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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.1348 of 2020
and W.M.P No.1608 of 2020

N.Lakshmipathy

Petitioner

vs.

1. The Chief Educational Officer,
Krishnagiri District - 632 001.
2. The District Educational Officer,
Denkanikota 635 107,
Krishnagiri District.
3. The Block Educational Officer,
Thally,
Krishnagiri District.

4. M.Manju

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Proceedings Aa.Thi.Mu/1502/2019/Aa dated 25.09.2019 passed by the 3rd respondent herein and quash the same as illegal and consequently direct the respondents 1 to 3 herein to re-fix the petitioners salary as on 17.12.2012 on the basis of the petitioners representation dated 16.09.2019.

For Petitioner : Mr.R.Ramesh

For Respondents: Mrs.V.Annalakshmi
Government Advocate

O R D E R

This writ petition has been filed challenging the rejection of the request made by the petitioner to step up his pay on par with the pay of his junior by the 3rd respondent by his proceedings dated 25.09.2019.

2.The case of the petitioner is that he joined as a teacher in the Panchayat Union Middle School in the year 2012 and at that time, the petitioner was brought within the pay



scale of 5400 + 2800 = 8000 with a special pay of Rs.750/- per month. The petitioner was confirmed in the said post in the year 2014. The grievance of the petitioner is that one Manju who was appointed as a teacher much after the petitioner is receiving a higher pay and therefore, the petitioner sought for stepping up of pay on par with his junior and the same was rejected by the proceedings of the 3rd respondent on the ground that the seniority can be ascertained only if both the petitioner and the said Manju fall within the same Union.

3. Heard Mr.R.Ramesh, learned counsel appearing on behalf of the petitioner and Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents.

4. The service particulars of the petitioner and the 4th respondent is tabulated hereunder:

Sl.No	Job Particulars	Petitioner N.Lakshmipathy	Manju (Junior)
1	Date of Birth	26.06.1981	01.05.1987
2	Qualification	M.Sc., B.Ed.,	B.Ed. on 20.12.2012/ M.Sc., on 06.01.2016 Completed
3	First Appointment (Teacher)	Thally Union 17.12.2012	Thally Union 20.12.2012
4	Mathematics Teacher	PUMS Doddabilimudrai	Olipanda PUMS
5	Conformation order	16.12.2014	19.12.2014
6	Promotion	Second Grade Teacher 17.08.2015	Second Grade Teacher 17.08.2015
7	Date of appointment Salary	5200+2800 = 8000 5200-20200+2800GP	5200+2800 = 8000 5200- 20200+2800GP
8	Salary 2015	9300+4600=13900 9300-34800+4600GP	9300+4600=13900 9300- 34800+4600GP
9	Increment 06.01.2016	-	-- 13900+8400=14740
10	In the year of 01.07.2018	38600+1200-39800	41000+1200=42200
11	In the year of 01.07.2019	39800+1200=41000	42200+1300=43500



5. It is clear from the above tabulation that the petitioner is clearly senior to the 4th respondent even within the same Union and it is seen that the 4th respondent is receiving a higher pay than the petitioner.

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6. The issue involved in this case is squarely covered by the judgment of this Court in W.P.No.34450 of 2019, dated 06.01.2020. The relevant portions of the judgment are extracted hereunder:

7. It is seen from records that the petitioner joined at Krishnapuram Panchayat on 05.01.1990 and P.Rajeswari had joined the services only on 07.12.1990. Thereafter, the petitioner was transferred to Vazhapadi Block and even there, she had joined on 20.06.1990 and P.Rajeswari had joined only on 19.06.1991. This is clearly borne out by records.

8. It is therefore clear from the above that both in terms of joining service and in terms of being transferred into a different block, the petitioner is senior to the said P.Rajeswari.

9. It will be relevant to refer the judgment of this Court in WP (MD).No.24551 of 2018 dated 19.02.2019. The relevant portions of the judgment is extracted hereunder:

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 march over the petitioner. The order impugned in this writ petition is quashed. The



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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. The second respondent had filed a Counter affidavit, wherein it has been stated as follows:

11. It is to be noted that B. Anuradha (Panchayar Union Area, S. Pudhur) was appointed in the very same S. Pudhur Union, ie., on 27.07.1999 and got transferred to the same Thirupathur Union on 01.11.2000. These two panchayat Union areas are same distinct and that the Teachers appointed in the same Union area, compared for fixation of pay with his junior, who came from one Unit to another Unit, cannot be done.

12. So even basically, the question of comparison cannot be entertained and her request cannot be entertained and his request cannot be considered even at the initial stage. So, the prayer of the petitioner can be set aside even at the primary stage.

7. 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



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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 march over the petitioner. The order impugned in this writpetition 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.

8.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.

10.The above judgment was also subsequently followed in WP(MD).No.6358 of 2019 dated



25.04.2019.

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11.It is clear from the above judgments that even after the transfer of the teacher to the new division and placing the teacher at the bottom of the seniority list, the fact remains that the junior had got into the new division only at a later point of time. Therefore, the junior cannot be permitted to take a march over a senior teacher.

12.In the present case, apart from the facts which clearly demonstrates that the petitioner is very much senior to P.Rajeswari both in terms of joining service and also joining the new division, the above judgment also clearly covers the facts of the present case.

13.In view of the above discussion, this Court is of the considered view that the impugned order passed by the 2nd respondent dated 09.10.2018, requires interference and accordingly the same is quashed and the petitioner is entitled to seek pay parity on par with her junior P.Rajeswari, who according to the petitioner is getting a higher pay. The 2nd respondent is directed to rectify the pay anomaly in the case of the petitioner and accordingly, step up the pay of the petitioner on par with her junior P.Rajeswari and extend all the consequential benefits. Necessary orders shall be passed in this regard by the 2nd respondent within a period of six weeks from the date of receipt copy of this order.

7.In view of the above, the impugned proceedings of the 3rd respondent is hereby quashed and there shall be a direction to the 3rd respondent to refix the pay of the petitioner by stepping it up on par with the pay of the 4th respondent and appropriate orders shall be passed in this regard within a period of four weeks from the date of receipt of copy of this order. The petitioner shall be entitled for arrears of pay by virtue of his pay being stepped up.

8.In the result, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr



To

1. The Chief Educational Officer,
Krishnagiri District - 632 001.

2. The District Educational Officer,
Denkanikota 635 107,
Krishnagiri District.

3. The Block Educational Officer,
Thally,
Krishnagiri District.

+1cc to MR.R.Ramesh, Advocate SR.15509

+1cc to the Government Pleader SR.16235

W.P No.1348 of 2020
and W.M.P No.1608 of 2020

MP (CO)
CB (13/07/2020)