

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1092 of 2015
and M.P.No.1 of 2015

1. Government of Tamil Nadu
Rep. by Secretary to Government
Education Department
Chennai 600 009.

2.The Director of School Education
Chennai 600 006.

3.The Chief Educational Officer
Salem.Appellants/Respondent

Vs
R.JaganathanRespondent/Petitioner

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 13.09.2013 passed by this Court in W.P.No.4804 of 2009.

Writ petitions filed under Article 226 of the Constitution of India for the issuance a Writ of certiorarified mandamus calling for the records of the second respondent in procNo. 92820/W3/E1/07 dated 23.1.2008 quash the same and issue consequential directons to the Respondents to step up the pay of the petitioner onpar with his junior Thiru M. Swaminathanas on 27.5.1999 and to disburse consequentil monetary benefits with interest.

For Appellants : Mr.K.Karthikeyan
Government Advocate
For Respondent : Mr.M.Ravi

JUDGMENT

P.VELMURUGAN, J.

This intra Court appeal is directed against the order dated 13 September, 2013 passed by a learned Single Judge in W.P. No.4804 of 2009.

2 For the sake of convenience, the parties are referred to as per their rank in the instant intra Court appeal.

3 A vignette of the facts leading to the institution of this intra Court appeal, is as under:

3.1 The respondent joined the service as Post Graduate Assistant (Tamil) on 07 September, 1981, while his junior M.Swaminathan, joined the service as Post Graduate Assistant on 16 September, 1981. While the service of the respondent was regularised on 07 September, 1981 itself, Swaminathan's service was regularised only on 18 February, 1982. Both of them were in the same scale of pay of Rs.675-35-885-45-1200 at the time of their appointment.

3.2 On acquiring M.Ed. qualification, the respondent was granted two incentive increments. Hence, his pay was increased from Rs.1410 to 1530 in the scale of pay of Rs.1160-1950. Thereafter, his pay was revised from 01 January, 1989 based on the recommendations of the V Pay Commission.

3.3 When the pay of the respondent's junior, viz., Swaminathan, was revised to Rs.2,000/- as on 01 January, 1989, the respondent wanted revision after the drawal of increment in the old scale of pay. Accordingly, revision was given to the respondent with effect from 01 July, 1989 and he was granted revision of pay at Rs.2,180/- as on 01 July, 1989. Thus, on his own volition, the respondent sought to receive lesser pay from 01 January, 1989 to 30 June, 1989.

3.4 Hence, the Director of School Education, the second appellant, vide proceedings dated 23 January, 2008, declined the respondent's request to increase his pay to Rs.9,925/- as given to his junior Swaminathan from 27 May, 1993 when he acquired M.Ed. qualification and the respondent was given pay at Rs.9,375/- in the pay scale of Rs.8000-13500. Aggrieved against the said order, the respondent preferred the writ petition before the Writ Court.

4 In the writ petition, the appellants filed a counter affidavit justifying the order impugned before the writ court. The only reason assigned in the impugned order is that inasmuch as the respondent received lesser pay from 01 January, 1989 to 30 June, 1989, he could not ask for removal of anomaly, when the same occurred on 27 May, 1999.

5 The pay of the respondent was revised as on 01 July 1989 on his request, since that could be favourable to him. When the revision was given pursuant to the Pay Commission's recommendations, the respondent continued to receive

Rs.1,670/- as basic pay from 01 January, 1989 to 30 June, 1989, while the pay of his junior was revised to Rs.2,000/- as on 01 January, 1989 pursuant to the V Pay Commission's recommendations. The respondent had no grievance for granting Rs.2,000/- to his junior while he was receiving Rs.1,670/-. Since his increment falls on 01 July, 1989, he wanted revision as per the V Pay Commission's recommendations with effect from 01 July, 1989. But, the respondent's junior was granted Rs.9,925/- as on 27 May, 1999 for acquiring M.Ed. qualification. As on 27 May, 1999, the pay of the respondent was Rs.9,375/- and the same was not increased to Rs.9,925/-.

6 The learned Single Judge, observing that if the reason given by the appellants is to be accepted, then, the respondent's junior who obtained M.Ed. qualification in 1999, much later than the respondent who acquired the said qualification in 1987 itself will be placed in a higher scale and the respondent, despite acquiring M.Ed. qualification in 1987 itself, will be placed in a lower scale, quashed the order.

7 Heard the learned Government Advocate appearing on behalf of the appellants and the learned counsel for the respondent and also perused the materials available on record.

8 The main plank of contention of the learned Government Advocate is that the anomaly is only due to the implementation of the V Pay Commission and not due to the incentive increment for M.Ed. qualification.

9 The aforesaid contention of the appellants does not have legs to stand for the simple reason that by no stretch of imagination, could it be held that the respondent, despite being senior to Swaminathan and acquiring M.Ed. qualification much prior to Swaminathan, should be put in a disadvantageous position when compared to Swaminathan on par with whom, he seeks stepping up of pay. In other words, the respondent's very seniority over his junior Swaminathan and also his acquiring M.Ed. qualification much earlier than his junior Swaminathan, cannot be put against him and this is unheard of in service jurisprudence. Furthermore, the appellants are not justified in negating the genuine request of the respondent by taking umbrage under the V Pay Commission recommendations.

10 In view of the foregoing discussion, this Court finds no reason whatsoever to interfere with the well considered order passed by the learned Single Judge.

As a sequel, this intra court appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

gms

To

1. Government of Tamil Nadu
Rep. by Secretary to Government
Education Department
Chennai 600 009.

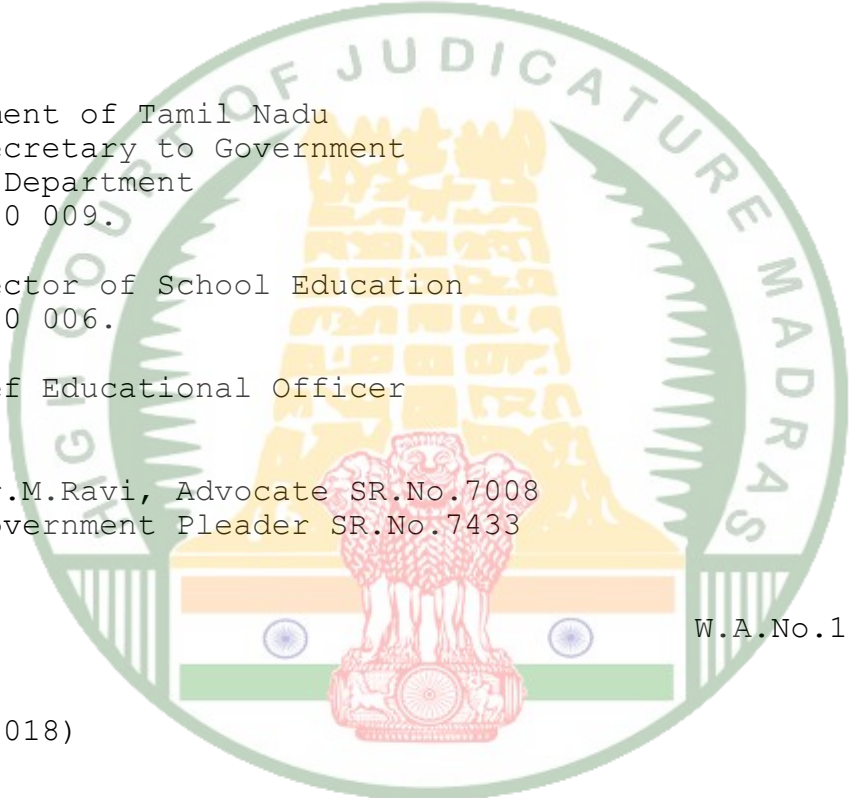
2. The Director of School Education
Chennai 600 006.

3. The Chief Educational Officer
Salem.

+1cc to Mr. M. Ravi, Advocate SR.No.7008
+1cc to Government Pleader SR.No.7433

W.A.No.1092 of 2015

RSI (CO)
GN(14/03/2018)

The seal of the Tamil Nadu Legislative Assembly is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green trees. The entire emblem is set against a white background with a green border. The words 'TAMIL NADU LEGISLATIVE ASSEMBLY' are written in a circular path around the emblem. Below the emblem, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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