



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.03.2019

CORAM:

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

WP (MD) No.20147 of 2018

S.Delight

... Petitioner

Vs.

1.The District Educational Officer,
Thoothukudi Educational District,
Thoothukudi District.

2.The Block Educational Officer,
Karunkulam Union,
Thoothukudi Educational District,
Thoothukudi District,
Formerly known as
Additional Assistant Elementary Educational Officer,
Karunkulam Union,
Thoothukudi District. ... Respondents

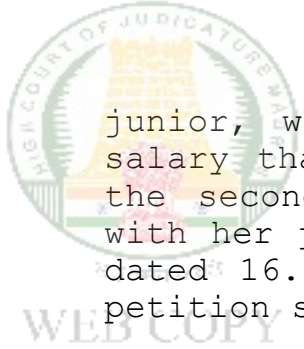
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire record pertaining to the impugned order in Aa.Thu.Mu.489/S114 dated 16.12.2014 passed by the second respondent and quash the same as illegal and consequently direct the first and second respondents to re-fix the petitioner's salary as on 14.09.2007, on the basis of her subsequent representation dated 07.04.2017, as per the proceedings of the first respondent in Na.Ka.No.2749/Aa3/2018, dated 28.06.2018, within a stipulated time as fixed by this Court.

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 Aa.Thu.Mu.489/S114 dated 16.12.2014 passed by the second respondent and consequently, direct the first and second respondents to re-fix the petitioner's salary as on 14.09.2007, on the basis of her subsequent representation dated 07.04.2017, as per the proceedings of the first respondent in Na.Ka.No.2749/Aa3/2018, dated 28.06.2018.

2. The case of the petitioner is that she was appointed as a Secondary Teacher in Avinasi Union and subsequently was transferred to Kayathar Union. Thereafter she was transferred to Karunkulam Union. The grievance of the petitioner is that one



junior, who is now working at Karunkulam Union is getting more salary than the petitioner. Hence, she made a representation to the second respondent seeking re-fixation of her salary on par with her junior. However, the same was rejected, vide proceedings dated 16.12.2014. Hence, the petitioner filed the present writ petition seeking the above said prayer.

3. Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

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 relied on the order 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. Applying the aforesaid orders to the facts of the present case, this Court is of the opinion that the petitioner, being a similarly placed person, is entitled to seek pay parity on par with his junior. Hence, the impugned orders of the first respondent are liable to be quashed.



8. In the result, the impugned orders are quashed and 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 thereafter make payment of the difference of pay to the petitioner. Such an exercise 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 disposed of. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The District Educational Officer,
Thoothukudi Educational District,
Thoothukudi District.

2. The Block Educational Officer,
Karunkulam Union,
Thoothukudi Educational District,
Thoothukudi District,
Formerly known as
Additional Assistant Elementary Educational Officer,
Karunkulam Union,
Thoothukudi District.

+1CC TO MR.P.M.VISHNUVARTHANAN, Advocate Sr. No.54729

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 55127

ORDER MADE IN
WP (MD) No. 20147 of 2018
18.03.2019

TR (11.04.2019) 4P 5C