



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal (MD) No.1301 of 2014 and
MP (MD) No.2 of 2014

- 1.State Rep by its
The Chief Secretary,
Secretariat, Chennai.
- 2.The Secretary, Finance Department,
Secretariat, Chennai.
- 3.The Secretary, Personnel
Administration and Reforms Department,
Secretariat, Chennai.
- 4.The Secretary, School Education Department,
Secretariat, Chennai.
- 5.The Director of Elementary Education,
DPI Campus, College Road, Chennai 6. ... Appellants
Vs.
K.James ... Respondent

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 03.06.2014 made in W.P.(MD)No.11332 of 2011.

Prayer in WP(MD)No.11332/2011: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the relevant portion relating to the pay scale of the Middle School Headmaster in G.O.Ms.No.23 Finance (PC) Department dated 12.01.2011, and quash the same as inappropriate one and consequently direct the Respondents to revise the pay scale of the petitioner (A.E.E.O) . (Prayer amended vide court order dt.26/03/2012 in MP.2/2012)

For Appellants

: Mr.V.R.Shanmuganathan,
Special Government Pleader.

<https://hcservices.ecourts.gov.in/hcservices/> For Respondent

: Mr.R.Lakhshmanan

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN,J)

The writ appeal filed by the State is directed against the order of the learned Judge setting aside one portion of the Government Order in G.O.Ms.No.23 Finance (PC) Department, dated 12.01.2011 insofar as it relates to the fixation of pay scale of Middle School Headmaster is concerned.

2.Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.R.Lakshmanan, learned counsel appearing for the respondent.

3.The respondent herein was appointed as a Secondary Grade Teacher. He was later promoted as Headmaster of a Primary School. During the said period, the respondent acquired an under graduate degree and also a bachelor degree in education. Therefore, he was promoted as Middle School Headmaster.

4.The post of Middle School Headmaster belongs to a category which is interchangeable with the post of Assistant Elementary Educational Officer which is on the administrative side. The appointment to the post of Assistant Elementary Educational Officer is by two methods. One is by way of direct recruitment. The second is by transfer of persons holding the post of Middle School Headmaster. After the implementation of the recommendations of the 6th Pay Commission under G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009, the scale of pay of the posts of Primary School Headmasters, Graduate Assistants, Middle School Headmasters, Assistant Elementary Educational Officers and Office Superintendents were revised with effect from 01.01.2006. The revised scales of pay of all these posts are as follows:-

"The scale of Pay as per 6th Pay Commission with effect from 01.01.2006

	Grade Pay
1.Primary School Headmaster	Rs.9300-34800-4500
2.Graduate Assistant	Rs.9300-34800-4600
3.Middle School Headmaster	Rs.9300-34800-4700
4.Asst.Elementary Edu.Officer	Rs.9300-34800-4700
5.Office Superintendent in (AEEO)	Rs.9300-34800-4800"

5.After the respondent herein was transferred and posted as Assistant Elementary Educational Officer on 29.03.2008, the respondent found that he was given a scale of pay of Rs.9300-34800 with grade pay of Rs.4700/-. According to the respondent, the Assistant Elementary Educational Officer is the captain of a ship



and that after his transfer, he found that a person working in the post of Superintendent which is a subordinate post to the post of Assistant Elementary Educational Officer, who given a scale of pay of Rs.9300-34800 with a grade pay of Rs.4800/-.

6. Therefore, the respondent came up with a writ petition in W.P(MD)No.11332 of 2011 seeking to set aside that portion of the Government Order in G.O.Ms.No.23 Finance (Pay Cell) Department dated 12.01.2011 whereby the grade pay of the post of Assistant Elementary Educational Officer was fixed as Rs.4700/- and for a consequential mandamus to direct the appellants to revise the pay scale of the post of Assistant Elementary Educational Officer.

7. That writ petition was allowed by the learned Judge of this Court by an order dated 03.06.2014. Aggrieved by the said order, the State has come up with the above appeal.

8. The main grievance of the State is that the posts on the teaching side follow a particular stream while the posts on the administrative side follow a different stream. When there are two separate streams containing various posts, the mere interchangeability of one post in a stream to another post in another stream would not according to the appellants lead to pay anomaly, enabling such a person to come up before Court and seek a mandamus.

9. The sum and substance of the grievance of the appellant is that the Tamil Nadu Ministerial Service which is governed by separate set of rules issued in terms of the proviso to Article 309 of the Constitution comprise of several posts such as Junior Assistants, Assistants, Desk Superintendents and Superintendents etc., Insofar as the Department of School Education is concerned, the post of Superintendent is a feeder category to the post of Personal Assistant to the District Educational Officer which post itself is the feeder category to the post of Burzor. Therefore, the case of the appellants is that the post of Superintendent is on the ministerial side at a particular stage in a hierarchy that has nothing to do with the educational side.

10. On the other hand, the post of Middle School Headmaster is actually a stream which belongs to teaching side. The Middle School Headmaster is entitled to be promoted next to the post of High School Headmaster. He also has the option of going on to the administrative side by becoming an Assistant Elementary Educational Officer after which he can perhaps opt for the post of District Educational Officer also.

11. What the learned Judge has done is that on the application of the first principle, learned Judge thought that a person working in a lower post in the same office, cannot draw more pay than a person working in the same office as his superior. But that is not the rationale on the basis on which pay anomalies



could be sought to be rectified. Even in cases relating to the application of Article 39(d) for the claim of equal pay for equal work, the Supreme Court has repeatedly held that no two posts are comparable. Therefore, these kind of anomalies are not anomalies that fall within the purview of a Court's consideration.

WEB COPY

12.The contention of Mr.R.Laxmanan, learned counsel for the respondent is that when similar pay anomalies occurred in the case of persons working in jail between Jailor and the Superintendent with the former coming from the Tamil Nadu Jail Service and the latter coming from the Tamil Nadu Ministerial Service, the Government was directed to equalise the pay scales and they passed orders in G.O.Ms.No.67, Finance Department dated 26.02.2011. Therefore, it is his contention that the same logic would apply.

13.But the case on hand is not comparable to the case of a Jailor and the Superintendent. There, there are no two streams where interchangeability is there. Though it is contended by the learned counsel for the respondent that once two posts are interchangeable, the terms and conditions of service as well as the qualifications for both posts should continue to be the same, we do not think so. There are any number of posts which belong to different streams in the Government service. But certain posts require certain qualifications. Therefore, after a post is included in a particular stream, the interchangeability would depend upon the fulfilment of necessary qualification.

14.Admittedly, even in the case of Middle School Headmaster, he cannot be transferred and posted as Assistant Elementary Educational Officer unless he has passed certain departmental tests, such as accounts test for subordinate officers, District Office Manual Test-Part I and other tests.

15.Merely because of the requirement to acquire additional qualifications in the form of departmental tests, the persons seeking such a transfer and getting posted to that post, cannot also claim that the post should be given a higher pay scale.

16.As a matter of fact, there is no compulsion for a Middle School Headmaster to opt to go to other stream at all. The post of Assistant Elementary Educational Officer is filled up admittedly based upon the fulfilment of the additional qualifications and also it is done only from among the senior most persons who are willing to go there.

17.When the interchangeability of the post depends upon the option exercised by the individual concerned, it is always open to the individuals not to exercise the option to go to a post on the ground that the post does not carry a scale of pay that befits the status of that post.



18.It could be seen from the facts of the case on hand that the respondent herein was promoted as Middle School Headmaster and while he was working he was transferred and posted as Assistant Elementary Educational Officer on 25.03.2008.

WEB COPY

19.The recommendations of the 6th Pay Commission were implemented by G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 but with effect from 01.01.2006. We do not know what was the pay scale of the post of Assistant Elementary Educational Officer on 25.03.2008 and what was the pay scale of the post of Superintendent on that date. If the anomaly that the respondent had pointed out, was in existence, even on the date of his transfer namely on 25.03.2008, he has accepted such anomaly and gone there. If the anomaly has arisen only as a result of the revision made on the recommendations of the 6th Pay Commission, then it is only for the Pay Anomaly Commission to rectify the same.

20.The contention that a superior in a Government Office should draw at least one rupee more than that of his subordinate is based upon sound commonsense but unfortunately, commonsense has no role to play in the matter of pay fixation. A newly recruited officer of the Indian Administrative Service who joins as Sub Collector or Assistant Collector always draws a lesser pay than the person who has put in 30 years of service and reached the post of Tahsildar or Revenue Divisional Officer. Therefore, on the basis of commonsense approach, such pay anomalies cannot be brought within the domain of the Court to interfere.

21.After having exercised the option to switch over to the administrative stream, knowing fully well the existence of pay anomaly, it was not open to the respondent to seek to set aside the Government Order. Therefore, we are of the considered view that the relief granted by the learned Judge with a positive mandamus, to fix the Assistant Elementary Educational Officer's grade pay over and above that of the post of Superintendent could not have been issued. Hence, the writ appeal is allowed and the order of the learned Judge is set aside and the writ petition is dismissed.

22.If any Pay Anomalies Commission has taken note of the existence of such pay anomaly and if the Government had passed an order in such cases, the present order allowing the writ appeal and dismissing the writ petition will not stand in the way of the respondent getting such benefit. No costs. Consequently, M.P(MD) Nos.2 of 2014 is closed.

Sd/-

Assistant Registrar(Crl.Side)



To

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.

WEB COPY

- 2.The Secretary, Finance Department,
Secretariat, Chennai.
- 3.The Secretary, Personnel
Administration and Reforms Department,
Secretariat, Chennai.
- 4.The Secretary, School Education Department,
Secretariat, Chennai.
- 5.The Director of Elementary Education,
DPI Campus, College Road, Chennai 6.

+One cc to The Special Government Pleader, SR.No.64687
+2cc to Mr.R.Lakhshmanan, Advocate, SR.No.64418

sms

RL/9c/NGM/SS/23/11/2015

Writ Appeal(MD) No.1301 of 2014

02.11.2015