



W.A.MD) No.686 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.A(MD)No.686 of 2022

and

C.M.P(MD)No.5741 of 2022

- 1.The State of Tamil Nadu
Rep by its Secretary,
Department of School Education,
Fort, St.George,
Chennai-600 009.
- 2.The Director of Elementary Education,
College Road,
Chennai-600 009.
- 3.The District Educational Officer,
Devakottai,
Sivagangai District.
- 4.The Block Educational Officer(3)
Block Educational Office, Kalayar Koil,
Sivagangai District-630 551.
- 5.The Headmistress,
Panchayat Union Primary School,
Oyyavanthan,
Kalaiyarkoil Union,
Sivagangai District-630 551.

... Appellant/ Respondents



W.A.MD) No.686 of 2022

-Vs-

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A.Joseph Sebastian, Secondary Grade Teacher,
Panchayat Union Primary School,
Oyyavanthan, Kalaiyarkoil Union,
Sivagangai District-630 551.

...Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause XV of Letters of Patent Appeal, against the order dated 01.04.2022 made in W.P(MD)No.17205 of 2020 passed by this Court.

For Appellants : Mr.V.Om Prakash
Government Advocate

For Respondent : Mr.P.Bhagavath Srinath

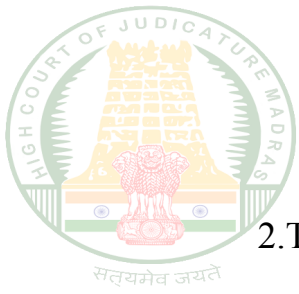
JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

The intra Court appeal is by the State being aggrieved by the order passed by the learned single Judge referring one of the judgment of this Court as a precedent, however, ignoring three other Division Bench judgments of this Court which is against the preposition laid by the learned single Judge.



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2.The writ petition seeking Certiorarified Mandamus filed by the P.G Assistant Teacher who joined Government service, worked as Secondary Grade Teacher in a private aided school. She was initially appointed on 14.09.2001 as a Secondary Grade Teacher in St. Paul Higher Secondary School, Maravaneri, Salem, in a sanctioned post. Later, she was transferred to St. Antony Higher Secondary School, Thiruchancode, Namakal District, under the same corporate Management, on 09.06.2004. While so, when the Teachers Recruitment Board invited the applications from the eligible candidate for the post of Secondary Grade Teachers in the Government School. She applied and got selected. She was posted as a Secondary Grade Teacher in the Panchayat Union Primary School, Arangiran Patti, Thirumayam, Pudukottai District, on 09.02.2010. She was relieved from the Private School Management and joined the Government Service on the next day.

3.Claiming refixation of pay taking into her pay scale drawn while she was serving as a Secondary Grade Teacher under the Private Management, the writ petition in W.P(MD)No.17205 of 2020 was filed. The learned singel Judge expressing his opinion that the issue is no more *res integra*, in view of the judgment passed in W.P.No.32645 of 2018, later confirmed in W.A.No.3868 of 2019 and the dismissal of SLP filed by the State held that under FR 22(B), the



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past service of the writ petitioner as a Secondary Grade Teacher in a private school is to be taken into account for fixing of proper pay scale. By holding so, the writ petition was allowed.

4.The State, being aggrieved by the order, had preferred intra Court appeal on the ground that the learned single Judge miserably failed to take note of the fact that the service rendered by the writ petitioner in the Government aided school cannot be taken into account for any purpose if she has resigned the job and joined the Government service as a fresh recruit pursuant to the selection by the Teachers Recruitment Board. It is not a case of migration, but a case of new recruitment, neither Rule 26 of FR nor 22B of the FR is applicable to the case of the writ petitioner. The writ petition, writ appeal and SLP referred as a precedent by the learned single Judge been considered subsequently by the Division Bench of this Court and has held that there cannot be a refixation of pay scale taking into account the past service rendered by the Secondary Grade Teacher in a Private Management.

5.The learned Government Advocate appearing for the appellant would submit that the judgment relied by the learned single Judge been considered by atleast three Division Bench of this Court and has expressed contrary view



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holding that the past service of a Secondary Grade Teacher in a private school cannot be taken into account applying FR 22B.

6.For the appreciation of the submission made by the learned Government Advocate, it is necessary to examine the reason given by the learned single Judge in the impugned order for allowing the writ of Certiorarified Mandamus. Hence, for the said purpose, the findings of the learned single Judge which is impugned in the writ appeal is extracted below:

“5.Upon hearing the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents, it appears that the present issue of fixation of salary of the petitioner is no more res integra and the same issue was already came before this Court and this Court rejected the contention of the respondents and allowed the W.P.No.32645 of 2018 as follows:

“9. This Court, after considering the arguments of both sides, is unable to appreciate the stand of the respondents that the petitioner is not entitled to fixation of proper pay scale on par with other similarly placed teachers only because of the fact that he had, on his own wish, went to Government service, after rendering 14 ½ years of continuous service in aided schools. This Court is unable to comprehend such objection being raised, that too, seriously by the Government. Any teacher, who worked in aided school, would always like to migrate to Government service for betterment of their service benefits and career.



Such option exercised by the petitioner cannot be put against him and on that basis, the denial of pay scale on par with other similarly placed teachers, would be grossly discriminatory and would cause grave injustice to the interest of the petitioner. In fact the improper fixation of pay scale, without taking into account the past service of the petitioner in the aided schools, would amount to violation of equality clause enshrined in [Article 14](#) of the Constitution of India.

“10. In fact while rejecting the claim of the petitioner, the Authorities have not taken into consideration the contents of G.O.(Ms.)No.367, Education, Science and Technology Department dated 30.03.1984. According to the said Government order, the appointment of Higher Grade teacher in upgraded post of Secondary Grade Teacher, is also entitled to fixation of pay under FR 22(B) and the benefit of the orders referred to in paragraph (1) of the Government Order would also be extended to these appointments as well. Unfortunately, it appears that the Authority has not applied his mind properly with reference to the contents of the said Government Order and has simply denied only on specious reasoning that the petitioner has migrated to Government Service on his own wish. This Court is unable to find such reasoning has any meaning at all with relation to the claim of the petitioner herein. On the whole, it appears that the basis of the rejection is wholly unjustified, not acceptable and the same has to be rejected outright.

11. Therefore, this court is of the view that the petitioner is entitled to proper fixation of pay on the basis of his last pay drawn, before his appointment in Government service.



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The said order was upheld by the Division Bench of this Court in W.A.No.3868 of 2019, vide order dated 16.10.2020 and against the said judgment, S.L.P.No.5633 of 2021 was filed and the same was also dismissed. In the present case also the petitioner was appointed as Secondary Grade Teacher in the Government Aided School and subsequently he was migrated to the Government School. He was relieved by the District Educational Officer on 08.02.2010 and on the very next day i.e., on 09.02.2010, he had joined as Secondary Grade Teacher in Panchayat Union Primary School. The grievance of the petitioner was that he is entitled for the same scale of pay as drawn in the Secondary Grade Teacher in the Government Aided School before migration to the Government School as Secondary Grade Teacher. As stated above, the issue has already been settled and reached the finality at the level of Hon'ble Supreme Court. Therefore, the issue is no more res integra. Thus, this Court is of the view that the petitioner is entitled for re-fixation of pay, based on the last pay received in the Government Aided School till 08.02.2010 and thus the impugned order is liable to be quashed.

7. Contrary to the judgments cited as precedent by the learned single Judge, we have, The Hon'ble Supreme Court judgment reported in (2017) 5 SCC Page 783 (**Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others**) in Paragraph Nos.14 and 15 has held as follows:

“14. Transfer and recruitment by transfer are entirely two different concepts. No doubt transfer can be from one category



to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra-category and inter-category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class to another class or from one service to another. If it is a transfer simpliciter it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.

15.Transfer in relation to service simply means a change of a place of employment within an organization. Such transfer being to a similar post in the same cadre and therefore, obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter, to a different service altogether”.

8.Following the Hon'ble Supreme Court judgment cited supra in W.A.No.627 of 2022, S.K.Kannan Case it was held that:

“Once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the



employee different from what would have been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in change of place of employment and therefore, there is no termination of lien (see.V.Jagannadha Rao Vs.State of A.P and B.Thirumal V.Ananda Sivakumar) ”

26.We are not in agreement with the judgment of the Division Bench in W.A.No.3868 of 2019 dated 16.10.2020 for the following reasons:

- (i).The judgment of the Hon'ble Supreme Court reported in in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others) as referred supra has not been taken into consideration.*
- (ii).Rule 2(b)(ii) of Special Rules for Tamil Nadu Higher Secondary Educational Service relating to 50% reservation for direct recruitment has not been brought to the notice of the Division Bench.*
- (iii).Rule-8 relating to fixation of two different periods of probation for the candidates selected through direct recruitment and transfer of service has not been brought to the notice of the Division Bench.*

27.In view of the above said circumstances, we respectfully follow the judgement of the Hon'ble Supreme Court reported in in (2017) 5 SCC Page 783 (Palure Bhaskar Rao and others -Vs- P.Ramaseshaiah and others).

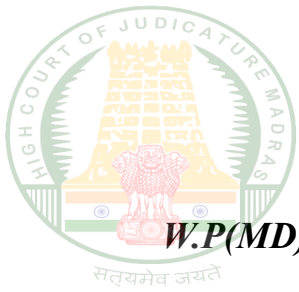
29. In view of the judgment of the Hon'ble Supreme Court, we find that the order dated 12.04.2021 made in SLP(Civil).No.5633 of 2021 is an order refusing the Special Leave Petition without assigning any reason.



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Hence, it does not attract the doctrine of merger. Therefore, an order refusing Special Leave Petition does not stand substituted in the place of the order in W.A.No.3868 of 2019. Hence, the contention of the learned counsel appearing for the appellant that the order of the Division Bench of our High Court has been confirmed by the Hon'ble Apex Court is not legally sustainable.”

9.The subsequent Division Bench judgment in ***S.K.Kannan-Vs-The Director of School Education and others***, in ***W.A(MD)No.627 of 2022***, the learned Division Bench has observed that the petitioner having participated in the direct recruitment process and got appointment cannot turn around and contended that he was appointed by transfer of service to the post of P.G Assistant. The Division Bench held that the petitioner even after being appointed as P.G.assistant will not confer any right to get pay protection. The fact that there was no break in service also will not convert direct recruitment into an appointment by transfer of service. Thus, the inclination legally held by the learned Division Bench is that a person had been in service under Management after getting appointment in the Government through direct recruitment process cannot claim any pay protection which he was enjoying while serving under the private management. This view been again reiterated by the Division Bench of this Court in ***Esakkiraj v. The Chief Educational Officer, Chief Education Office, Tirunelveli, and others***,

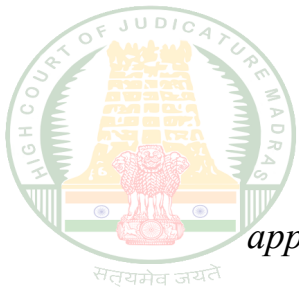


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W.P(MD)No.1805 of 2023, vide order dated 12.10.2023, wherein the Division Bench had discussed about the effect on FR 22(B) in case of pay fixation of a person who had served under Management in a private aided school and later appointed afresh by direct recruitment in a Government service.

10.In this considering judgment also the Division Bench of this Court had an opportunity of the judgment relied on by the learned single Judge in the order impugned before us and the subsequent judgment of the Division Bench rendered in W.A.No.627 of 2022 and has held that the order passed in W.P(MD)No.627 of 2013 in the case of **S.K.Kannan case(cited supra)** the dictum to be followed. The reasoning of the Division Bench in the subsequent judgment ie., **Esakkiraj case(cited supra)** is as below:

“10. Relationship between Employer and Employee is the contract. Service conditions stipulated and agreed by the employees are binding on them. So also, the Fundamental Rules and Service Rules on appointment into Government Services are applicable and binding. In the present case, the order of appointment issued to the appellant dated 24.11.2012 unambiguously stipulates the pay band in which the appellant was appointed and the commencement of probation and other conditions. Order of appointment being a contract and a fresh appointment is made, the appellant is bound by the conditions stipulated in the order of appointment and more so, the



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appellant has not chosen to challenge the said conditions but accepted the conditions and joined into Government Services and only after declaration of probation the writ proceedings are instituted claiming the benefit of Selection Grade for the services rendered by him in a Private Aided School. Conditions stipulated in the order of appointment, dated 24.11.2012, reveals that the appellant was appointed in the time scale of pay of Rs.5200-200 + 2800 Grade Pay. The salary and allowances will be paid from the date of joining. Probation period of two years is contemplated under the relevant Rules. When the appointment conditions are unambiguous and the said appointment order remained unchallenged and the appellant accepted the appointment order and it was implemented, now he cannot turnaround and claim the benefit of services rendered by him in a Private Aided School based on the contract between management of the Private Aided School and the appellant.”

11.It is also worth to know that the Senior Judge who authored the judgment in W.A(MD)No.3868 of 2019, which been relied by the learned Single Judge as a precedent subsequently, while sitting with another learned Judge, had changed his view following the other two judgments which cited above, in ***the Governmen of Tamil Nadu and others-vs-S.Arulmani in W.A(MD)No.1118 of 2019***, vide judgment dated 05.03.2012 after referring the Government Orders pertaining to fixation of pay scale of teachers, who rendered service under the



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Private School Management in a sanctioned post getting appointment in the Government School, had distinguished that a fresh appointee in the post of Secondary Grade Teacher cannot claim her past service under the private mangement. Thus, the judgments rendered by the Court consistently had held that the application of FR 22B can be extended only if there is a migration or transfer of one service to another. If the subsequent appointment is a direct recruit, there cannot be any mandatory benefit in view of the past service. The judgments rendered in case where the teachers were transferred from one department to another or migrated to one department to another cannot be relied as a precedent to extend the benefit to the teachers who had been recruited afresh directly by the Government through direct recruitment process. It is made clear in the catena of judgment cited above and reiterated again by the Division Bench in ***the Government of Tamil Nadu and others v. S.Arulmani***, in the following terms:

“12.G.O.Ms.No.2357, dated 27.12.1983 and G.O.Ms.No.1580, dated 18.10.1969, relied upon by the writ petitioner, are not applicable to his case, since in those cases, the Teachers got prior permission from the Government for such transfer from one Department to another. Further, there is no specific provision in the Tamil Nadu Educational Subordinate Service Rules for transfer of appointee from one unit of Establishment or Department to another unit of Establishment or Department. In the absence of such Rules or specific orders from the Government, the request of the writ



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petitioner cannot be entertained and he has no merit in this case. But the learned Single Judge, without considering the above facts, allowed the Writ Petition and hence, the same may be set aside.

15.In this regard, the learned counsel for the writ petitioner drew the attention of this Court to G.O.Ms.No.1580, Education Department, dated 18.10.1969 and submitted that the said G.O. provides for protection of last drawn pay to the Teachers, who resigned service from one Management and joined another Management. Similarly, in G.O.Ms.No.2357, Education, Science and Technology Department, 27.12.1983, the Government of Tamil Nadu delegated power to the Director of Elementary Education to grant the last drawn pay to the Secondary Grade Teachers, who had resigned from service in Anglo Indian Schools and joined as a teacher in Aided Schools. Those two G.Os. are issued to protect the last drawn pay of the Teachers, who are transferred from one post to another post, which carries same scale of pay. Since the petitioner was transferred from one Government Department to another Government Department, he stands on better footing than the teachers working in the Aided Schools. Therefore, following the said G.O.s, the writ petitioner is entitled for the last drawn pay protection. Thus, the learned Single Judge has rightly extended the benefits of the said G.Os. to the respondent/writ petitioner. Therefore, there is no infirmity in the said order, and thus, he sought for dismissal of the Writ Appeal.

21.On a perusal of the appointment order dated 23.07.1999 issued by the District Elementary Educational Officer, Namakkal, we



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find that the writ petitioner was appointed as a fresh appointee in the post of Secondary Grade Teacher in the pay scale of Rs. 4500-125-7000 as per the list sponsored by the District Employment Exchange. Further, absolutely no documentary evidence was produced by the writ petitioner to show that he was transferred from the Social Welfare Department to the Education Department.”

12.The learned counsel appearing for the respondent submitted that recently the learned Single Judge of this Court, in ***R.Lilly Theras vs. the Government of Tamil Nadu***, vide order dated 14.03.2024, has followed the judgment rendered in ***W.A.No.3868 of 2019, The Secretary to State Government and another -vs- G.Rufus David***, and has allowed the writ petition extending the benefit of FR and refixation of pay scale. With great respect to the learned Single Judge, it is noted that though the judgment of ***S.K.Kannan v. The Director of School Education, and others***, in W.A(MD)No.627 of 2022 was brought to the notice of the learned Single Judge, he had observed that the dictum laid in the S.K.Kannan judgment will not apply to the case in hand. He had distinguished the case under his consideration with that of the fact in *S.K.Kannan's case*. According to this Court, since the facts in *S.K.Kannan's case* as well as the *S.Arulmani case* and *L.Esakkiraj case*, are identical to the facts of the case in hand and bound by the judgments rendered by the equal strength, allow the writ appeal following the



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three judgments which is based on the dictum laid down by the Hon'ble Supreme Court in *Palure Bhaskar Rao Etc. Etc. v. P. Ramaseshaiah & Ors*, reported in (2017) 5 SCC 783.

13.We hold that the learned Single Judge has erred in allowing the writ of mandamus ignoring the consistent view of the Division Bench judgment , liable to be set aside.

14.As a result, the Writ Appeal is allowed and the order of the learned Single Judge is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

[G.J., J.] & [R.P., J.]
24.03.2025

NCC : Yes / No
Index : Yes / No



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To

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Department of School Education,
Fort, St.George,
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