

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 12580 of 2007 (V)

PETITIONER(S) :

P.K.JAYASREE, AGED 42 YEARS,
W/O.T.NARAYANAN KUTTY, H.S.A SOCIAL STUDIES,
CHALAVARA HIGHER SECONDARY SCHOOL, P.O.CHALAVARA,
PALAKKAD DISTRICT, PERMANENTLY RESIDING AT VYSAKH,
CHALAVARA P.O., PALAKKAD DISTRICT, PIN - 679 505.

BY ADVS.SRI.P.T.DINESH
SMT.SUSMITHA P.MALLAYA

RESPONDENT(S) :

1. STATE OF KERALA REPRESENTED BY
THE PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.
4. THE DISTRICT EDUCATIONAL OFFICER,
OTTAPALAM, PALAKKAD DISTRICT.

BY SR.GOVERNMENT PLEADER SRI.ABDUL KHADIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE RELEVANT PART OF THE G.O.(P)NO.3000/98/FIN. DATED 25.11.1998.
- EXHIBIT P2: TRUE COPY OF THE FIXATION OF PAY ORDER NO.B6/4749/2003 DATED 03.01.2004.
- EXHIBIT P3: TRUE COPY OF THE FIXATION OF PAY ORDER NO.B6/4749/2003 DATED 03.01.2004 BY THE FOURTH RESPONDENT.
- EXHIBIT P4: TRUE COPY OF THE COMPARITIVE STATEMENT OF THE FIXATION OF PAY OF THE PETITIONER WITH P.K.JAYASREE (NO.2).
- EXHIBIT P5: TRUE COPY OF THE ORDER NO.B6/431/03 DATED 24.03.2003 BY THE 4TH RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE REPRESENTATION DATED 26.01.2004 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P7: TRUE COPY OF THE COVERING LETTER NO.18/04/CVA/HSS DATED 29.01.2004 BY THE PRINCIPAL TO THE 4TH RESPONDENT.
- EXHIBIT P8: TRUE COPY OF THE ORDER NO.DIS/B6/896/04 DATED 19.02.2004 BY THE 4TH RESPONDENT.
- EXHIBIT P9: TRUE COPY OF THE REVISION DATED 18.11.2004 FILED BY THE PETITIONER BEFORE THE GOVERNMENT OF KERALA.
- EXHIBIT P10: TRUE COPY OF THE ORDER NO.D5/3943/05 DATED 03.10.2005 BY THE 3RD RESPONDENT.
- EXHIBIT P11: TRUE COPY OF THE LETTER NO.D5/3943/2005 DATED 14.01.2006 SUBMITTED BY THE 3RD RESPONDENT TO THE SECOND RESPONDENT.
- EXHIBIT P12: TRUE COPY OF THE OBJECTION DATED 26.02.2006 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT WITH A COPY TO THE FIRST RESPONDENT.
- EXHIBIT P13: TRUE COPY OF THE JUDGMENT DATED 24.03.2006 IN W.P.(C).NO.8918 OF 2006.
- EXHIBIT P14: TRUE COPY OF THE G.O.(RT)NO.4490/06 DATED 16.10.2006 BY THE FIRST RESPONDENT IS PRODUCED.
- EXHIBIT P15: TRUE COPY OF THE G.O.(P)NO.296/2006/FIN DATED 14.07.2006 BY THE FINANCE DEPARTMENT, GOVERNMENT OF KERALA.

WP(C).No. 12580 of 2007 (V)

RESPONDENT(S)' EXHIBITS

**EXHIBIT P16: TRUE COPY OF THE SERVICE CERTIFICATE DATED 28.08.2009 BY
THE HEAD MISTRESS, CHALAVARA HIGHER SECONDARY SCHOOL
ISSUED TO THE SENIOR.**

**EXHIBIT P16(A): TRUE COPY OF THE SERVICE CERTIFICATE DATED 28.08.2009 BY
THE HEADMISTRESS, CHALAVARA HIGHER SECONDARY SCHOOL
ISSUED TO THE JUNIOR.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K. SURENDRA MOHAN,J.

W.P(C) NO. 12580 OF 2007

Dated this the 20th January, 2015.

JUDGMENT

The petitioner is working as a High School Assistant ('HSA' for short) in Social Studies in Chalavara Higher Secondary School, Palakkad district. Her complaint is that, her junior who is also working as an HSA is being paid higher salary. Therefore, she is being discriminated.

2. The petitioner was appointed as an Upper Primary School Assistant ('UPSA' for short). She was promoted as an HSA on 30.9.1993. On 1.3.1997 as per Ext.P1, a revision of pay was implemented. On 23.7.2001, her junior Smt.P.K.Jayasree (both the petitioner and her junior have the same name) who was also a UPSA was promoted as an HSA . Her promotion was later on shifted to a vacant post, with effect from 7.6.2000. Meanwhile, as a result of the

implementation of pay revision as per Ext.P1, the salary of a higher grade UPSA had been revised. Therefore, upon her promotion the petitioner's junior started drawing a pay higher than that of the petitioner. The petitioner's junior started drawing a higher pay with effect from 1.8.2000. Exts.P2 and P3 are the orders fixing the pay of the petitioner as well as the junior. Ext.P4 is a statement showing the comparative salary of the petitioner and her junior.

3. In view of the above anomaly the petitioner submitted Ext.P6 representation to the fourth respondent. However, the representation was rejected without stating any reasons. Therefore, the petitioner sought reconsideration of the said order by submitting Ext.P6, a fresh representation. However, the same was also not considered. Therefore, she preferred Ext.P9 revision to the Government. However, the revision has also been rejected by Ext.P14.

4. According to Mr.Dinesh P.T who appears for the petitioner both the petitioner as well as her junior were

working as UPSA's teaching the same subject. They were both promoted as HSA's though on different dates. They discharge the same duties. The petitioner is admittedly senior but she is drawing a lesser pay than her junior, though in Ext.P14, it is stated that the same was only a temporary phenomenon. Reliance is placed on Exts.P16 and P16(a) service certificates to contend that even to this date the petitioner's junior is drawing a higher pay. Therefore, it is contended that the same is discriminatory. The counsel places reliance on the decisions of the Apex Court as well as this Hon'ble Court to contend that the stand adopted by the respondents in refusing to correct the anomaly results in violation of the principle of equality enshrined in Art.14 of the Constitution. The counsel therefore seeks the issue of appropriate directions for rectification of the anomaly.

5. A counter affidavit has been filed on behalf of the first respondent. The stand taken by the first respondent is that, the petitioner as well as her junior belonged to different

categories. Her junior had got the benefit that was granted to a primary teacher Gr.I. Since the petitioner as well as her junior were not of the same category it is contended that she is not entitled to claim the benefit of stepping up of pay as envisaged by Ext.P1. Therefore, it is contended that the writ petition is only to be dismissed.

6. Heard. There is no dispute regarding the facts. The petitioner was promoted as HSA on 30.9.1993 before the date of Ext.P1. Her junior was also similarly promoted on 23.7.2001. Later on, the date of her promotion has been shifted to 7.6.2000. Both of them are HSAs in Social Studies. Therefore, it is clear that, they are both discharging the same duties as HSAs. There is no dispute that the petitioner is the senior. Ext.P4 as well as Exts.P16 and P16(a) show that the petitioner's junior is drawing a higher pay than her. Provision has been made in Ext.P1 for setting right, such anomalies. Rule 6 of Ext.P1 reads as follows:–

“6. In cases, where a senior Government servant

promoted to a higher post before 1.3.1997 draws less pay in the revised scale than his junior promoted to the higher post after 1.3.1997, the pay of the senior employee shall be stepped up to the level of the pay of the junior with effect from date on which the junior draws more pay, provided that:-

i) the senior and the junior employees should belong to the same category and should have been promoted to the same category of post;

ii) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

iii) the senior Government servant at the time of promotion have been drawing equal or more pay than the junior;

iv) the anomaly should have arisen directly as a result of the introduction of the revised scale of pay.

Note:-(1) If in the lower post the junior employee was drawing more pay in the pre-revised scale than the senior by virtue of any advance increment granted to him, the senior to such junior have no claim over the pay of the junior.

(2) In case where the pay of an employee is stepped up in terms of clause 6 above, the next

increment shall be granted after completing the required qualifying service for the next increment.”

As already noticed above, the petitioner as well as her junior were both working as UPSA's drawing the same salary. It was in such circumstances that the petitioner was promoted as an HSA on 30.9.1993. The petitioner's junior was promoted on 23.7.2001, with effect from 7.6.2000. However, it was during the interregnum period that the pay revision was implemented in accordance with Ext.P1. The anomaly that has arisen in the present case is due to the implementation of Ext.P1 pay revision, which entitled the petitioner's junior to draw a higher pay as an HSA. Until the introduction of Ext.P1, the scale of pay of a higher grade UPSA and an HSA were the same. It is the change in the pay of HSA that has created an anomaly. Therefore this is a case in which the petitioner was entitled to a stepping up of her pay in accordance with the provisions of Ext.P1 extracted above.

7. The counsel for the petitioner has placed reliance on

the decision of Union of India and others v. P.Jagdish [(1997) 3SCC 176] and Kamala Devi v. Kerala State Financial Enterprises Ltd. [2002(1)KLT 157] to contend that, the grant of a higher pay to the petitioner's junior is per se discriminatory and violative of Art.14 of the Constitution. As already noticed above, the petitioner's junior though working in the same cadre of HSA and discharging identical duties was drawing a higher pay than the petitioner who is her senior from 1.8.2000 onwards. The same is discriminatory and violative of Art.14 of the Constitution. In the above view of the matter, Ext.P14 cannot be sustained. The petitioner is also entitled to have her salary stepped up to that of her junior with effect from 1.8.2000 onwards.

In view of the above this writ petition is allowed. Ext.P14 is set aside. The respondents are directed to grant to the petitioner the benefits of stepping up of her salary to that of her junior Smt. P.K.Jayasree and to pay all the arrears due to her computed on the basis of such stepping up. Such arrears

shall be paid as expeditiously as possible and at any rate within a period of four months of the date of receipt of a copy of this judgment.

Sd/-
K. SURENDRA MOHAN
Judge

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/True copy/

