



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2018
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.9647 of 2018

V.Helen Baby

... Petitioner

-Vs-

1. The District Elementary
Educational Officer,
Nagercoil,
Kanyakumari District.

2. The Additional Assistant Elementary
Educational Officer,
Munchirai Range,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire record pertaining to the impugned order in proceedings அ.தி.மு.எண்.923/A3/2017 dated 09.05.2017, passed by the first respondent and quash the same as bad in law and consequently direct the first and second respondents to re-fix the petitioner's salary as on 17.08.2015, on the basis of the petitioner's representation dated 24.03.2017 (Received by the office of the first respondent only on 04.04.2017) as per his own proceedings in Na.Ka.No.1994/A4/2016 and Na.Ka.No.1878/A2/2016 both dated 28.07.2016.

For Petitioner : Mr.P.M.Vishnuvarthanan
For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

The prayer sought for in the writ petition is for a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order in proceedings அ.தி.மு.எண்.923/A3/2017, dated 09.05.2017, passed by the first respondent and quash the same as bad in law and consequently direct the first and second respondents to re-fix the petitioner's salary as on 17.08.2015, on the basis of the petitioner's representation dated 24.03.2017 (Received by the office of the first respondent only on 04.04.2017) as per his own proceedings in Na.Ka.No.1994/A4/2016 and Na.Ka.No.1878/A2/2016 both dated 28.07.2016.

2.Heard Mr.P.M.Vishnuvarthanan, learned counsel appearing for the petitioner and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents.



3. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

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

(i) The petitioner was appointed as a Teacher on selection through Teachers Recruitment Board in the year 1995 and accordingly, she was posted at Panchayat Union Elementary School, Agarapattu, Viralimalai Union, Pudukkottai District. Thereafter, she was transferred to Kanyakumari District on 25.07.1996. Subsequently, the petitioner was regularized on 31.07.1997 and then, she completed B.A., (English) Degree in 1998 and also completed M.A., (English) Post Graduate Degree in November 2000.

(ii) The petitioner completed 10 years of service and got Selection Grade on 31.07.2005. Subsequently, on the basis of the qualification she acquired, she was promoted as B.T. Assistant on 02.06.2009 and she was awarded incentive for her acquiring higher qualification ie., B.Ed., and M.A., Degree from 28.10.2008.

(iii) Even though the petitioner acquired the degree and got incentive increment, her present pay is Rs.24,750/- (Rupees Twenty Four Thousand Seven Hundred and Fifty only), whereas, some of the juniors appointed in the same Department has been getting higher pay and in this regard, comparing with one individual by name Mrs. Anne Darling, who was appointed subsequent to the petitioner on 07.08.1995, at a Panchayat Union Elementary School and the said junior is getting higher pay than the petitioner, therefore, the petitioner seems to have made a request to the respondent authorities to step up her pay along with or on par with her junior, who is getting higher pay.

(iv) The said request of the petitioner was forwarded by the Assistant Elementary Education Officer, Munchirai Range, Pudukadai Post, Kanyakumari District, to the first respondent on 25.04.2017. The first respondent, on considering the said request forwarded by the second respondent, has passed the impugned order on 09.05.2017, stating that since the petitioner and the individual had been appointed in different districts, the petitioner and the person, who may be junior to her getting higher pay, appointed in the same district, the pay disparity cannot be rectified and by stating this reason, the first respondent rejected the request of the petitioner through the impugned order. Challenging the same, the present writ petition is filed.

5. I have heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader.

6. Both the learned counsel for the parties would submit that the issue raised in this writ petition is covered by a number of



decisions already passed in this regard. As in those cases, the similar reason given by the respective authorities for rejecting the pay parity had been found to be unlawful and unjustifiable and accordingly, the reliefs were given to the individual employees.

7. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of this Court in W.P(MD).No.742 of 2018 dated 07.02.2018 in the matter of K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and another, where the following order was passed:

"5.The first respondent has proceeded on the footing that since the petitioner got transferred from Pudukkottai 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."

8.Following the similar orders passed by this Court, I had an occasion to consider this issue in W.P.(MD) No.8046 of 2018 and I have passed an order in the following terms:-

"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:

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".....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. "

9.In view of the above said orders, it is clear that the issue raised in this writ petition is covered by the number of decisions, as the reason given in the impugned order was no more be a valid one and therefore, on that ground, this impugned order is liable to be quashed. Accordingly, it is quashed.

10.In the result, the respondent, especially, the first respondent is directed to rectify the pay anomaly in respect of the petitioner and accordingly, step-up her pay on a par with her junior, who is getting higher pay irrespective of the place of joining office at the first instance, after selection to the post of Teacher and after calculating the same, the difference of pay shall be paid to the petitioner and the needful shall be done, within a period of six weeks from the date of receipt of a copy of this



11. With the above directions, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary
Educational Officer,
Nagercoil,
Kanyakumari District.
2. The Additional Assistant
Elementary Educational Officer,
Munchirai Range,
Kanyakumari District.

+1CC to Mr.P.M.Vishnuvarthanan, Advocate, SR.No.63776
+1CC to the Special Government Pleader SR.No.64096

W.P. (MD) No.9647 of 2018
26.04.2018

RMK/RR
ES/SKN/RSK/SAR 1/14.06.2018/5P/5C