

W.A.(MD)Nos.424 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.03.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.424 of 2025
and
C.M.P.(MD).No.3267 of 2025**

The Chief Educational Officer,
Madurai

... Appellant

-- Vs--

M.Somu

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.14687 of 2018, dated 19.08.2024.

For Appellant :Mr.J.Ashok
Additional Government Pleader
For Respondent :Mr.V.Panneer Selvam

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed by the Chief Educational Officer
challenging the order dated 19.08.2024 passed in W.P.(MD)No.14687 of 2018.

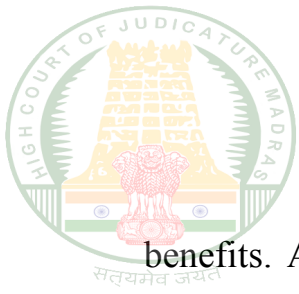


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2. The Writ Petition was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 16.08.2017 in Na.Ka.7264/A3/2016 passed by the respondent and to grant the special grade in the cadre of Secondary Grade Teacher with effect from 26.04.2010 with all consequential benefits.

3. The briefs facts as stated by the writ petitioner is that he was working in Private Aided School as Secondary Grade Teacher and was awarded selection grade. Thereafter, the petitioner joined the Government Higher Secondary School, Kottampatti as Secondary Grade Teacher on 28.02.2001. The petitioner is entitled to special grade but the respondent has taken the service of the government school alone and declined to grant special grade. Further, the respondent submitted that the petitioner had resigned from private aided school and there is no prior permission and hence on resignation, the principle of forfeiture of service is applicable. Hence the respondent submitted that the petitioner cannot claim to take past service rendered in the private school for granting special grade pay. Aggrieved over the same, the writ petition was filed.

4. After considering the rival claims, the Writ Court has quashed the impugned order and directed the respondents to grant special grade in the post of secondary grade teacher with the effect from 26.02.2010 with all consequential



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benefits. Aggrieved over the same, the present writ appeal is preferred by the Education Department.

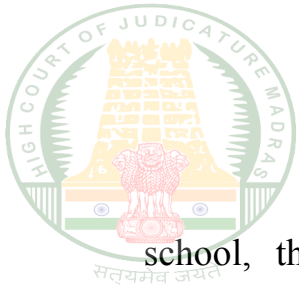
5. The contention of the appellant is that admittedly, the writ petitioner was serving in private aided school. After resignation, the petitioner has joined the government school. On resignation, the service rendered in private aided school ought to be forfeited. The said contention cannot be accepted. Of course, the rules states that on resignation, the employee ought to forfeit the past service. But under proviso it states, if the employee obtained prior permission to join the new service, there will be continuity of service and the principle of forfeiture will not be applicable. In the present case the petitioner has submitted resignation in the earlier private school and sought permission to resign in order to join the government service. Once the employee discloses the reasons for resignation as to join another service, then the earlier employer is bound to grant permission. In other words, the employer is not having any power to decline permission once the employee discloses to resign in order to join another service. Therefore, once the employee discloses the reason for resignation as to join another service, then the proviso to rule would come into effect and the forfeiture of past service is not applicable.



6. In the present case, the writ petitioner had submitted resignation and had disclosed the reason to join the government service. In such circumstances, the proviso would protect the past service and hence the petitioner is entitled to continuity of service and the principle of forfeiture will not be applicable and the petitioner's case would fall under the proviso clause.

7. The next contention of the appellant is that the writ petitioner is not entitled to claim special grade from 2010 onwards. Since the petitioner has joined the government service in the year 2001, the petitioner is entitled to selection grade in the year 2011, thereafter, the petitioner is entitled to special grade from 2021.

8. The said contention cannot be accepted. This Court has already held that the service rendered in the private aided school ought to be included while calculating the 10 years of service to grant selection grade and special grade. The petitioner has joined the private aided school on 26.04.1990, then the petitioner is entitled to selection grade on completion of ten years on 26.04.2000. The petitioner was already granted the selection grade while working in the private aided school itself. Thereafter, he joined the government service on 08.03.2001. Since the petitioner has put in 10 years service in private aided



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school, the accrued right to claim selection grade cannot be taken away.

Therefore, the continuity of service ought to be granted. The petitioner had completed 20 years on 26.04.2010. Therefore, the petitioner is entitled to special grade from 26.04.2010, in the cadre of secondary grade teacher. Therefore, the accrued benefits ought to be granted to the petitioners. However, the petitioner is not entitled to any interest for the belated benefits. Further, it is clarified that the petitioner is entitled to special grade to the scale of pay fixed by the government service alone.

9. With the above said directions, the writ appeal is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.]

[S.S.Y., J.]

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Index : Yes / No

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To:

The Chief Educational Officer,
Madurai



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