



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2018

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.8046 of 2018

A.John Peter

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Sivagangai District.

2.The Additional Assistant Elementary Educational Officer,
Kalaiyarkoil, Sivagangai District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings in Na.ka.No.839/A1/2016 dated 03.08.2016 and quash the same and direct the respondents to step up the petitioner's scale of pay with effect from 17.08.2015, the date on which his junior was given higher scale of pay with all consequential benefits thereof.

For Petitioner :Mr.V.Paneer Selvam

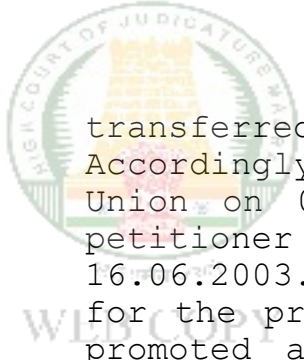
For Respondents :Mrs.S.Srimathy,
Special Government Pleader

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings in Na.ka.No.839/A1/2016 dated 03.08.2016 and quash the same and to direct the respondents to step up the petitioner's scale of pay with effect from 17.08.2015, the date, on which his junior, was given higher scale of pay with all consequential benefits thereof.

2.The short facts which are required to be noticed for the disposal of this writ petition are as follows:

3.The petitioner was appointed as Secondary Grade Teacher through Teachers Recruitment Board (in short TRB) in the year 1995 and on the basis of the rank awarded by TRB, originally, the petitioner was allotted to Madurai Corporation, where he joined on 28.08.1995. Thereafter, as per the Government Order, he was

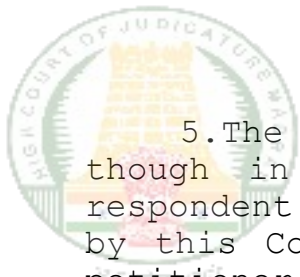


transferred to his native district as per the rank number. Accordingly, he was transferred and joined in the second respondent Union on 07.08.1996. Thereafter, as per the seniority list, the petitioner was promoted as Elementary School Head Master on 16.06.2003. Since the petitioner had acquired higher qualification for the promotion to the post of B.T. Assistant (Science), he was promoted as B.T. Assistant on 21.07.2012. When that be so, one Ms.R.Vijayalakshmi, was appointed as Secondary Grade Teacher through Teachers Recruitment Board in the year 1995 and she was posted at second respondent Union on 27.07.1995 and her rank number is 4053.

2.2.As per the rank number, seniority was fixed and as per the same, the petitioner was senior to the said R.Vijayalakshmi. The said R.Vijayalakshmi was promoted as Elementary School Head Master on the very same day of promotion as of the petitioner, ie., on 16.06.2003. Since both were appointed in 1995 and were promoted as Elementary School Head Masters on 16.06.2003, both received the same scale of pay. The petitioner was, thereafter, promoted to the post of B.T.Assistant on 21.07.2012 and the said R.Vijayalakshmi was also promoted to the post of B.T.Assistant on 17.08.2015, ie., after three years of the petitioner's promotion. Since the said Vijayalakshmi was promoted as B.T.Assistant, after awarding Special Grade in the cadre of Elementary School Head Master, she received higher pay than the petitioner. Therefore, the petitioner made a request to step up his scale of pay on par with his junior. However, the said request of the petitioner was rejected by the second respondent by the impugned order, dated 03.08.2016. Therefore, aggrieved over the same and challenging the said order, the present writ petition has been filed.

3.Mr.V.Paneer Selvam, learned Counsel for the petitioner, would submit that the only reason stated in the impugned order for rejecting the request of the petitioner to step up the pay on par with his junior is that, even though the petitioner is senior based on the rank given by TRB, such seniority shall be considered only for one time promotion and if both such persons were posted in the same Union and if there is a pay difference, then it can be set right for the senior. In this case, since the petitioner was appointed somewhere, and the person, i.e., MsR.Vijayalakshmi, was appointed somewhere, and both were posted in the same Union, the petitioner's claim of seniority and pay parity cannot be considered.

4.In this regard, the learned Counsel for the petitioner would rely upon a recent decision of this Court made in W.P. (MD)No.742 of 2018, in the matter of Ms.K.Vijayarani vs. The District Elementary Educational Officer, Thoothukudi and another, dated 07.02.2018. By relying upon the same, the learned Counsel for the petitioner would submit that the only reason cited in the impugned order cannot stand in the legal scrutiny, in view of the said decision of this Court. Therefore, the impugned order can be interfered with and the relief sought for can be granted to this case also.



5.The learned Special Government Pleader would submit that though in the impugned order, the reason cited by the second respondent cannot be justifiable, in view of the said decision taken by this Court in the order cited supra (K.Vijayarani's case), the petitioner, whether would be otherwise eligible to claim the same scale of pay on par with his junior, Ms.R.Vijayalakshmi, is to be independently looked into by the respondent and thereafter, a decision can be taken.

6.Heard Mr.V.Paneer Selvam, learned Counsel, appearing for the petitioner and Mrs.S.Srimathy, learned Special Government Pleader, appearing for the respondents.

7. I have considered the submission made on either side and also perused the materials placed before this Court.

8.Admittedly, the petitioner was senior based on the rank given by TRB and based on ranking, appointments were made to the petitioner and the third party who was selected and appointed in the year 1995 as Secondary Grade Teacher. However, subsequently, based on the seniority, the petitioner was promoted as Elementary School Head Master on 16.06.2003 and further, promoted as B.T.Assistant on 21.07.2012. Whereas, the third party, Ms.R.Vijayalakshmi was promoted only on 17.08.2015 as B.T.Assistant, after the period of three years from the date of promotion given to the petitioner.

9.Therefore, it became obvious that the petitioner all along from the date of selection and appointment has been senior and has been marching ahead of the said Ms.R.Vijayalakshmi. Therefore, the pay disparity if anything found between the petitioner and the third party, who is admittedly junior to the petitioner, the same shall be set right by the respondent and the anomaly must be redressed. In this regard, the only reason cited by the second respondent in the impugned order is that if both the petitioner and the third party, who is junior to the petitioner, are appointed in the same Panchayat Union, then only the pay disparity can be redressed and as a result pay can be stepped up to the senior person. These reasons cannot be accepted as the seniority will not get changed, unless, the person gives up such right of seniority, if he is transferred from one Union to other Union by losing the right of seniority. It was in the case on hand, the petitioner all along has been senior and thereafter, would have been available to the respondents for promotion. Moreover, as rightly pointed out by the learned counsel for the petitioner that the issue is no more res integra, as the learned single Judge of this Court in the case of Vijayarani, cited supra, had an occasion to consider the similar issue and ultimately, the learned Single Judge has given findings, which reads thus:

".....5.The first respondent has proceeded on the footing that since the petitioner got transferred from Pudukottai to Kayathar Union, it is not possible to set right the pay anomaly. The reason assigned by the first respondent in the impugned order is un-sustainable in law.



Even though the writ petitioner came to Kayathar Union by way of transfer and has to be placed at the bottom of the seniority list, the fact remains that the Shanthi got appointment as Secondary Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthi could have stolen a march over the petitioner. The order impugned in this writ petition is quashed. The respondents are directed to set right the pay anomaly and step-up the pay of the petitioner on par with said Shanthi. Such an order shall be issued by the respondents within a period of eight weeks.

6.This Writ petition is allowed accordingly. No costs."

10.In view of the legal position and factual matrix of this case, I am of the considered view that the petitioner shall be entitled to seek pay parity on par with his junior, namely, one, Ms.R.Vijayalakshmi, who according to the petitioner gets a higher pay, who is junior to the petitioner all along. Therefore, the said grievance of the petitioner shall be redressed and his pay shall be stepped up on par with his junior.

11.In the result, the impugned order is quashed and a direction is given to the second respondent to consider the request of the petitioner to step up the scale of pay with effect from 17.08.2015 and in that exercise for stepping up the pay disparity, the difference of pay shall be calculated and shall be disbursed to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

12.In the result, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar(CS-II)

cmr

To

1.The District Elementary Educational Officer,
Sivagangai District.

2.The Additional Assistant Elementary Educational Officer,
Kalaiyarkoil, Sivagangai District.

+1cc to Mr.V.Panneer Selvam, Advocate in SR No.63437