

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 31332 OF 2013

I.Mariya Joseph

.. Petitioner

- Vs -

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006.
 2. The District Elementary Educational Officer
Villupuram District, Villupuram.
 3. The Assistant Elementary Educational Officer
Vikravandi Block
Villupuram District, Villupuram.
- .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the 3rd respondent in O.M.U. No.1866/A1/2012 and quash the same and consequently direct the respondents to set up the scale of pay of the petitioner on par with his junior Tmt. K.Sumathi, B.T. Assistant with retrospective effect with all consequential and other attendant benefits including arrears of salary within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.S.Suresh Kumar, GA

ORDER

It is the case of the petitioner that he was appointed as Secondary Grade Teacher on 6.10.88 and had obtained various promotions and incentive increments. It is the further case of the petitioner that one Tmt. K.Sumathi, was appointed as B.T. Assistant, subsequent to the petitioner, on 1.12.88 and she too obtained various promotions and incentive increments. It is the case of the petitioner that the incentive increments obtained by the petitioner were even prior to the incentive increments

obtained by the said Sumathi. It is further averred by the petitioner that the said Sumathi got promotion to the post of B.T. Assistant after reaching selection grade in the lower post and further she was given incentive increment for M.A. after getting revision of pay as per VI Pay Commission recommendations and, by virtue of the same, she draws salary higher than the petitioner, though she is junior in service. In this regard, the petitioner submitted a representation for stepping up his scale of pay on par with his junior as per Fundamental Rules, which was rejected by the 3rd respondent by the impugned proceedings. Against the said order, the present writ petition has been filed.

2. Learned counsel appearing for the petitioner, while reiterating the grounds advanced in the petition, submitted that the Fundamental Rules prescribe that the pay of the senior, if lower than the junior, ought to be stepped up equivalent to the junior and specific reference is drawn to Rule 9 of the Special Rules. It is submitted that the respondents have not considered the representation of the petitioner in proper perspective and, therefore, the said order requires interference at the hands of this Court.

3. On the above contentions, this Court heard the learned Government Advocate, who submitted that the respondents have taken into consideration the Fundamental Rules as also the Special Rules, while rejecting the claim of the petitioner and that the petitioner was not entitled for stepping up of his pay scale, as the said Sumathi received her selection grade pay in the lower post and in such circumstances her pay was fixed in the scale of pay of Rs.15,600-39,100 - GP 5,400. It is the further contention of the learned Government Advocate that the said Sumathi hails from Arni Block, and came to the unit of Vikravandi Union and hence, she cannot be compared as junior to the petitioner. Further, the petitioner has not fulfilled the conditions imposed in G.O. Ms. Nos.25, P&AR Department dated 23.3.15 and G.O. Ms. No.234, Finance (PC) Dept., dated 1.6.09. Further, the petitioner and the alleged junior were holding different posts having different scales of pay on various dates and extending the concession of fixation of pay on par with the junior does not arise. Therefore, he prayed for dismissal of the present petition.

4. The facts in issue are not in dispute. It is also not in dispute that the alleged junior to the petitioner, viz., Sumathi, hails from Arni Unit and on transfer, she has joined Vikravandi Unit, where the petitioner is working. Further, the affidavit of the petitioner itself reveals that the petitioner and the said Sumathi have received various promotions and incentive increments on different dates. Further the said

Sumathi had received the selection grade pay before her promotion as B.T. Assistant.

5. In the case of K.Muthumari - Vs - Director of Elementary Education & Ors. (W.P. (MD) No.19969/2014 - Dated 8.1.18), learned single Judge of this Court, in identical circumstances, has held as under :-

3. The fourth respondent was appointed as Secondary Grade Teacher as early as on 29.07.1988. On the other hand, the petitioner got appointed as Secondary Grade Teacher on 28.02.1990. It is true that the fourth respondent had joined in Kamuthi Union later in point of time. The petitioner as well as the fourth respondent got promoted as Elementary School Headmistresses on 29.11.1999. Though, the petitioner as well as the fourth respondent got promoted as Elementary School Headmistresses on 29.11.1999, the fourth respondent had attained the selection Grade for the 3 post of Secondary Grade Teacher on 29.07.1998 itself. Thus, on the date of promotion to the post of Elementary School Headmistress, the fourth respondent was already holding the Selection Grade. That is to say, she got promotion, after she got the selection grade. On the other hand, the petitioner got promotion as Headmistress within a time span of nine years, i.e., before getting selection grade. Thus pay-fixation for both cannot be same. The petitioner cannot claim stepping up of her pay on par with the fourth respondent, on the ground that the fourth respondent is junior to her in Kamudi Panchayat Union. Pay anomaly is clearly explainable. There is no merit in this writ petition."

6. In the present case, the alleged junior, viz., Sumathi, had obtained selection grade scale of pay prior to her promotion as B.T. Assistant and, accordingly, her pay was fixed in the scale of pay of Rs.15,600 - 39,100 - GP 5,400 pursuant to the VI Pay Commission Recommendation. The said fact is not disputed by the petitioner. In such a backdrop, the ratio laid down in Muthumari's case (supra) squarely stands attracted to the case on hand. Further, the conditions as enumerated in G.O. Ms. Nos.25, P&AR Department dated 23.3.15 and G.O. Ms. No.234, Finance (PC) Dept., dated 1.6.09 have also not been fulfilled by the petitioner and, therefore, the petitioner cannot claim stepping up of his salary to that of the said Sumathi. In such view of the matter, this Court is of the considered opinion that the order passed by the respondents rejecting the claim of the

petitioner for stepping up his scale of pay does not call for any interference.

7. Accordingly, for the reasons aforesaid, this writ petition fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006.
2. The District Elementary Educational Officer
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3. The Assistant Elementary Educational Officer
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+1 cc to the Government Pleader Sr.No. 26579

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RSV (CO)
RR II (08/09/2020)

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