

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9105 of 2012

A.Seeniammal

... Petitioner

Versus

1. The Director of School Education,
Office of the Director of School Education,
D.P.I. Complex, College Road, Nungambakkam,
Chennai-600 006.

2. The Chief Educational Officer,
Tiruchirapalli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 1st respondent in his proceeding O.Mu.No.119440/L4/10 dated 22.3.2011 and quash the same and direct the respondents to step up the pay of the petitioner on par with that of her Junior M.Vijayalakshmi and all the other consequential benefits.

For Petitioner : Mr.K.Balasubramanian

For Respondents : Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petitioner was appointed as a Secondary Grade Teacher on 01.06.1988 and was promoted as a Graduate Teacher (B.T.Assistant) on 17.01.1997 in which post she was regularised. She was subsequently promoted to the Post of Graduate Teacher on 19.11.2011. In view of her higher educational qualification of M.Ed., and M.A., degrees of B.T. Cadre, incentives and increments were awarded to her and her pay was fixed at Rs.6,375/- in the Scale of Rs.5500-175-9000. The petitioner's grievance is that one Mrs.M.Vijayalakshmi, who is junior to her is now drawing a higher pay than the petitioner.

2.Heard Mr.K.Balasubramanian, learned counsel on behalf of the petitioner and Mr.R.Govindasamy, learned Special Government Pleader on behalf of the respondents.

3. According to the learned counsel for the petitioner, Mrs.M.Vijayalakshmi had joined as Graduate Teacher on 12.01.1998 after the petitioner's appointment on 18.09.1997. By virtue of the petitioner's seniority, the petitioner was promoted as P.G. Assistant on 19.11.2011. Her junior Mrs.M.Vijayalakshmi was still working as a Graduate Teacher. When the VI Pay Commission was introduced, their pay scale were re-fixed with effect from 01.01.2006 whereby, the petitioner's scale was re-fixed at Rs.18,540/- in the pay scale of 9300-34800-4400 and her junior Mrs.M.Vijayalakshmi's pay was re-fixed at Rs.18,220/- in the pay scale of 9300-34800-4400. Since the Mrs.M.Vijayalakshmi's annual increment was on 1st January every year, she was given an annual increment of Rs.550/- on 01.01.2006 and after re-fixation, her basic pay was re-fixed to Rs.18,770/- from 01.01.2006 and thereby she was drawing a higher pay than that of the petitioner. Incidentally, the petitioner's date of increment is 1st of July every year. Since, there is a disparity in the pay scale of the petitioner and that of her junior due to the re-fixation of their respective salaries as per the recommendation of the VI Pay Commission, the petitioner had sent a representation on 21.01.2010 to the first respondent to rectify the anomaly. However, by an order dated 22.03.2011, the first respondent had rejected the petitioner's claim on the ground that the petitioner and Mrs.M.Vijayalakshmi were initially appointed in different cadres. Aggrieved against the same, the petitioner has filed this Writ Petition.

4. The learned counsel for the respondents would submit that the petitioner was promoted from the post of Secondary Grade Teacher to that of B.T. Assistant, whereas, her junior was directly appointed as B.T. Assistant and therefore, the impugned order has been properly passed.

5. It would be relevant to refer Rule 7(ii) (iii) of the Tamil Nadu Revised Scales of Pay Rules, 2009 before analysing the impugned order passed by the respondent. Rule 7(ii) (iii) of the Tamil Nadu Revised Scales of Pay Rules, 2009 states as follows:

"Rule 7(ii) The next increment of a Government employee in the revised pay scale shall be granted on the date he would have drawn increment had he continued in the existing pay scale.

(iii) If a Government employee draws his next increment in the revised pay scale under sub-rule(ii) under and thereby becomes eligible for higher pay than his senior whose next increment falls due at a latter date, then the pay of such senior shall be re-fixed equal to the pay of the Junior from the date on which the junior becomes entitled to higher pay."

6. From the above Rules, it is seen that if a junior happens to get higher pay than that of the senior, the pay of the senior has to be stepped up in par with that of the junior. The said rule does not stipulate any condition to redress the junior to get more than that of the senior. It is not in dispute that Mrs.M.Vijayalakshmi is junior to the petitioner. While that being so, in the absence of any other separate Rules, the pay of the petitioner's has to be stepped up in par with the pay of the junior.

7.Relying on Rule 22 Sub Clause 2(b) of the Fundamental Rules, the learned counsel for the respondent would submit that while stepping up the pay of the senior with that of the junior, both the petitioner and senior should belong to the same cadre and the post in which they are appointed or promoted should be identical and in the same manner.

8.The case in hand is that, the petitioner was earlier treated as senior to that of Mrs.M.Vijayalakshmi and therefore she was promoted as P.G.Assistant on 19.11.2011 and in view of her seniority Mrs.M.Vijayalakshmi was still working as Graduate Teacher at that point of time. The entire disparity arose only during the re-fixation as per the recommendation of the VI Pay Commission. The respondent's ought to have taken into account the petitioner's date of increment was only from 1st July, while her junior's was 1st of January every year and should accordingly re-fixed their respective scale of pays. It is not in dispute that Mrs.M.Vijayalakshmi is drawing higher salary with that of the petitioner. It is also not in dispute that the petitioner and her junior are working as Graduate Teachers with same qualifications. Under such circumstances, the Fundamental Rules relied upon may not be of any assistance to the respondent. On the other hand, the disparity has to be set right by applying Rule 7(ii)(iii) of the Tamil Nadu Revised Scales of Rules, 2009 and thereby step up the pay of the petitioner on par with that of her junior.

9.Under such circumstances, the impugned order passed by the first respondent dated 22.03.2011 is set aside. Consequently, the respondents are directed to step up the petitioner's pay on par with that of her junior Mrs.M.Vijayalakshmi alongwith all other consequential benefits within a period of three months from the date of receipt of copy of this order.

10.With the above observation, the Writ Petition is allowed. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

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To

1. The Director of School Education,
Office of the Director of School Education,
D.P.I. Complex,
College Road, Nungambakkam,
Chennai-600 006.

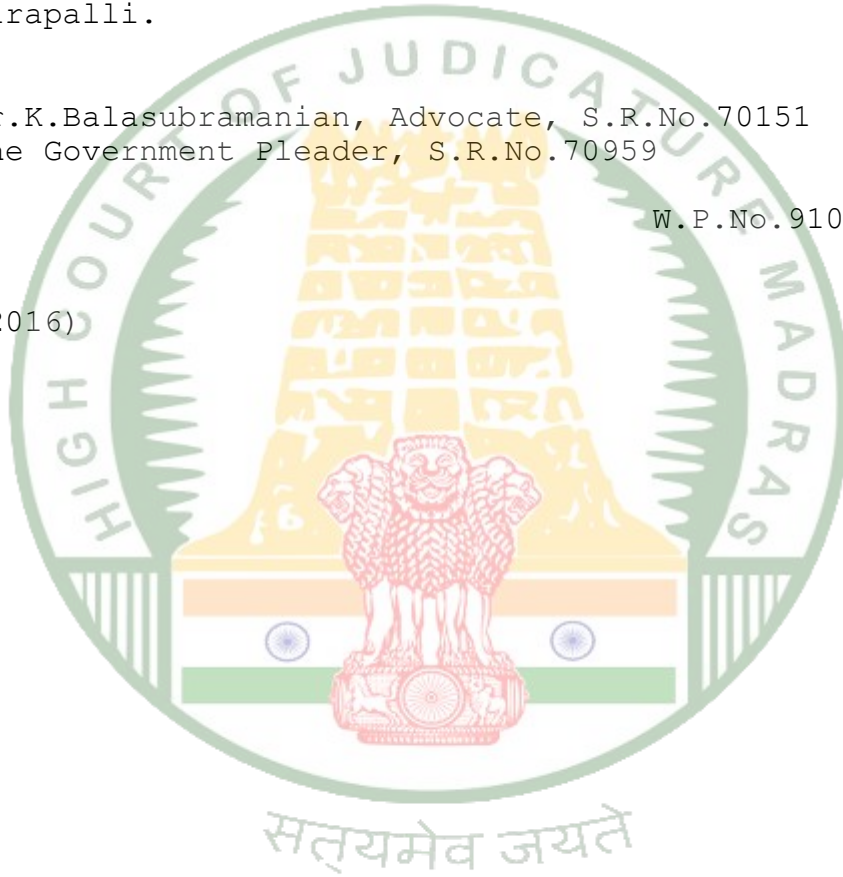
2. The Chief Educational Officer,
Tiruchirapalli.

+1cc to Mr.K.Balasubramanian, Advocate, S.R.No.70151

+1cc to the Government Pleader, S.R.No.70959

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CNR(CO)
CA(20/12/2016)



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