

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.33005 of 2013

R.Sachithanatham

.. Petitioner

Vs.

1.The District Elementary Educational Officer,
Tiruvallur District,
Tiruvallur - 602 001.

2.The Assistant Elementary Educational Officer,
Sholavaram Panchayat Union,
Tiruvallur District, Sholavaram,
Chennai - 600 067.

3.J.Santhi,
Headmistress,
Panchayat Union Middle School,
Neduvarambakkam Village,
Sholavaram Panchayat Union,
Ponneri Taluk, Tiruvallur District.

.. Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the 1st respondent in his proceedings A.Thi.Mu.No.1579/A5/2013, dated 30.7.2013 and quash the same as arbitrary, unconstitutional and illegal and consequently direct the 1st respondent to rectify the pay anomaly of the petitioner by stepping up his pay on par with the 3rd respondent with effect from 01.04.2013.

For Petitioner : Mr.R.Munuswamy

For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader
for respondents 1 and 2

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the

records of the 1st respondent in his proceedings A.Thi.Mu.No.1579/A5/2013, dated 30.07.2013, to quash the same as arbitrary, unconstitutional and illegal and consequently direct the 1st respondent to rectify the pay anomaly of the petitioner by stepping up his pay on par with the 3rd respondent with effect from 01.04.2013.

2. The facts in a nutshell are as under: By proceedings dated 5.3.1988, the District Adult Educational Officer, Chengalput District at Kancheepuram appointed the petitioner as Supervisor at the office of the Project Officer, State Adult Education Scheme, Minjur Union at Ponneri on consolidated pay of Rs.600/- per month and he joined duty on 14.03.1988.

3. It is stated that pursuant to the issuance of G.O.Ms.No.1211, dated 07.09.1989, directing the Director of Non-formal Adult Education to furnish the list of Supervisors with their particulars to the Director of School Education and also to the Director of Elementary Education, so as to enable them to appoint those Supervisors in school under their control as Secondary Grade Teachers, the District Educational Officer, Chennai, vide proceedings dated 20.10.1989 appointed the petitioner as Secondary Grade Teacher at Panchayat Union Elementary School, Chinnamedupettai, Sholavaram Union and based on such order of appointment, the petitioner joined duty on 26.10.1989 and his service was regularized by proceedings dated 15.03.1991.

4. It is stated that thereafter by proceedings dated 09.07.1999 of the first respondent, the petitioner was granted promotion as B.T. Assistant (Science) and transferred to Panchayat Union Middle School, Panjetty, Sholavaram Union. Subsequently, by proceedings dated 24.06.2006 of the first respondent, the petitioner was promoted as Head Master and transferred and posted at Panchayat Union Middle School, Gnayiru, Sholavaram Union, whereafter he was transferred to various schools and at the time of filing the writ petition, he was working as Head Master at Panchayat Union Middle School, Nallur.

5. It is the grievance of the petitioner that though he is senior to the third respondent, who was selected and appointed as Secondary Grade Teacher only on 07.12.1990, he is drawing lesser pay than the third respondent with effect from 01.10.2012 by difference of Rs.2300/-. However, the first respondent, by an endorsement dated 30.07.2013, is alleged to have rejected the request of the petitioner stating that the petitioner joined in the service as Supervisor in Adult Education Department on 14.03.1988, but

the third respondent joined in service as Secondary Grade Teacher in Tanjore District and inasmuch as the petitioner and the third respondent joined in different services and are holding different posts, the request for rectification cannot be considered. The second respondent, by proceedings dated 02.09.2013, citing the endorsement of the first respondent, returned the request made by the petitioner.

6. In such backdrop, the present writ petition is filed for the relief stated supra.

7. It is the contention of the learned counsel for the petitioner that inasmuch as the petitioner is possessing higher qualification compared to the third respondent and they both were in the same cadre of service and the petitioner was in fact promoted much earlier to the third respondent, it does not lie in the mouth of the respondent authorities to contend that their employment should be in the same cadre and wing and, therefore, the anomaly needs to be rectified forthwith and the petitioner should be pay should be stepped up on a par with the third respondent

8. Per contra, the learned Additional Government Pleader appearing for respondents 1 and 2 submitted that inasmuch as the petitioner and the third respondent did not enter into service in the same unit of establishment and are not working in the same union and further their modes of appointment are different, there cannot be any parity drawn between them and, therefore, the order under challenge needs know interference.

9. It is beyond any cavil that the petitioner was initially appointed as Supervisor under Adult Education Department on a consolidated pay with effect from 14.03.1988. Thereafter, the petitioner was appointed as Secondary Grade Teacher and he joined duty on 26.10.1989 in the Panchayat Union Elementary School, Chinnamedupettai, Sholavaram Union. It is also a matter of record that the third respondent was appointed as Secondary Grade Teacher with effect from 07.12.1990 at Panchayat Union Elementary School, Thirumarugal Union. Therefore, as on their joining as Secondary Grade Teacher, the petitioner is senior to the third respondent. This fact is also evident from the counter affidavit.

10. The petitioner thereafter was promoted as B.T.Assistant with effect from 09.07.1999 and with effect from 24.06.2006, he was promoted as Head Master. It is seen from the affidavit that the third respondent was promoted as Head Mistress with effect from 11.03.2013.

11. It is no doubt true that the principle, "equal pay for equal work" must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. The persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them.

12. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect.

13. Two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment etc. are different.

14. In the case on hand, at the time of joining as Secondary Grade Teacher the petitioner is senior to the third respondent. Likewise, comparing the dates of promotion of petitioner and third respondent, again the petitioner is senior to the third respondent. From the date of their joining as Secondary Grade Teacher if a comparison is drawn, it can be seen that both were discharging the duties of Second Grade Teachers since their dates of initial appointment and thereafter they were promoted as Head Master and Head Mistress respectively. Therefore, it cannot be said that their nature of work is entirely different. It is also not the case of the respondent authorities that the qualifications of the petitioner and the third respondent differ. The cadre the petitioner and the third respondent is identical at the stage of Secondary Grade Teacher level and both discharged the same functions. Therefore, it cannot be said that merely because the petitioner worked on consolidated pay earlier to his appointment as Secondary Grade Teacher, the mode of appointment differs and, therefore, he cannot be treated on a par with the third respondent. This certainly is in violation of Rule 22 of the Fundamental Rules.

15. For the foregoing reasons, the writ petition is allowed and the order of the 1st respondent in proceedings A.Thi.Mu.No.1579/A5/2013, dated 30.07.2013 is set aside and the 1st respondent is directed to rectify the pay anomaly of the petitioner by stepping up his pay on par with the 3rd respondent with effect from 01.04.2013 and grant all benefits notionally, as the petitioner would have retired from service by now. Such order shall be passed by the

first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

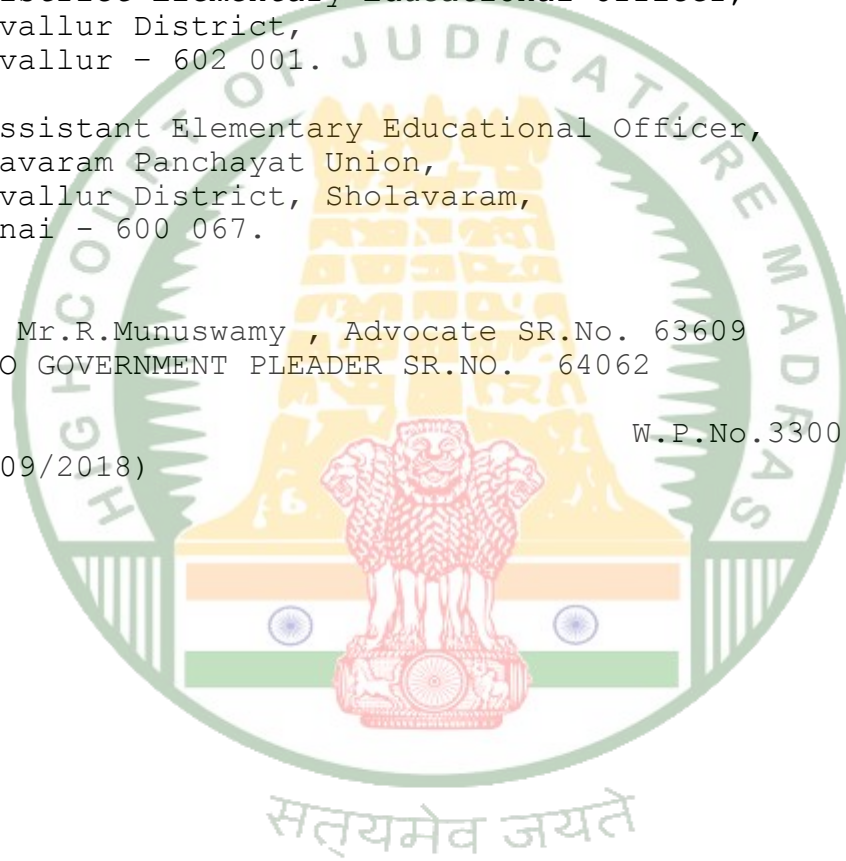
vs
To:

- 1.The District Elementary Educational Officer,
Tiruvallur District,
Tiruvallur - 602 001.
- 2.The Assistant Elementary Educational Officer,
Sholavaram Panchayat Union,
Tiruvallur District, Sholavaram,
Chennai - 600 067.

+1cc to Mr.R.Munuswamy , Advocate SR.No. 63609
+1 CC TO GOVERNMENT PLEADER SR.NO. 64062

W.P.No.33005 of 2013

ASK(12/09/2018)



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