

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.30102 of 2004

S.Piichainathan

... Petitioner

Vs

1.The Chief Educational Officer,
Dindigul.

2.The Director of School Education
College Road, Chennai.

...Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records relating to the order of the second respondent dated 19.03.2004 issued in Ref.No.O.Mu.No.8396/L1/2004, to quash the same and to further direct the respondents to step up the pay of the petitioner to that of his junior Mr.Viman's pay with effect from 27.05.1999 with all consequential benefits.

For Petitioner : Mr.R.Muthukannu

For Respondents : Mr.Digvijaya Pandian
Addl. Government Pleader

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 relating to the order of the second respondent dated 19.03.2004 issued in Ref.No.O.Mu.No.8396/L1/2004, to quash the same and to further direct the respondents to step up the pay of the petitioner to that of his junior Mr.Viman's pay with effect from 27.05.1999 with all consequential benefits.

2. The facts in brief are as under: According to the petitioner, he was appointed as B.T.Assistant on 24.02.1986, whereas one Viman was appointed as B.T. Assistant on 29.09.1986. It is stated that from the date of appointment till 01.07.1995, he was drawing higher pay (Rs.1800 + Rs.50) than the said Viman (Rs.1760 + Rs.60/-). In the year 1999, one incentive increment

was given to both of them for acquiring higher qualification and as a consequence, the petitioner's pay was fixed at Rs.7700/-, whereas the pay of Viman was fixed at Rs.7300/-.

3. It is the case of the petitioner that as per G.O.Ms.No.162, Finance Department, dated 13.04.1998, when a junior was fixed higher pay consequent to incentive increment, the senior's pay should be stepped up to that of junior's pay. On this premise, the petitioner sent a representation on 19.11.2003. However, the second respondent by proceedings dated 19.03.2004 had rejected the claim of the petitioner. Hence, the present writ petition.

4. It is the contention of the learned counsel for the petitioner that the petitioner and the said Vimal possess the same educational qualification and moreover, the petitioner joined earlier than the said Viman and while the petitioner obtained incentive for higher qualification in the ordinary grade of B.T. Assistant on 05.01.1988, Viman got incentive in the Selection Grade of B.T. Assistant on 27.05.1999 and, therefore, as per G.O.Ms.No.162, Finance Department, dated 13.04.1998, the petitioner's pay should be stepped up on a par with Viman. To buttress his argument, the learned counsel for the petitioner relied on the following decisions:

- (i) The Chief Educational Officer v. P.Kumarasamy Pilla, 2017 1 WLR 922;
- (ii) A.Thomas v. The Director of Elementary Education and another (Order dated 02.03.2011 in W.P.No.3409 of 2005); and
- (iii) V.Arjunan v. The District Educational Officer and two others (Order dated 06.09.2007 in W.P.No.21782 of 2006).

5. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents contended that Viman was previously appointed as a B.T.Assistant in Government Aided School on 14.12.1983, i.e., prior to the appointment of the petitioner as B.T.Assistant on 24.02.1986, and such service rendered in aided agencies needs to be counted in the light of G.O.Ms.No.992, Education Department, dated 22.06.1979, and, therefore, the order passed by the respondent authorities does not warrant interference.

6. I heard Mr.R.Muthukannu, learned counsel for the petitioner and Mr.Digvijaya Pandian, learned Additional Government Pleader for the respondents and perused the documents available on record.

7. It is beyond any cavil that the petitioner was appointed as B.T.Assistant on 24.02.1986. The records produced before

this Court in the form of typed set show that the said Viman served in Pachaiyappa Nadar High School in Kamatchipuram from 14.12.1983 itself as B.T. Assistant. The said school is admittedly a Government Aided School.

8. At this juncture, it is apposite to refer to the relevant portion of G.O.Ms.No.992, Education Department, dated 22.06.1979, which reads as under:

"... The Director of School Education has brought to the notice of the Government that certain Chief Educational Officers had not agreed to take into account the services rendered by School Assistants in various schools prior to their resignation from schools concerned and thus deprived them from the concession of getting selection grade on completion of 10 years of services.

3. The Director of School Education had also stated that the rules obtaining in respect of Panchayat Union School Teachers and Municipal School Teachers do not permit the benefit of past services in the case of teachers who resigned from one management school or from a Panchayat Union school of Municipal School. He has therefore suggested that the relevant rules may be suitably modified to avoid discrimination among the teachers in this regard. The Director of Rural Development and Inspector of Municipalities have also agreed with the suggestion of the Director of School Education.

4. The Government have carefully examined the (sic) and have decided that the relevant Panchayat Union Council Establishment Rules and the relevant Tamil Nadu Municipal Educational Service Rules be amended suitably to ensure the past services rendered by teacher prior to his/her resignation from one management school or from a Panchayat Union School or from a Municipal School are taken into account for the period of 10 years of service required for grant of grade. Pending issue of amendment to the Panchayat Union Establishment Rules and the Tamil Nadu Municipal Rules, the Government direct that the services rendered by a teacher under all kinds of managements, viz., Government Panchayat Municipal Corporation and aided agencies and also (sic) under the control of Director of Backward Classes and of Harijan and Tribal Welfare prior to his/her resignation, termination, transfer or migration should be counted for the required

period of 10 years of service for the purpose of granting selection grade in that post excluding the period of breaks if any.”

9. On a perusal of the Government Order, supra, it is explicitly clear that the service rendered in the aided agencies should also be counted for the required period of ten years of service for the purpose of granting Selection Grade in the post. In the case on hand, the service rendered by Viman in the Government Aided School from 14.12.1983 to 27.09.1986 was counted in terms of the above said government order. Therefore, by no stretch of imagination the petitioner can claim to be a senior to Viman.

10. The claim of the petitioner seeking parity with Viman, without considering the prior service rendered by the said Viman in the Government Aided School is, in my considered opinion, without basis.

11. In none of the decisions cited by the learned counsel appearing for the petitioner, viz., The Chief Educational Officer v. P.Kumarasamy Pillai, 2017 1 WLR 922; A.Thomas v. The Director of Elementary Education and another (Order dated 2.3.2011 in W.P.No.3409 of 2005); and V.Arjunan v. The District Educational Officer and two others (Order dated 06.09.2007 in W.P.No.21782 of 2006), the person with whom parity in pay was sought to be fixed rendered prior service in any Government Aided School, as in the case on hand. The said decisions cited by the learned counsel for the petitioner are distinguishable on facts.

For the foregoing reasons, the writ petition is dismissed. No costs.

Sd/-

Deputy Registrar

// True Copy//

Sub Assistant Registrar

WEB COPY

vs

To

1.The Chief Educational Officer,
Dindigul.

2.The Director of School Education
College Road, Chennai.

+1cc to Mr.R.Muthukkannu, Advocate SR.No.63083

RMP (19/09/2018)

W.P.No.30102 of 2004



WEB COPY