

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.03.2019

Delivered on : 03.04.2019

CORAM:

THE HONOURABLE MR. **JUSTICE Senthilkumar Ramamoorthy**

W.P.No.10424 of 2006

C.Lakshmanan

... Petitioner

Vs.

1. Director of Elementary Education,
Chennai-6.

2. District Elementary Educational Officer,
Salem, Salem District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari cum Mandamus, calling for the records pertaining to the order passed by the First Respondent in his Proceedings Na.Ka.No.40631/A3/2004 dated 25.11.2004 and quash the same and direct the Respondents to step up the scale of pay of the Petitioner on par with that of his junior G.Subramaniam and confer all the consequential benefits.

For Petitioner : Mr.S.Mani
for Mr.Sellapandian

For Respondents : Mrs.V.Annalakshmi
Government Advocate(Education)

ORDER

This Writ Petition has been filed for a Writ of Certiorari cum Mandamus to call for the records pertaining to the order of the First Respondent in proceedings Na.Ka.No.40631/A3/2004 dated 25.11.2004 and quash the same and direct the Respondents to step up the scale of pay of the Petitioner on par with that of his junior G.Subramaniyam and confer all consequential benefits.

2.The case of the Petitioner is that he joined as B.T. Headmaster of Middle School on 08.12.1972 at the Panchayat Union Middle School, Saminaickenpatty, Omalur Taluk, Salem District. He states that his services were regularised in the cadre of BT Headmaster of Middle School. He further states that he continued in the same school until 14.07.1995 in the same post. He, thereafter, acquired a M.A. degree in 1987 and a M.Ed. degree in 1989 and was, therefore, sanctioned two sets of incentive increments. In view of the fact that the Panchayat Union School was taken over by the Education Department on 14.07.1995, he was posted as an Additional Assistant Elementary

Education Officer on 14.07.1995 at Kadayampatti Union, Salem District. He states that he served as an Assistant Elementary Education Officer in various unions and that he reached the age of superannuation on 30.04.2003 and continued under extension of service until 31.05.2003.

3.He further states that a junior called G.Subramaniyam joined as B.T. Headmaster of Middle School on 10.02.1975 and that he acquired the higher qualification of M.Ed. in 1997 and M.A. in 2000 and was also sanctioned incentive increments for the above higher qualifications. However, the said junior was sanctioned incentive increments as per the sixth pay commission whereas the Petitioner was sanctioned incentive increments as per the fourth and fifth pay commission. As a result, the said junior was drawing higher pay than the Petitioner. Therefore, the Petitioner made representations to step up his pay on a par with that of his junior on 17.06.2004 to the Second Respondent. However, the said representation was rejected on the ground that the Petitioner and the said junior worked in different unions and therefore there is no provision for stepping up the Petitioner's scale of pay on a par with that of his junior. The Order dated 25.11.2004 of the First Respondent refusing to step up the scale

of pay of the Petitioner on a par with that of his junior is the Impugned Order in this Writ Petition.

4.The case of the Respondents is that the District Elementary Education Officer verified the alleged disparity in pay as between the Petitioner and his junior and also clarified the matter with the Director of Elementary Education. By Order dated 25.11.2004, the Director of Elementary Education stated that the Petitioner and his junior were appointed in different unions and, upon transfer, were working in different unions and, therefore, there is no provision to step up the Petitioner's pay on a par with his junior. The Respondents further state that separate union officers, namely, the Commissioner of Panchayat Union, Omalur, Salem District and the Commissioner of Panchayat Union, Senthamangalam, Namakkal District, respectively, appointed the Petitioner and his junior. It is further stated that seniority is fixed only within the unit and, therefore, parity in scale of pay cannot be claimed as between persons employed by different unions. Hence, the Petitioner is not eligible for parity of pay with his junior.

5.At the hearing, the learned counsel for the Petitioner submitted that, admittedly, the Petitioner was senior to Mr.Subramaniam. He

further submitted that the Tamil Nadu Revised Scales of Pay Rules, 1985(the T.N. Revised Scale of Pay Rules) was introduced in order to redress such instances of disparity in pay. He referred to Rule 5(2) which reads as under:

“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 1 January 1996 draws less pay than his junior in the revised scales of pay consequent on the sanction of incentive increments 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.”

6.The learned counsel for the Petitioner also referred to and relied upon an order passed by this Court in **W.P.No.11714 of 2007 in D.MANUAL Vs.THE CHIEF EDUCATION OFFICER, THIRUVANNAMALAI**, wherein it was held in paragraph 12 that the right of the senior claiming parity with a junior is a constitutional right. If the junior is granted incentive increments for acquiring higher qualification 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 the senior should be brought on

a par with the junior. Otherwise it amounts to punishing the senior for acquiring the higher qualification at an earlier point of time and it also defeats the very purpose of granting incentive increments for acquiring higher qualification. Similarly, the learned counsel also relied upon the order of this court in **W.P.No.24093 of 2006, R.LAKSHMI Vs.DIRECTOR OF SCHOOL EDUCATION AND ANOTHER**, wherein, the TN Revised Scale of Pay Rules was relied upon to step up the pay of the senior to be on a par with that of the junior. The learned counsel also referred to the judgment of the Division Bench of this Court in the appeal arising out of the aforesaid order, wherein the Division Bench rejected the Appeal of the Directorate of School Education.

7.In response, the learned counsel for the Respondents referred to paragraphs 6 and 7 of the counter affidavit of the Second Respondent and stated that the representation of the Petitioner was rejected by Order dated 25.11.2004 because the Petitioner and his junior were appointed in different unions and seniority is fixed only within the unit. Accordingly, the Respondents submitted that every Panchayat Union is considered as an unit for purposes of appointment and transfer and that, therefore, it is not possible to have parity of pay as between different units. In this connection, the learned counsel for

the Petitioner relied upon the Proceedings of the First Respondent dated 11.08.2016 wherein it is stipulated that each Panchayat Union is an unit and that pay parity would only apply within the same unit and not if the person concerned is transferred to another unit.

8.The affidavit, counter affidavit, documents on record and oral submissions were carefully considered.

9.It is evident that the TN Revised Scale of Pay Rules was introduced in order to redress issues relating to disparity in pay as between seniors and juniors on account of the application of revised scales of pay at different points of time. Moreover, G.O.Ms.No.320 dated 02.04.1990, which was issued to redress pay anomalies, has directed that the refixation of the pay of seniors shall be done by the appointing authorities so as to ensure parity between seniors and juniors who acquire higher qualifications subsequently. The learned counsel for the Respondents referred to the proceedings of the Firest Respondent dated 11.08.2016 to justify the refusal to apply the TN Revised Scale of Pay Rules to persons appointed in different unions or units. This contention is untenable because the accrued and vested rights of the Petitioner under the TN Revised Scale of Pay Rules cannot

be divested by the aforesaid proceedings dated 11.08.2016, which were issued much later. As held by the Hon'ble Supreme Court in **BIBI SAYEEDA Vs. STATE OF BIHAR, (1996) 9 SCC 516**, at paragraph 17, vested rights are settled and complete rights and cannot be divested through subsequent proceedings or actions. In this regard, the decisions cited by the learned counsel for the Petitioner are also applicable. Accordingly, the Impugned Order dated 25.11.2004 of the First Respondent is liable to be quashed. As a consequence, the Petitioner is entitled to a step up in the scale of pay on a par with that of his junior G.Subramaniyam along with all consequential benefits.

10. In the result, this Writ Petition is allowed. Consequently, the Impugned Order dated 25.11.2004 of the First Respondent is quashed and the Respondents are directed to step up the scale of pay of the Petitioner on a par with that of his junior G.Subramaniyam along with all consequential benefits by issuing necessary orders, in this regard, within a period of 8 weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

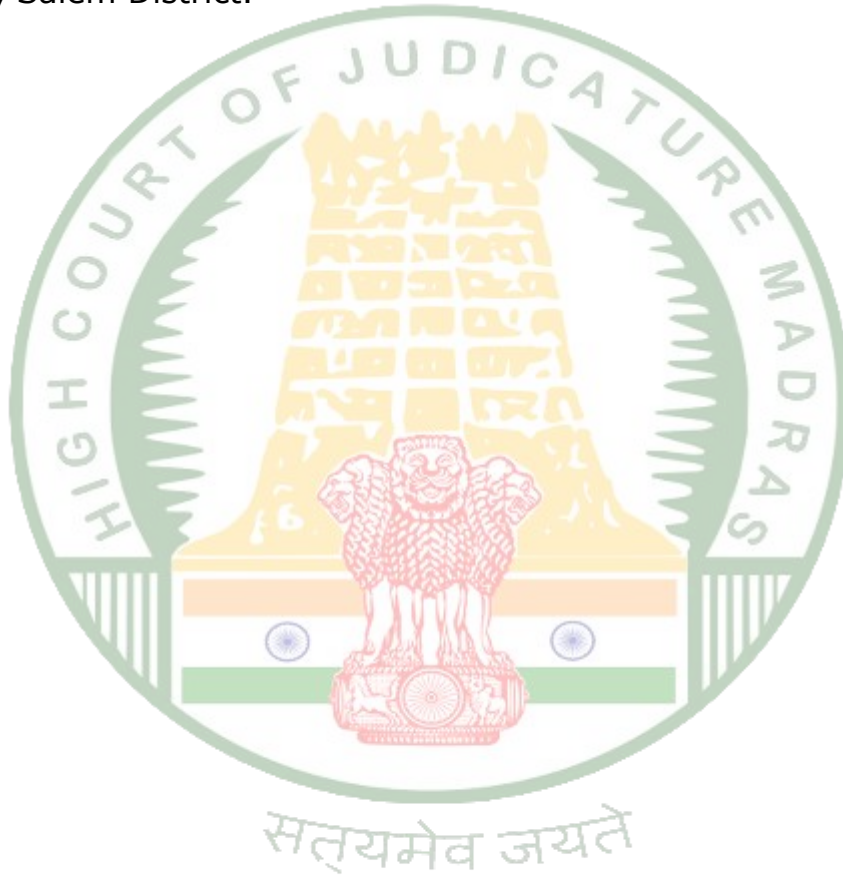
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03.04.2019

Index : Yes
 Internet : Yes
 Speaking Order/Non speaking order
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To

1. Director of Elementary Education,
Chennai-6.
2. District Elementary Educational Officer,
Salem, Salem District.



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SENTHILKUMAR RAMAMOORTHY, J.,
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**Pre Delivery Order in
W.P.No.10424 of 2006**

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