



W.P.(MD) No.21885 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 04.08.2023

ORDERS PRONOUNCED ON : 10.08.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.21885 of 2016

and

W.M.P.(MD) Nos.15637 and 15638 of 2016

and W.M.P.(MD) No.6644 of 2017

A.Amaladas

... Petitioner

Vs.

1.The Director of Elementary Education,
College Road, Chennai-6.

2.The District Elementary Educational Officer,
Dindigul, Dindigul District.

3.The Additional Assistant Elementary
Educational Officer,
Natham Union, Dindigul District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records relating to the impugned proceedings of the 1st respondent herein in Na.Ka.No. 16907/E1/2016 dated 11.08.2016 and consequential impugned order of the



W.P.(MD) No.21885 of 2016

3rd respondent in Na.Ka.No.494/A2/15 dated 23.08.2016 and quash the same.

For Petitioner : Mr.T.Pon Ram Kumar
For Respondent : Mr.V.Nirmal Kumar
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the record.

2. Learned counsel for the petitioner submits that the petitioner was appointed as Secondary Grade Teacher on 27.09.1996 in the Panchayat Union Elementary School, Therku Puthuvayal, Thirumayam Union, Pudukkottai District. On 18.03.1997, he was transferred to Natham Union, Dindigul District. On 30.06.2006, he was promoted as Headmaster in Panchayat Union Primary School, Pillayar Natampudur, Natham Union, Dindigul District. The scale of pay for the post of Primary School Headmaster in VI-Pay Commission is Rs.9,300-34,800-4,800. One



W.P.(MD) No.21885 of 2016

Mrs.P.Mallika was appointed on 21.07.1997, i.e., junior to the petitioner as Secondary Grade Teacher in Natham Union and after completion of 10 years of service, she was awarded Selection Grade. Subsequently, she was promoted as Primary School Headmaster. By virtue of award in Selection Grade pay in the cadre of Secondary Grade Teacher post, the said Mrs.P.Malliga is getting higher pay than the petitioner in the cadre of Primary School Headmaster.

3. Learned counsel further submits that in view of the same, the petitioner made a representation to the respondents requesting to re-fix the scale of pay on par with that of his junior. On 05.08.2015, the 3rd respondent issued proceedings rectifying the pay parity and re-fixed the pay of the petitioner on par with his junior by following Rule 5(3) and Rule 7(iii) of the Tamil Nadu Revised Scales of Pay Rules, 2009 and the clarifications issued by the Government. Accordingly, the pay of the petitioner has been fixed on par with his junior with effect from the date on which the difference occurred, i.e., 25.07.2007.



W.P.(MD) No.21885 of 2016

WEB COPY

4. Learned counsel for the petitioner further contends that the 1st respondent herein without applying his mind or without referring earlier G.O.Ms.No.710, dated 23.09.1994 or the Tamil Nadu Revised Scales of Pay Rules, 2009 and other relevant Government Orders, issued the impugned order in Na.Ka.No.16907/E1/2016, dated 11.08.2016 stating that as per G.O.Ms.No.320, dated 02.04.1990, the District Elementary Educational Officer is the competent authority to rectify the pay parity between the senior and junior and each Panchayat Union is a separate union and pay parity between the senior and junior may be set right by stepping up on par with junior by comparing the person who has worked in the union only. Based on the directions of the 1st respondent, without application of mind or without affording opportunity to the petitioner, the 3rd respondent herein issued the impugned proceedings in Na.Ka.No.494/A2/15, dated 23.08.2016 cancelling the pay fixation order and directed to recover the excess amount and refixation of salary. Under these circumstances, being left with no other option, the petitioner is constrained to file this writ petition.



W.P.(MD) No.21885 of 2016

WEB COPY

5. On the other hand, the learned Government Advocate basing on the averments made in the counter affidavit filed by the respondents, would submit that the petitioner was initially appointed as Secondary Grade Teacher on 27.09.1996 in Panchayat Union Elementary School, Therku Puduvayal, Thirumayam Union, Pudukkottai District. Then he was transferred to the present Natham Union on 18.03.1997. The learned Government Advocate contends that the petitioner cannot compare a person, who has been appointed in a separate unit on appointment. The Teachers appointed in the same union can get the benefit of fixation of pay on par with their juniors. The concept of fixation of pay on par with the juniors does not apply to those who have been initially appointed in one union and transferred to another. In the instant case, the petitioner, being appointed in Thirumayam Union and subsequently came on transfer to Natham Union on his willingness, cannot compare to a Teacher already working in Natham Union, as his conditions of service being appointed in a separate union differs.



W.P.(MD) No.21885 of 2016

WEB COPY

6. The learned Government Advocate further submits that the appointment authorities can take remedial measures to set right the mistakes occurred for which no prior notice is issued. All the fixations of pay are subject to further audit and rectification and accordingly, the learned Government Advocate sought to dismiss the writ petition.

7. Learned counsel for the petitioner has placed reliance on the judgment of a Division Bench of this Court in ***Chief Educational Officer, Villupuram Vs P.Kumarasamy Pillai*** reported in ***(2017) 2 CWC 617***; an order of this Court in W.P.(MD) No.742 of 2018, dated 07.02.2018; an order in W.P.(MD) No.8046 of 2018, dated 24.04.2018; an order in W.P.(MD) No. 4231 of 2019, dated 13.03.2019; a judgment in W.A.(MD) No.1220 of 2019, dated 14.11.2019; an order in W.P.(MD) No.11427 of 2015, dated 23.04.2019; a judgment in W.A.(MD) No.829 of 2021, dated 15.04.2021; an order in W.P.No.34455 of 2019, dated 06.01.2020; a judgment in W.A.No. 178 of 2021, dated 18.03.2021; and an order in W.P.No.10424 of 2006, dated 03.04.2019.



W.P.(MD) No.21885 of 2016

WEB COPY

8. Having heard the submissions of the respective counsels and on perusal of the material available on record and the reliances placed by the learned counsel for the petitioner, it appears in the present writ petition that there is no dispute with regard to the admitted facts of the case.

9. The only issue to be considered is whether the petitioner is entitled for pay on par with his junior or not.

10. Admittedly, the petitioner was appointed as Secondary Grade Teacher in Thirumayam Union, Pudukkottai District and later, he was transferred to Natham Union of Dindigul District. The contention of the respondents is that as the petitioner came to the Natham Union on transfer, he cannot insist for pay equivalent to the persons originally appointed in Natham Union, though they are juniors to the petitioner.

11. In fact, the issue is squarely covered by the various orders and judgments of learned Single Judges and Division Benches as mentioned



W.P.(MD) No.21885 of 2016

above. In one of the writ petitions in W.P.(MD) No.742 of 2018, dated 07.02.2018, wherein in identical circumstances, at Paragraph No.5, it has been held as under:

“5. The first respondent has proceeded on the footing that since the petitioner got transferred from Pudukottai to Kayathar Union, it is not possible to set right the pay anomaly. The reason assigned by the first respondent in the impugned order is un-sustainable in law. Even though the writ petitioner came to Kayathar Union by way of transfer and has to be placed at the bottom of the seniority list, the fact remains that the Shanthi got appointment as Secondary Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthi could have stolen a march over the petitioner. The order impugned in this writ petition is quashed. The respondents are directed to set right the pay anomaly and step-up the pay of the petitioner on par with said Shanthi. Such an order shall be issued by the respondents within a period of eight weeks.”



W.P.(MD) No.21885 of 2016

WEB COPY

12. In view of the facts and circumstances of the case and on consideration of various orders passed by this Court, in the considered opinion of this Court, the impugned order passed by the 1st respondent and the consequential order passed by the 3rd respondent are liable to be set aside.

13. Accordingly, this Writ Petition is allowed with the following directions:

- i. The impugned order dated 11.08.2016 passed by the 1st respondent and the consequential order dated 23.08.2016 of the 3rd respondent are hereby set aside;
- ii. The matter is remitted back to the respondents for passing appropriate orders afresh in the light of the orders referred to above;
- iii. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order;



W.P.(MD) No.21885 of 2016

WEB COPY

iv. No costs; and

v. Connected miscellaneous petitions are closed.

10.08.2023

Note: Issue order copy by 14.08.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

abr



WEB COPY



W.P.(MD) No.21885 of 2016

To

- 1.The Director of Elementary Education,
College Road, Chennai-6.
- 2.The District Elementary Educational Officer,
Dindigul, Dindigul District.
- 3.The Additional Assistant Elementary
Educational Officer,
Natham Union, Dindigul District.



WEB COPY



W.P.(MD) No.21885 of 2016

BATTU DEVANAND, J.

abr

Pre-delivery Order made in
W.P.(MD) No.21885 of 2016

10.08.2023