

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Appeal No.174 of 2011

The Chief Educational Officer
Villupuram, Villupuram District Appellant

vs.

P.Kumarasamy Pillai Respondent

Writ Appeal filed under clause 15 of the Letters Patent against the order of this writ court dated 16.09.2009 made in W.P.No.11623 of 2007.

Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.1488 of 2002 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for the records relating to the impugned order of the Respondent in O.Mu.No.952/Aa-2/2001 dt 2.6.2001 and quash the same and direct the respondent to fix the pay of the applicant on par with his junior Mr.E.Elumalai and grant him all consequential benefits.

For Appellant : Mr.V.Anandamurthy
Additional Government Pleader

For Respondent : Mr.P.Rajendran

JUDGMENT

(delivered by S.MANIKUMAR, J)

Challenge in this writ appeal is to an order dated 16.09.2009 made in W.P.No.11623 of 2007, by which, the writ court, quashed the order dated 02.06.2001 of the Chief Educational Officer, Villupuram, Villupuram District and consequently, directed him to fix the pay of the respondent, on par with that of his junior Mr.E.Elumalai and grant all consequential benefits.

2. Facts leading to the writ appeal are that the respondent was initially appointed as Secondary Grade teacher on 05.11.1982 in

Cuddalore District. While he was working as Secondary Grade Teacher in Government Girls Higher Secondary School, Manalurpet, Villupuram, he was promoted as Tamil Pandit in 1998. He was allowed one incentive increment (two advance increments) with effect from 29.09.1991 for acquiring B.Ed., qualification. He was also allowed one more incentive increment (two advance increments), for acquiring M.Ed., with effect from 01.06.1994, before the introduction of V Pay Commission report.

3. In the meantime, his junior Mr.E.Elumalai, was allowed one incentive increment (two advance increments) with effect from 16.03.1990 for acquiring B.Ed., qualification. He was also allowed one more incentive increment (two advance increments) for acquiring M.A. qualification, with effect from 29.05.1996.

4. When the Head Master of the Government Higher Secondary School, Sithalingamadam, vide letter dated 27.12.2000, sent a proposal for rectification of pay anomaly between the respondent P.Kuamarasamy Pillai, senior in the cadre of Secondary Grade Assistant with that of Mr.E.Elumalai, his junior, based on the clarifications issued by the Director of School Education, Chennai-6, vide letter dated 03.01.2000, the Chief Educational Officer, Villupuram has rejected the proposal on 02.06.2001, which reads as under:

Proceedings of the Chief Educational Officer, Villupuram
O.Mu.No.952/B2/2001 dt.02.06.2001

Sub: Tamilnadu Educational Subordinate Service-pay
anomaly
between senior and junior Thiru.P.Kumarasampillai,
Govt.Hr.Sec. School, Sithalingamadam - Reg.

Ref: 1)Lr.dt.27.12.2000 of the Headmaster Govt. Hr. Sec.
School, Sithalingamadam

2) Proceedings D.Dis No.051162/L3/98 dt.3.1.2000 of
the Director of School Education, Chennai 6

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As per the reference cited first above, the proposals for the rectification of the pay anomaly between senior and junior is received. It is found that the senior Thiru.P.Kumarasampillai, who is senior in the cadre of Secondary Grade Assistant had got incentive increment for B.Ed from 29.9.91 later he had also got another incentive for the higher qualification of M.Ed from 1.6.94.

The Junior Thiru.K.Elumalai had got incentive increment for the higher qualification of B.Ed from

16.3.90 and another incentive increment for M.A from 29.5.96.

In the reference second cited above, it is clarified that the pay anomaly cannot be rectified if the grant of incentive increment is made to the senior and junior for the different higher qualification. On the contrary the pay anomaly can be rectified if both the senior and junior had been granted incentive increment for the same higher qualification. The senior had got incentive increment for M.Ed. higher qualification and on the other hand the junior who is junior in the post of Secondary Grade Assistant had got incentive increment for M.A. degree. Hence it is informed that the proposals for the rectification of pay anomaly between senior and junior received in the above reference first cited cannot be rectified with reference to the proceedings of the Director of School Education second cited.

Encl: Proposals with SR-Two Vols.

Sd/-xxxx
Chief Educational Officer
Villupuram

To
Headmaster
Government Higher Secondary School
Sithalingamadam

5. Being aggrieved by the same, the first respondent, has filed O.A.No.1488/2002 before the Tamil Nadu Administrative Tribunal, which has been subsequently transferred to this Court and renumbered as W.P.No.11623 of 2007. The respondent has contended that, in cases, the senior was allowed incentive increment, in the pre-revised scale of pay, that the junior was allowed incentive increment in the revised scale of pay and when the junior draws higher pay than the senior, on account of such incentive increment, in the revised scale of pay, then pay of the senior should be stepped up on par with that of his junior.

6. Further contention has been made that there is no difference in the quantum of incentive increment, with reference to the difference in higher qualification, whether it is, M.A./M.Ed./B.Ed. Further contention has also been made that incentive increments are allowed for acquiring higher qualification, such as M.A., M.Ed., B.Ed., etc. Contention has been made that denial of pay fixation, on par with that of his junior, on the ground that qualification acquired by the respondent is different, is arbitrary and unjust.

7. Before the writ court, opposing the prayer sought for to quash the order dated 02.06.2001 of the Chief Educational Officer, Villupuram, Villupuram District and the consequential direction, to fix the pay of the respondent, on par with that of his Junior Mr.E.Elumalai, the appellant has contended that as per the orders of the Government, in Memorandum No.24702/P2/78-3 and G.O.Ms.No.710 Finance (CMPC) Dept. Dt. 23.9.94, anomaly of the junior drawing more pay than his senior, on account of obtaining a different higher qualification i.e. instead of M.A./M.Sc./M.Com., (General qualification for M.Ed. degree professional qualification), cannot be rectified to step up the pay of the senior on par with that of his junior. Further, reference has also been made to a Government Letter dated 08.12.1999 and communicated by the Director of School Education, Madras in proceedings dated 03.01.2000 as stated supra.

8. Contention has been made by the appellant that, based on the above orders, the request of the respondent, who acquired M.Ed. degree, has been rightly rejected. Contention has also been made that even though there is a provision in the rules, to step up the pay of the senior on par with that of the junior, who had obtained higher qualification and incentive increment, pay of the senior can be stepped up, only if he possesses a higher qualification, as possessed by his junior and not a different qualification, though the quantum of incentive increment is same. For the above said reasons, order dated 02.06.2001 of the Chief Educational Officer, Villupuram, Villupuram District was sought to be sustained.

9. Adverting to the rival submissions and taking note of Rule 5(2) of the Tamil Nadu Revised Scales of Pay 1998, vide order in W.P.No.11623/2007 dated 16.09.2009, at paragraph Nos.9 to 12 the writ court ordered, as hereunder:

"9. Further, the learned counsel for the petitioner has brought to my notice Rule 5(2) of the Tamil Nadu Revised Scales of Pay Rules, 1998 and the same is extracted hereunder:

" (2) In cases where a senior employee who had drawn incentive increments in the pre-revised scale and drawn more pay than his junior prior to 1st January 1996 draws lesser pay than his junior in the revised scales of pay consequent on the sanction of incentive increments in the revised scales of pay to the junior for acquiring the same higher/special qualification after introduction of revised scales of pay, then the pay of the senior may be stepped up to the level of that of the junior from the date from which the junior draws such higher pay."

10. This Rule provides an answer to the problem. As per this Rule, if a junior receives more pay pursuant to his acquiring higher qualification after the revision of pay on 01.01.1996, the senior should also be brought on par with the junior, particularly when the senior was granted incentive increments for higher qualifications, which he obtained prior to 01.01.1996.

11. Further, the right of the seniors claiming parity with juniors pay is a constitutional right guaranteed under Article 39(d) read with Article 14 of the Constitution. However, if junior is granted incentive increment for acquiring higher qualifications and the senior does not acquire such a higher qualification, the senior cannot claim parity. But, if the senior obtained higher qualification prior to the junior and the junior acquires higher qualification later, the scale of pay of senior should be brought on par with the junior, if the junior's pay became more due to the sanction of incentive increment for acquiring higher qualification. Otherwise, it amounts to punishing the senior for acquiring higher qualification at the earlier point of time and it also defeats the very purpose of granting incentive increments for acquiring higher qualification. The very purpose is to persuade the teachers to obtain higher qualification, so that they render better service to the students. Thus, if acquiring higher qualification earlier is put to disadvantage to a person, the very scheme of providing incentive increment for acquiring higher qualification gets defeated.

12. In the result, the impugned order is quashed and the writ petition is allowed. No costs."

10. Though Mr.V.Anandamurthy, learned Additional Government Pleader assailed the correctness of the above said order, reiterating the very same objections, this court is not inclined to accept the same and reverse the well considered order, both on facts and law.

11. Respondent has acquired B.Ed. qualification, for which one incentive increment (two advance increments) has been granted with effect from 29.09.1991. He has also acquired M.Ed. for which another incentive increment (two advance increments) has been granted with effect from 01.06.1994. Pay of the respondent's junior, Mr.E.Elumalai has been fixed in the revised scale of pay, as per the V Pay Commission recommendation, whereas, the respondent, admittedly a senior, has been allowed incentive increment in the pre-revised scale, and pay fixed. Quantum of

incentive increment is admittedly the same. Reasoning of the writ court, cannot be found fault with. Added further Mr.P.Rajendran, learned counsel for the respondent submitted that as against the decision made in W.P.No.11714/2007 dated 24.08.2009, there was no appeal. It is also brought to the notice of this court that pursuant to the directions of this court, made in W.P.No.11714/2007 dated 24.08.2009, pay of one Mr.Immanuel, a Senior Secondary Grade teacher has been revised, on par with that of his junior, L.Devaraj and pay anomaly has been rectified, vide orders of the Chief Educational Officer, Tiruvannamalai in Pa.Mu.No.928/A4/2003 dated 10.07.2010.

12. He also submitted that, pursuant to the directions of the writ court in W.P.No.11623/2007 dated 16.09.2009, against which the instant appeal is filed, the District Educational Officer, Villupuram, vide proceedings in R.C.No.4485/B3 dated 09.08.2011 has also revised the scale of pay of the respondent, Mr.P.Kumarasamy Pillai, subject to the outcome of the instant writ appeal No.174 of 2012. From the above, it could be deduced that the Education Department has not chosen to file any appeal against the order made in W.P.No.11714/2007 dated 24.08.2009, and implemented the same. But chosen to challenge the decision of the writ court in W.P.No.11623/2007, dated 16.09.2009, decided one month later, i.e. on 16.09.2009. There is no reason as to how case of the writ petitioner in W.P.No.11714 of 2007 was different, both on facts and law, which the appellants have chosen to implement without any appeal. Department of Education, cannot be allowed to apply different yardstick. A senior granted advance increments, in the pre-revised scale of pay, before coming into force of the pay commission recommendation, cannot be denied the scale of pay, fixed to a junior, who had the benefit of Pay Commission recommendation. Writ court, has rightly taken note of the same, by considering Rule 5(2) of the Tami Revised Scales of Pay Rules. As observed by us, in the foregoing paragraphs, there is no infirmity in the order of the writ court.

In the light of the discussion, writ appeal fails and accordingly dismissed. However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS VI)

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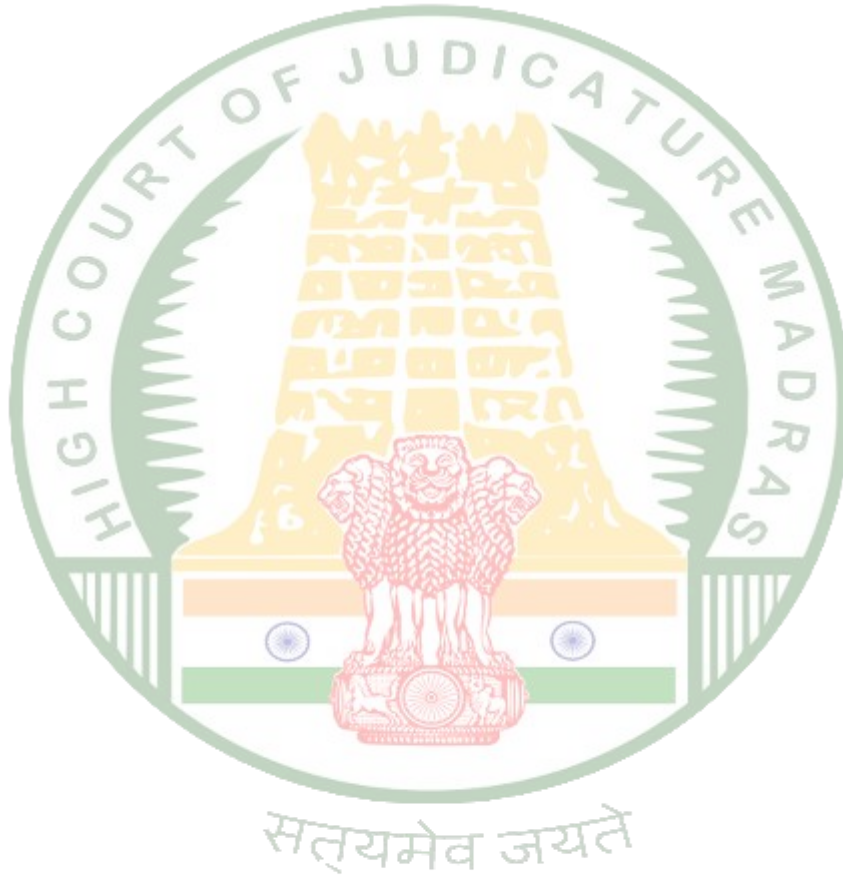
Sub Assistant Registrar

To
The Chief Educational Officer
Villupuram, Villupuram District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.72395

W.A. No.174 of 2011

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