



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED : 27.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) No.8680 of 2011

S.Duraipandi

.. Petitioner

Vs.

1. The District Elementary Educational Officer
Tanjore, Tanjore District.

2. The Assistant Elementary Educational Officer
Madukur, Tanjore District.

.. Respondents

Petitioner under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus to call for the records relating to the order passed by the second respondent in his proceedings in Na.Ka.No.971/A1/2010, dated 12.01.2011, quash the same and to direct the respondents to step up the scale of pay with effect from 01.07.1996, the date on which his junior was given higher scale of pay and consequent fixation thereof in all levels and confer all the consequential benefits.

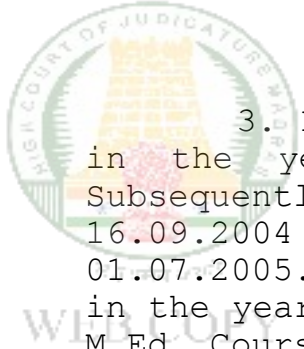
For Petitioner : Mr.V.Panneer Selvam
for M/s.C.S.Associates

For Respondents : Mr.K.Guru
Addl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the second respondent in his proceedings in Na.Ka.No.971/A1/2010, dated 12.01.2011, quash the same and to direct the respondents to step up the scale of pay with effect from 01.07.1996, the date on which his junior was given higher scale of pay and consequent fixation thereof in all levels and confer all the consequential benefits.

2. The brief facts of the case are as under: According to the petitioner, he was appointed as Secondary Grade Teacher through employment exchange on 14.09.1987 in Kottur Panchayat Union, Nagapattinam District and, thereafter, transferred to Madukkur Panchayat Union on 01.07.1988.



3. It is stated that while he was working he got B.Ed. Degree in the year 1993 and thereafter got M.Ed. Degree in 1999. Subsequently, he was promoted as Elementary School Headmaster on 16.09.2004 and was further promoted as Middle School Headmaster on 01.07.2005. He averred that he was sanctioned incentive increment in the year 1993 as per V Pay Commission and thereafter in 1999 for M.Ed. Course as per VI Pay Commission.

4. It is the case of the petitioner that his junior, one P.Sankaralingam, who was drawing only Rs.4750/- at the time when the petitioner was drawing Rs.4875/-, is being paid Rs.5125/-, whereas the petitioner was paid only Rs.5000/- as on 01.07.1996, since the said individual acquired B.Ed. Degree in the new scale of pay and incentive increment was sanctioned in revised scale of pay.

5. Pointing out the said anomaly, the petitioner made a representation to the first respondent on 26.07.2010 requesting to step up his scale of pay in the cadre of Secondary Grade Teacher with effect from 01.07.1996, the date on which his junior was drawing higher scale of pay. It is specifically averred that even though the petitioner was working as Middle School Headmaster and was drawing Rs.6500/-, his junior, who was working as Elementary School Headmaster was drawing Rs.6650/-.

6. By the impugned proceedings dated 12.01.2011, the second respondent rejected the claim of the petitioner on the ground that the petitioner and the said Sankaralingam were appointed in different units and are holding different posts.

7. Assailing the said order, the present writ petition is filed for the relief stated supra.

8. The learned counsel for the petitioner contends that though the petitioner and his junior were appointed in different units, both of them are presently working in the same Madukur Panchayat Union and that the petitioner came to the present panchayat union in the year 1988, whereas his junior came to the said union only in the year 1992 and these factors clearly establish that the petitioner was far senior and should draw higher scale of pay. He added that once the petitioner and his junior are working in the same union, seniority has to be determined on the basis of date of joining in the present union as well as date of appointment.

9. The learned counsel further submitted that as per the Pay Commission Rules, if there is an anomaly of junior getting more scale of pay than senior, the scale of the senior has to be stepped up on a par with that of his junior, if the anomaly occurred on account of incentive increments.

10. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents reiterated the reasons that weighed with the authorities below and prayed for dismissal of the

writ petition. He, however, drew the attention of this Court to G.O.Ms.No.162, Finance Department, dated 13.4.1998, more particularly the note under para 5(1) of the said government order, which reads as under:

"Note: 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 or otherwise, the seniors in such junior have no claim over the pay of the junior."

and submitted that senior cannot claim stepping up of pay on a par with junior.

11. I heard Mr.V.Panneer Selvam, learned counsel for the petitioner and Mr.K.Guru, learned Additional Government Pleader for the respondents and perused the documents available on record.

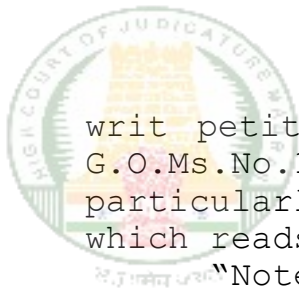
12. The fact that the petitioner was appointed in 1987 and the said Sankaralingam in the year 1988 is not disputed. The petitioner joined in the Madukkur Panchayat Union in the year 1988, whereas the other person joined in the year 1992. On 06.03.1993, incentive increment was granted to the petitioner for acquiring B.Ed. Qualification and his pay was fixed at Rs.1410/-, at that time the pay of the said Sankaralingam was Rs.1320/-. After the One Man Commission recommendations with effect from 01.01.1996, the pay of the petitioner was fixed at Rs.4,875/-, whereas the pay of his junior was fixed at Rs.4,750/-.

13. However, in May, 1996, incentive increment was granted to Sankaralingam for higher qualification of B.Ed. and his pay was fixed at Rs.5000/-, whereas the petitioner, who was senior, was drawing only Rs.4875/-. It is only the pay revision granted with effect from 01.07.1996, which is under challenge in this writ petition.

14. At this juncture, it would be apposite to refer to Rule 5 (2) of the Tamil Nadu Revised Scales of Pay Rules, 1998, which stipulates as under:

"Rule 5(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."

15. After referring to the said provision, which provides an answer to the problem, a learned Single Judge of this Court in D.Manuel v. The Chief Educational Officer [W.P.No.11714 of 2007,



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dated 24.8.2009] held as under:

"11.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.

12.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 for 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.

16. When identical order, as referred supra, was challenged by the respondent authorities before a Division Bench of this Court, such appeal was dismissed vide the decision in The Chief Educational Officer v. P.Kumarasamy Pillai, [Judgment dated 5.12.2016 passed in W.A.No.174 of 2011] holding as under:

"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.

17. The facts of the said case are akin to the instant case and this Court finds no reason to take a different view. Judicial propriety demands that this Court follows the decision of the Division Bench under identical facts and circumstances. In view of the law laid down in the decisions referred supra and the similar facts involved in this case, this Court is of the firm view that the petitioner herein should also be granted such benefits.

18. In the result:

(a) the writ petition is allowed and the proceedings in Na.Ka.No.971/A1/2010 dated 12.01.2011 passed by the second respondent is set aside;

(b) the respondents are directed to consider the petitioner's case in respect of scale of pay with effect from 01.07.1996 and pass appropriate orders in the light of the decisions referred supra, within a period of two months from the date of receipt of a copy of this order, of course after affording an opportunity of hearing to the petitioner. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Tanjore, Tanjore District.
2. The Assistant Elementary Educational Officer,
Madukur, Tanjore District.

order made in
W.P. (MD) No.8680 of 2011
27.02.2017

vs

AM/SV MMS/SAR 1/18.04.2018/2P/3C

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