

R. Subbian Vs The Director of Elementary Education, The District Elementary Education Officer, The Assistant Educational Officer and The Accountant General (A and E)

Court: Madras High Court (Madurai Bench)

Date of Decision: June 30, 2008

Hon'ble Judges: M. Venugopal, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: G.R. Swaminathan, for the Appellant; Pala. Ramasamy, Special Govt. Pleader for R.1 to R.3, for the Respondent

Final Decision: Allowed

Judgement

M. Venugopal, J.

This Writ Appeal is filed by the appellant/petitioner as against the order of the learned Single Judge of this Court dated

17.04.2007, passed in W.P. (MD) No. 10246 of 2006, in dismissing the writ petition.

2. The appellant/petitioner has filed W.P.(MD) No. 10246 of 2006, praying to issue a Writ of Mandamus directing the respondents to forthwith

pay the arrears due to the petitioner consequent to the issuance of the proceedings of the third respondent in Na.Ka. No. 3249/Aa2/05 dated

12.05.2006 and continue to pay the petitioner's pension in terms thereof.

3. The learned Single Judge has passed an order inter alia observing that the relief of awarding of Selection Grade and Special Grade to the

appellant/petitioner taking into account the services rendered by him in the feeder category, cannot be granted, since no Government Order or any

rule has been brought to the notice of the Court and further stated that if the relief sought for is granted, then the service of the lower category will

have to be taken into account for awarding Selection Grade and Special Grade in the promotional post i.e., Middle School Headmaster and as far

as the Selection Grade is concerned, one is eligible for Selection Grade after completion of ten years of service and one is eligible for Special

Grade after completion of twenty years of service in the post and that as per the averment made in the writ petition, the appellant/petitioner was

promoted as a Middle School Headmaster in the year 1992 and as per further averment in paragraph No. 2 of the affidavit, the appellant/petitioner

has attained the age of superannuation on 31.10.2000, i.e., the appellant/petitioner had not completed ten years of service in the post of Middle

School Headmaster as per the rule issued with regard to the award of Selection Grade and Special Grade and the appellant/petitioner is not

eligible either for Selection Grade or for Special Grade in the post of Middle School Headmaster and as far as the post of Middle School

Headmaster is concerned, unless the Government had issued any order for award of Selection Grade or Special Grade taking into account the

services rendered as the Secondary Grade Assistant, the appellant/petitioner is not eligible for the relief sought for" and resultantly, dismissed the

writ petition.

4. According to the learned Counsel for the appellant/petitioner, the learned Single Judge should not have gone into the issue of appellant's

entitlement for refixation of pay in the post of Middle School Headmaster for computation of pensionary benefits and that the principle of res

judicata applies to the case of the appellant/petitioner and that the learned Single Judge has not taken into consideration the fact that the order

dated 15.09.2005 passed in W.P. No. 29633 of 2005 wherein a direction was issued to implement the order passed by the Tamil Nadu

Administrative Tribunal in O.A. No. 3553 of 1997 in favour of the appellant/petitioner has become final and in similar cases, the Tamil Nadu

Administrative Tribunal's decision has been acted upon and denial of the similar relief to the appellant/petitioner is a clear case of discrimination

and therefore, prays for allowing the Writ Appeal to prevent aberration of justice.

5. It is to be pointed out that earlier the appellant/petitioner has moved the Tamil Nadu Administrative Tribunal in O.A. No. 3553 of 1997 arraying

the respondents 1 to 3 as parties, claiming a relief that his entire service, both as Headmaster and Secondary Grade Assistant should be taken into

account for the purpose of granting Selection Grade and Special Grade etc., and the Tamil Nadu Administrative Tribunal has allowed the said

O.A. No. 3553 of 1997 and batch, observing that "in similar circumstances in O.A. No. 1373 of 1996 etc., batch of cases dated 22.03.2002, the

claim of such similarly placed persons have been allowed and following the said decision and the reasoning therein, allowed the original

applications."

6. Since, in spite of the order of the Tribunal, the respondents have not implemented the same, the appellant/petitioner has filed W.P. No. 29633

of 2005 praying for an issuance of direction to the respondents therein who are the respondents 1 to 3 herein to implement the order of the Tamil

Nadu Administrative Tribunal passed in O.A. No. 3553 of 1997 in regard to the award of the Special Grade to him in the cadre of B.T. Grade

Middle School Headmaster service by reckoning their earlier entire service rendered in Elementary School Headmaster Cadre and the present

B.T. Grade Middle School Headmaster service with effect from 01.06.1988 and a learned Single Judge of this Court has allowed the same on

15.09.2005 directing the first respondent "to implement the order dated 17.04.2002 in O.A. No. 3553 of 1997 on the file of the Tamil Nadu

Administrative Tribunal strictly in accordance with its terms and in any event, not later than 30.11.2005".

7. It is to be pointed out that the order passed in O.A. No. 3553 of 1997 dated 09.04.2002 and the orders passed by this Court in W.P. No.

29633 of 2005 dated 15.09.2005 have become final and the same are binding on all the parties concerned.

8. It is not out of place to point out that the respondents 1 to 3 in the present appeal, are the respondents 1 to 3 in O.A. No. 3553 of 1997 and

also in W.P. No. 29633 of 2005. Moreover, in pursuance of the directions issued by this Court in W.P. No. 29633 of 2005, dated 15.09.2005,

the third respondent herein has issued the proceedings dated 12.05.2006 directing to include the appellant's Headmaster service in Elementary

School and to grant Selection Grade / Special Grade and to fix his pay and to receive the monetary benefits from 30.04.1992 to which he is

entitled to.

9. It appears that as per the Court orders, the third respondent has fixed the appellant/petitioner's entitlement. However, the fourth respondent

herein has filed a counter in the writ petition objecting to the claim of the appellant/petitioner stating that the appellant/petitioner was not a Middle

School Headmaster on 01.10.1970 and that he did not enjoy the scale protection allowed to those official who was officiating as Middle School

Headmasters on 01.10.1970, but was subsequently reverted as Secondary Grade Assistant or Primary School Headmaster and that he was

promoted as Middle School Headmaster on 30.04.1992, etc.

10. Even though the fourth respondent herein is not a party to O.A. No. 3553 of 1997 and W.P. No. 29633 of 2005, yet the fourth respondent

has not assailed the correctness of the orders passed in O.A. No. 3553 of 1997 and in W.P. No. 29633 of 2005 etc, after coming to know of the

same. As has already been adverted to supra, the said orders passed by the Tribunal and the learned Single Judge of this Court have reached

finality.

11. The learned Counsel for the appellant/petitioner brings it to the notice of this Court that in W.P. Nos. 39201 and 39202 and 39244 to 39249

of 2004, filed by G. Mani and others, praying to implement the order of the Tamil Nadu Administrative Tribunal, Chennai, in O.A. No. 9002 of

1998 and batch, dated 17.04.2002 to award Special Grade to them in the cadre of B.T. Middle School Headmaster etc., this Court has passed

an order on 31.12.2004 inter alia directing the first respondent to implement the order of the Tribunal dated 17.04.2002 within a period of sixteen

weeks from the date of receipt of a copy of the order, if there is no other legal impediments. Therefore, it is quite clear that the matter has reached

finality.

12. The prayer of the appellant/petitioner in the writ petition is only to direct the respondents to forthwith pay the arrears due to him, consequent to

the issuance of the proceedings of the third respondent in Na.Ka. No. 3249/Aa2/05 dated 12.05.2006 and continue to pay the petitioner's

pension accordingly.

13. A perusal of the third respondent's order dated 12.05.2006 clearly indicates that as per the order passed in W.P. No. 29633 of 2005 dated

15.09.2005, the appellant/petitioner's Headmaster Service in Elementary School has been directed to be calculated and to grant him Selection

Grade/Special Grade in the Middle School Headmaster position and to fix his salary etc.

14. When the order passed in O.A. No. 3553 of 1997 and the order passed in W.P. No. 29633 of 2005 dated 15.09.2005 etc, have become

final and more so, when the third respondent has passed the order in Na.Ka. No. 3249/Aa2/05 dated 12.05.2006, pursuant to the above said

orders of the Tribunal and the learned Single Judge of this Court and when the appellant/petitioner's prayer in the writ petition is only to direct the

respondents to pay him the arrears consequent to the issuance of the proceedings of the third respondent in Na.Ka. No. 3249/Aa2/05 dated

12.05.2006, then we are of the considered opinion that it is not open to the learned Single Judge to go into the merits of the matter in detail which

were already discussed in the earlier round of litigation and reached finality and to dismiss the writ petition ultimately assigning reasons therefor.

15. In fact, the orders passed in O.A. No. 3553 of 1997 and the order passed in W.P. No. 29633 of 2005 which have attained finality, cannot be

reopened and the principle of res judicata squarely applies to the facts of the present case.

16. In the light of the above discussions and on an overall assessment of the facts and circumstances of the present case, in an integral fashion, we

come to the inevitable conclusion that the order passed by the learned Single Judge in W.P (MD) No. 10246 of 2006 dated 17.04.2007, is not

correct and valid in law and allow the writ appeal in furtherance of substantial cause of justice. Resultantly, the order passed by the learned Single

Judge in W.P(MD) No. 10246 of 2006 dated 17.04.2007, is set aside and consequently, W.P. No. 10246 of 2006 stands allowed. However,

the parties are directed to bear their own costs.