
(2014) 09 MAD CK 0274

In the Madras High Court

Case No : Writ Petition No. 7980 of 2013

V. George William

APPELLANT

Vs

Director of School Education Chennai

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0274

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hariparanthaman, J.—The petitioner joined as a Secondary Grade Teacher at Vijayapuram District Board Elementary School on 05.08.1959. He was promoted as Headmaster of Primary School on 25.04.1960. He was again promoted as Headmaster of Middle School and was posted at Muthalipalam on 01.06.1962. The petitioner was transferred to Vijayapuram on 04.07.1963 as Headmaster of Middle School.

2. While the petitioner was working as Headmaster in the Panchayat Union Middle School at Vijayapuram, the said school was upgraded as High School on 19.08.1964 and the teachers, including the petitioner, were given option either to get absorbed in the High School service or to remain in the Panchayat Union service.

3. As far as Secondary Grade Teachers are concerned, there was no difficulty and they could be absorbed only as Secondary Grade Teacher and on absorption, they could not compare the erstwhile Secondary Grade Teacher in Panchayat Union School, who could have further chances of promotion as Primary School Headmaster and Middle School Headmaster.

4. As far as the case of the Headmaster of the Middle School is concerned, he will get pay protection, if he opted to go to High School service. It is as per the proceedings dated 15.06.1988 of the Commissioner and Secretary, School Education Department, Chennai. The said proceedings dated 15.06.1988 is

extracted hereunder:

Chennai 9. Commissioner and Secretary,
Educational Department, Chennai 6.

Copy of the letter sent to the Director of School Education

Lr. No. 76967F1/84 dt. 15.6.88

Sub: Elementary Education Panchayat union school, when upgraded as high school, fixing therapy of the middle school headmistress transferred to high school reg.

Ref: Your Lr. Na.Ka. No. 120455 P9 84 dt. 31.7.84 and 10.10.87

When upgrading the Panchayat Union middle school as High school, should not be called with another name when inducting the headmistress post in the Panchayat union middle school to high school and also without diminishing the pay of the teaching and non teaching staff of the school who are working in the middle school. It has been informed that the fixing of pay may be continued in proper manner when upgrading the Panchayat union middle school as Higher secondary school.

Sd. For Spl. Commissioner and Secretary

5. The petitioner herein got absorbed in High School service and he served in the V.K. Government Higher Secondary School, Tiruppur, as Secondary Grade Teacher up to 28.02.1997, the date of retirement, on reaching the age of superannuation.

6. The petitioner approached the Tamil Nadu State Administrative Tribunal by filing O.A. No. 6576/1995, while he was in service, claiming the benefits payable to the post of Headmaster of Middle School, as per the aforesaid proceedings dated 15.06.1988 of the Commissioner and Secretary, School Education Department, Chennai.

7. Along with the petitioner, other similarly situated persons also approached the Tamil Nadu State Administrative Tribunal. All those Original Applications were disposed of by a common order dated 12.07.2002 in O.A. Nos. 6576/1995 etc., batch and the said order is extracted hereunder:

These are the cases of middle school headmasters absorbed in High school as School Assistant. After their absorption, pay protection has been given. In similar circumstances, in OA Nos. 694, 740 of 1995 etc., and a batch of cases on 22-2-2002 I have passed an order as follows:

The petitioners should be given the same benefit as if they had continued as Headmasters, and consequential monetary benefits such as Selection Grade,

Special Grade, including increments etc., should be given to them till their retirement.

In the circumstances, the petitioners are entitled to some benefits. The petitioners shall be given selection grade and special grade including increments in the category of middle school headmasters, treating their service in High school as Headmaster in middle school.

8. It is not in dispute that the aforesaid order of the Tribunal attained finality. It is also a fact that the Tamil Nadu State Administrative Tribunal was abolished. In these circumstances, the petitioner made representations dated 18.09.2002 and 09.10.2006 to implement the order of the Tribunal, which attained finality.

9. Since there was no response, the petitioner approached this Court by filing W.P. No. 9846 of 2008 seeking to pass orders on his representations dated 18.09.2002 and 09.10.2006 in the light of the order dated 12.07.2002 in O.A. Nos. 6576/1995 etc., batch.

10. This Court by an order dated 01.12.2010 disposed of the writ petition viz. W.P. No. 9846 of 2008 with a direction to the first respondent therein to dispose of the petitioner's representations within a stipulated period.

11. Accordingly, the impugned order dated 24.03.2011 was passed by the first respondent. In the impugned order, the first respondent rejected the claim of the petitioner by relying on the judgment of the Honourable Supreme Court in *The Director of School Education and Another Vs. A.N. Kandaswamy and Another*, in *Director of School Education and Another Vs. A.N. Kandaswamy and Another*. The first respondent did not consider the order dated 12.07.2002 passed by the Tribunal in O.A. Nos. 6576/1995 etc., batch.

12. No counter affidavit is filed by the respondents. However, the learned Additional Government Pleader has made his submissions based on instructions. The learned Additional Government Pleader has submitted that since the impugned order was based on the judgment of the Supreme Court cited *supra*, the same shall be sustained.

13. Heard both sides.

14. The learned counsel for the petitioner has brought to my notice that I have considered the similar issue in the order dated 19.07.2012 in W.P. (MD) No. 1777 of 2007. In the said judgment, I have also considered the judgment of the Supreme Court referred to by the first respondent in the impugned order. In this regard, para 13 of the judgment dated 19.07.2012 in W.P. (MD) No. 1777 of 2007 is extracted hereunder:

13. The learned Special Government Pleader has heavily relied on the judgment of the Apex Court dated 29.10.1998 in C.A. No. 4582 of 1997 (*The Director of School Education and another Vs. A.N. Kandaswamy and another*). In my view, the said judgment is not applicable to the facts of this case. In the said case, a

Panchayat Union Middle School was upgraded as High School. A secondary grade teacher, who was serving in the Middle School, opted to get absorbed in the High school on its upgradation with effect from 28.10.1985. Some Junior teachers, who opted to continue in Panchayat Union service, got promoted as Primary School Headmasters from 01.06.1988. The Primary School Headmasters were given higher scale viz., 2000-3200 scale by G.O. Ms. No. 1381, Education Department dated 05.10.1990. Prior to 01.06.1988 the scale of pay of secondary grade teacher and the Primary School Headmaster was one and the same. The teacher, who opted to get absorbed in the High School service claimed 2000-3200 on the ground that his juniors were in receipt of the said scale. He approached the Tamil Nadu Administrative Tribunal and the Tribunal allowed his claim. Thereafter, the department took up the matter to the Apex Court. The Apex Court reversed the judgment of the Tribunal and held that after getting absorbed in the High School Service, the concerned teacher should not have compared himself with the teachers, who opted to continue in the Panchayat Union service. It is held that the service in Panchayat Union schools is a different service from that of the service in High School. It is also held that the teachers in Panchayat Union Schools are governed by different service rules.

15. That is, in the aforesaid judgment, I have made it very clear that the Secondary Grade Teachers, who got absorbed in the High School service could not compare them with the Secondary Grade Teachers in the erstwhile Panchayat Union and the absorbed Secondary Grade Teachers could not seek the pay of Primary School Headmaster or Middle School Headmaster on the ground that the juniors in the erstwhile Panchayat Union got promotion in Panchayat Union service. Once they opted to come under the High School service, they could not compare them with the juniors employed in the Panchayat Union service. The absorption was based on their option. They could have refused to come to High School service.

16. But in this case, the petitioner does not seek any pay on the ground that his juniors were getting more pay. He wanted only pay protection that was given to him as per the proceedings of the Commissioner and Secretary, School Education Department, as Headmaster of the Middle School. If no such pay protection is given, he could be reverted back to the post of Headmaster in Middle School in the erstwhile Panchayat Union. Once pay protection is given to him for the post of Middle School Headmaster, he should also be given Selection Grade/Special Grade and revision should also be given for the aforesaid post.

17. In fact, apart from the aforesaid order dated 19.07.2012 in W.P. (MD) No. 1777 of 2007, I have dealt with the aforesaid judgment of the Supreme Court in The Director of School Education and Another Vs. A.N. Kandaswamy and Another, , wherein also I have held that the Secondary Grade Teachers, who opted to come to High School Service either on their own or due to upgradation of the School, they could not compare them with the Teachers of the erstwhile Panchayat Union on their absorption into High School service.

18. Here, the petitioner does not make any comparison and he just wants pay protection as given under the proceedings of the Commissioner and Secretary, School Education Department and that the matter has also attained finality in view of the order dated 12.07.2002 in O.A. Nos. 6576/1995 etc., batch. Admittedly, the same was not questioned by way of writ proceedings before this Court. Hence, I am of the view that the impugned order is liable to be quashed.

19. Accordingly, the impugned order is quashed. Since the petitioner is entitled to pay and other Selection/Special Grade benefits attached to the post of Headmaster of Middle School, the first respondent is directed to pay monetary benefits accordingly, in tune with the order dated 12.07.2002 in O.A. Nos. 6576/1995 etc., batch by continuing to pay the scale of Middle School Headmaster and revision to that pay scale, if there is any revision, and also grant Selection/Special Grade pay and pay the arrears pursuant to the same, within a period of eight weeks from the date of receipt of a copy of this order. The first respondent is further directed to revise the pension of the petitioner accordingly, as per the aforesaid directions and pay arrears of pension and other terminal benefits within a period of eight weeks thereafter.

20. The writ petition is disposed of in the above terms. No costs.