in service she has joined the Government School after having been selected, she is also entitled to get the same benefit of pay protection.

7. However, learned Additional Government Pleader would contend that the services rendered in a private aided school is governed by a regulation called Tamil Nadu Private Schools Regulation Act, whereas the services rendered in a Government School is dealt with in a separate regulation. Therefore, both cannot be treated as continuous service and cannot be treated as service by transfer and hence the appellant / petitioner is not entitled to get such benefit. He would submit that even though there is a Division Bench judgment as has been cited by the learned counsel for the appellant in case of **G.Rufus David** cited supra, there are



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judgments taking contrary view and therefore it cannot be stated that this decision

alone is final one to be followed in similar cases, he contended.

8. We have considered the submissions made by the learned counsel for both sides and have gone through the materials placed on record.

9. In the said Division Bench judgment in **Rufus David's case** cited supra, similar facts have been dealt with by the Division Bench, where also, the teacher therein was appointed as Secondary Grade Assistant at CSI Higher Secondary School, Ketty, The Nilgiris District, and upon completion of 10 years of services he was also conferred with Selection Grade. Thereafter, grade pay and other pay benefits have been conferred on the teacher. When that being so, pursuant to the notification issued by the Teachers Recruitment Board in the year 2008, the teacher in the said case also made an application and she was selected for appointment as B.T.Assistant in a Government School, where she joined after getting relieved from the private aided school, where she was originally working and when her case had come for fixation of pay with pay protection, it was not considered by the Education



Department. Therefore, the lis was filed before this Court and ultimately the Division

Bench by a judgment dated 16.10.2010 has held as follows:

“ 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 re-fixation 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 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



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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.”

10. We are in complete agreement with the said view taken by the Division Bench in W.A.No.3868 of 2019 in **G.Rufus David's** case.

11. If at all a teacher had been working in a private aided school and the entire salary and other financial benefits have been paid to the teacher only from the Government Exchequer, the said teacher would also be entitled to pensionary benefits if he/she had joined before 01.04.2003. Therefore, for all practical purposes, if such teacher working in the private aided school and without any break



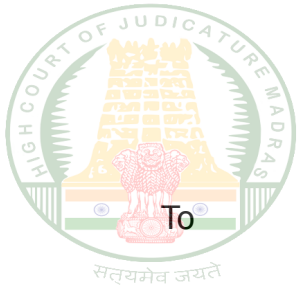
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in service joins the Government School after proper selection process, then the teacher would be entitled to get service benefits of continuity of service with pay protection. This issue has been exhaustively dealt with in the decision of the Division Bench cited supra.

12. Following the same, we are inclined to extend the same benefit to the appellant herein. Resultantly, this Writ Appeal is allowed by setting aside the order impugned as well as the order impugned before the writ Court and the respondents 1 and 2 are hereby directed to treat the services of the appellant/petitioner rendered by her prior to joining in the 3rd respondent School, a private aided school as continuous service and based on it, pay protection shall be given to the appellant / petitioner. With the above directions, this writ appeal is allowed. No costs.

(R.SURESH KUMAR, J.) (A.D.MARIA CLETE, J.)
02-04-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
KST



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