



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

WEB COPY

W.P. (MD) .No.18229 of 2014

S.Arockiya Nirmal Rajan,
B.T. Assistant,
Ponmudiyar Corporation Girls Higher Secondary School,
Madurai - 2. .. Petitioner

Vs.

- 1.The Commissioner,
Madurai Corporation, Madurai.
- 2.The Corporation Educational Officer,
Madurai Corporation, Madurai.
- 3.The Headmistress,
Ponmudiyar Corporation Girls Higher Secondary School,
Madurai - 2.
- 4.The Director of School Education,
DPI Compound, Chennai - 6. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pursuant to the impugned order of the second respondent in A4/036495/13, dated 20.03.2014 and quash the same and consequentially issue a direction, directing the respondents herein to rectify the anomaly of junior drawing more pay than senior and step up pay of the petitioner on par with his junior, Tmt.N.Rajeswari, in the cadre of B.T. Assistant with effect from 01.07.2008 and to grant him all consequential benefits.

For Petitioners : Mr.Isaac Mohanlal
Senior Counsel for
Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.J.Gunaseelan Muthiah
1 to 3

For Respondent 4 : Mr.N.Shanmugaselvan
Additional Government Pleader

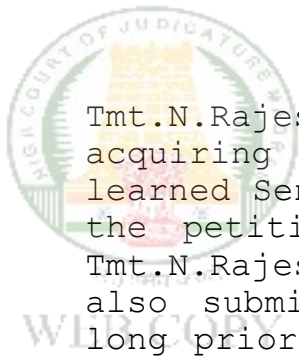


ORDER

This Writ Petition is filed to quash the impugned order of the second respondent dated 20.03.2014 by which the request of the petitioner to remove the anomaly and to pay salary on par with his junior by name N.Rajeshwari and step up the petitioner's pay in the cadre of B.T. Assistant with effect from 01.07.2008 and to grant him all consequential benefits.

2.The petitioner was originally appointed as Secondary Grade Assistant in the Panchayat Union Primary School, Keelapannaikulam, Muthukulathur Union, Ramanad District on 22.07.1999. The petitioner was thereafter appointed as B.T. Assistant by recruitment by transfer on 27.11.2006. One Tmt.N.Rajeswari was appointed as Secondary Grade Assistant in the Primary section of the Corporation School in the year 1995. however, it is submitted by the petitioner that the said Tmt.N.Rajeswari was promoted as B.T. Assistant only on 01.07.2008 by recruitment by transfer. Stating that the petitioner's appointment in the post of B.T. Assistant was from 2006 whereas the appointment of the said Tmt.N.Rajeswari was only in 2008, the petitioner submitted a representation that he is entitled to at least the same pay as Tmt.N.Rajeswari is drawing in the same post. It appears that the representation was not considered earlier therefore, the petitioner earlier filed a Writ Petition in W.P.(MD) No.7834 of 2013 seeking a direction to the respondent to remove the pay anomaly. This Court directed the first respondent to consider the representation of the petitioner. Even thereafter, the petitioner was constrained to file yet another Writ Petition in W.P.No.18030 of 2013 to direct the respondents to rectify the anomaly of junior drawing more pay than the petitioner and step up pay of the petitioner on par with his junior. It is admitted that in the meanwhile, the corporation has passed the impugned order. Hence, the earlier writ petition in W.P.(MD)No.18030 of 2013 was dismissed as withdrawn with liberty to challenge the impugned order of the first respondent. Accordingly, the present Writ Petition is filed by the Teacher to quash the impugned order and to direct the first respondent to rectify the anomaly of junior drawing more pay than senior and to step up the pay of the petitioner on par with his junior by name Tmt.N.Rajeswari.

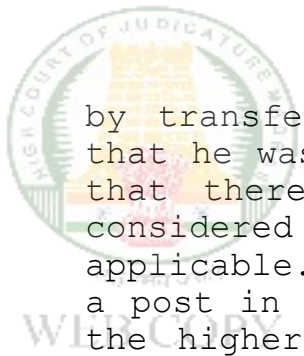
3.The learned Senior Counsel appearing for the petitioner submitted that the representation of the petitioner was turned down by the respondents primarily on three grounds which are not sustainable in law. From the impugned order, it is seen that the representation of the petitioner for removal of pay anomaly comparing his pay with that of his junior Tmt.N.Rajeswari was turned down mainly on the ground that the said N.Rajeshwari joined in service as Secondary Grade Teacher on 28.05.1995 and received selection grade pay in the same scale and that the said



Tmt.N.Rajeswari was entitled to receive two incentive increments for acquiring higher qualification in M.A., B.Ed., on 27.01.2008. The learned Senior Counsel appearing for the petitioner pointed out that the petitioner was appointed as B.T. Assistant in 2006 whereas Tmt.N.Rajeswari was appointed by transfer only on 01.07.2008. It is also submitted that the petitioner acquired higher qualification long prior to 2002 and was receiving two incentive increments that means four increment at the rate of Rs.125/- with effect from 2002 after acquiring higher qualification. Tmt.N.Rajeswari acquired higher qualification much later on 27.01.2008. Since the petitioner got higher qualification and consequential monetary benefits even with effect from 2002, the learned Senior Counsel appearing for the petitioner would submit that the reasons stated by the first respondent in the impugned order that Tmt.N.Rajeswari was given incentive increments from 27.01.2008 is not appropriate.

4.In the impugned order, the first respondent also stated that Tmt.N.Rajeswari was serving in the corporation school from 25.08.1995 as Secondary Grade Teacher whereas the petitioner has joined in the school as Secondary Grade Teacher only on 22.07.1999. Since Tmt.N.Rajeswari was senior in service, the petitioner cannot claim for removal of pay anomaly by comparing his salary with that of his senior teacher Tmt.N.Rajeswari. The second ground rejecting the request has no reason or factual basis. Though it is true that the petitioner joined in service only on 22.07.1999 and Tmt.N.Rajeswari was in service as Secondary Grade Teacher with effect from 28.05.1995, the petitioner was appointed as BT Assistant by transfer on 27.11.2006 and Tmt.N.Rajeswari was appointed as B.T. Assistant only on 01.07.2008. Since the petitioner and Tmt.N.Rajeswari migrated from different services, it is submitted by Senior Counsel that their past service in the post of Secondary Grade post cannot be taken as a relevant factor to consider the issue. The first respondent also indicated that Tmt.N.Rajeswari who was appointed on 25.08.1995 was getting Selection Grade in the post upon completion of ten years on 05.09.2005 and that therefore, the said N.Rajeshwari was entitled to get higher salary than the petitioner. The other reason stated by the first respondent in the impugned order is that the petitioner has joined as Secondary Grade Teacher in a different school and appointed as B.T. Assistant by transfer only in 2006 whereas Tmt.N.Rajeswari was working in the same school and that therefore Tmt.N.Rajeswari is senior.

5.In the counter affidavit, the first respondent reiterated the same points as it is found in the impugned order. With regard to the second reason found in the impugned order, the question is whether the seniority of the petitioner in the post of B.T. Assistant should be considered on the basis of his entry into service as a Second Grade Teacher. It is admitted that the petitioner as well as Tmt.N.Rajeswari were appointed in the post of B.T. Assistant by transfer only in 2006 whereas Tmt.N.Rajeswari was working in the same school and that therefore Tmt.N.Rajeswari is senior.



by transfer from the other schools. The petitioner's contention that he was appointed in the post much prior to Tmt.N.Rajeswari and that therefore, he should be considered as a senior has to be considered in the light of any Government order or rule which is applicable. When the petitioner and Tmt.N.Rajeswari were serving in a post in different service by way of transfer, their seniority in the higher post cannot be based on their date of entry into the service in the lower post. The contention of the respondent that Tmt.N.Rajeswari was getting Selection Grade in the higher post taking into consideration her entry into service from 1995 may not hold water for the simple reason that no Government Order or Rule is produced to count the past service as Secondary Grade Teacher. The petitioner was appointed as B.T. Assistant almost two years prior to the said Tmt.N.Rajeswari. The petitioner acquired higher qualification in 2002 and received two increments even while he was in different service. Learned Senior Counsel submitted that the pay anomaly is only due to the fact that Tmt.N.Rajeswari was given four increments at the rate of Rs.490/- for each increment from 2008 whereas the petitioner who acquired higher qualification was given four increments only at the rate of Rs.125/- for each increment from 2002. This appears to be probable as seen from the chart. The petitioner while receiving a salary of RS.14,120 + 4,600 Grade Pay, Tmt.N.Rajeswari is drawing the salary of Rs.16,760 + 4,600 Grade Pay as on 01.07.2011. The contention of the respondent that Tmt.N.Rajeswari was senior by virtue of appointment in 1995 in the same school cannot be accepted. Merely because Tmt.N.Rajeswari was appointed in 1995 cannot be considered for fixing the seniority in the post of B.T. Assistant. As regards pay anomaly, the petitioner who joined in the post of B.T. Assistant long prior to Tmt.N.Rajeswari is entitled to be considered as senior for fixing the pay scale. Since the anomaly is admitted and this Court accept the contention of the petitioner that he is senior to Tmt.N.Rajeswari, this petition deserves to be allowed. Accordingly, the Writ Petition is allowed. The impugned order passed by the second respondent dated 20.03.2014 is quashed. The first respondent is directed to rectify the pay anomaly by stepping up the pay of the petitioner on par with his junior Tmt.N.Rajeswari in the cadre of B.T. Assistant with effect from 01.07.2008. The respondents shall remove the pay anomaly in the light of the decision made in this Writ Petition and pay the monetary benefits to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

SRM

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Corporation Educational Officer,
Madurai Corporation, Madurai.

3.The Headmistress,
Ponmudiyar Corporation Girls Higher Secondary School,
Madurai - 2.

4.The Director of School Education,
DPI Compound, Chennai - 6.

+1CC TO MR.K.MUTHU GANESA PANDIAN, Advocate Sr. No.99885

+1CC TO MR.J.GUNASEELAN MITHIAH, Advocate Sr. No.99600

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 99963

ORDER MADE IN
W.P. (MD) No.18229 of 2014
19.11.2019

GRC (CO)
TR(10.12.2019) 5P 8C