



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP (MD) No.8355 of 2019

R.Retna Shahila Rani

... Petitioner

Vs.

1.The District Educational Officer,
Thuckalay Educational District,
Kanyakumari District.

2.The Block Educational Officer,
Thuckalay Union,
Thuckalay Educational District,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order in Na.Ka.No.187/A/2018, dated 05.03.2019, passed by the second respondent and quash the same as illegal and consequently direct the first and second respondents to re-fix the petitioner's salary as on 01.07.2017 on par with junior Smt.L.C.Vijila and to grant all other benefits there from, on the basis of her representation dated 13.11.2018.

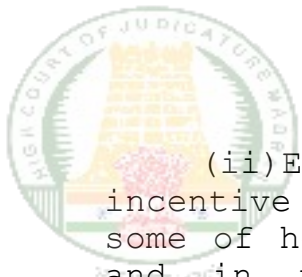
For Petitioner : Mr.P.M.Vishnuvarthanan
For Respondents : Mrs.S.Srimathy,
Special Government Pleader

ORDER

This writ petition has been filed praying to quash the order in Na.Ka.No.187/A/2018, dated 05.03.2019, passed by the second respondent and consequently, to direct the first and second respondents to re-fix the petitioner's salary as on 01.07.2017, on the basis of the petitioner's representation dated 13.11.2018.

2.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 Secondary Grade Teacher on 03.08.1995 and accordingly, she was posted at Panchayat Union Primary School, Mazhavarayanendal, Thirupuvanam Union, Sivagangai District. Thereafter, she was transferred to Kannakuruchi on 24.07.1996. Subsequently, she completed B.Lit., in May 2008, B.Ed. in the year 2015 and M.A.(History) in the year 2017. On the basis of the qualification acquired, she was promoted as Head Master on 04.07.2012.



(ii) Even though the petitioner acquired the degrees and got incentive increments, her present basic pay is Rs.19,520/- whereas, some of her juniors in the same Department are getting higher pay and in this regard, the petitioner, by comparing with one individual by name Smt.L.C.Vijila, who was promoted subsequent to the petitioner on 01.06.2017 and by stating that she is getting more pay than her, 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.

(iii) The said request of the petitioner was forwarded by the Block Educational Officer/ second respondent, to the District Educational Officer / first respondent, and on considering the said request forwarded by the second respondent, the first respondent has passed the impugned order on 05.03.2019 rejecting the claim by stating that her claim could not be considered under the circumstances as per Rules. Challenging the same, the present writ petition is filed.

3. Heard the learned Counsel on either side.

4. Both the learned Counsel would submit that the issue raised in this writ petition is covered by a number of decisions already settled in this regard. 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.

5. Further, the learned Counsel for the petitioner relied on the judgment passed by this Court in W.P(MD).No.742 of 2018 dated 07.02.2018 in the case of **K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and another**, wherein at paragraph No.5, it has been held as follows:

"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."

6. Following the decisions as mentioned above, this Court had,



in WP(MD)No.8046 of 2018, also 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:

".....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. "

7. 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 being a valid one and therefore, on that ground, this impugned order is liable to be quashed and accordingly, the same is quashed.

8. In the result, the first respondent is directed to rectify the pay anomaly in respect of the petitioner and accordingly, step-up her pay on 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 order.

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

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The District Educational Officer,
Thuckalay Educational District,
Kanyakumari District.

2. The Block Educational Officer,
Thuckalay Union,
Thuckalay Educational District,
Kanyakumari District.

+1CC TO MR.P.M.VISHNUVARTHANAN, Advocate Sr. No.63103
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 64065

ORDER MADE IN
WP (MD) No. 8355 of 2019
26.04.2019