

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.34455 of 2019

and

WMP Nos.35138 & 35139 of 2019

S.Premavathi

... Petitioner

.Vs.

1.Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.District Educational Officer,
Palladam.

3.The Block Educational Officer,
Kangeyam.

... 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 of the 2nd respondent in O.Mu.No.1425/Aa1/2018 dated 19.09.2018 and quash the same and consequently direct the respondents to step up the pay of the petitioner on par with her Junior Prabhu Sabestian as per the law laid down by this Court in W.P.(MD).742 of 2018.

For Petitioner : Ms.Dakshayani Reddy

For Respondents : Mrs.V.Annalakshmi
Government Advocate

O R D E R

This Writ Petition has been filed challenging the proceedings of the 2nd respondent dated 19.09.2018 and for a consequential direction to the respondents to step up the pay of the petitioner on par with her Junior Prabhu Sabestian.

2.The case of the petitioner is that she was originally appointed as a Secondary Grade Teacher in the year 1991 at Ammapettai. Subsequently, the petitioner was transferred to the present block at Kangeyam with effect from 02.03.1994. The services of the petitioner was regularised and her probation was also declared. Thereafter, the petitioner was

promoted to the post of Elementary School Headmaster and further promoted to the post of Middle School Headmaster with effect from 05.11.2007.

3.The petitioner found that her junior Prabhu Sabastian is getting more pay than the petitioner and there was an anomaly. In order to remove the anomaly, Rule 22 of the Fundamental Rules provides that the pay of the senior should be stepped up on par with that of the junior. In order to exercise this right, the petitioner made a representation to the 2nd respondent to step up the pay. By virtue of the impugned order, the 2nd respondent has rejected the claim only on the ground that the seniority of the petitioner can be assessed only division wise and the moment the petitioner has moved from one division to another, the seniority has to be assessed only by considering the new division. Aggrieved by this order, the present writ petition has been filed before this Court.

4.Mrs.Dakshayani Reddy, learned counsel appearing on behalf of the petitioner submitted that the impugned order passed by the 2nd respondent suffers from non-application of mind. The learned counsel submitted that even if the reasoning given in the impugned order is taken to be correct, even then the petitioner is very much senior to the said Prabhu Sabastian and therefore, in any case, the pay of the petitioner must be stepped up on par with that of the junior. The learned counsel submitted that both in terms of entry into service as well as joining into the new division, the petitioner is way ahead in the seniority and therefore the impugned order passed by the 2nd respondent requires interference.

5.Per contra, Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the seniority can be determined only division wise. Once a teacher is transferred from one division to another, the teacher loses the seniority in the earlier division and her seniority can be reckoned only in the division. The learned counsel submitted that it is only based on this rule, the impugned order was passed by the 2nd respondent.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.It is seen from records that the petitioner joined at Ammapettai on 31.01.1991 and Prabhu Sabastian had joined the services only on 04.10.1996. Thereafter, the petitioner was transferred to Oothukuli Block and even there, she had joined on 18.11.1991 and her present block on 02.03.1994 but Prabhu

Sabestian had joined only on 04.10.1996 in Kangeyam. 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 Prabhu Sabestian.

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 Shanthy got appointment as Secondary Grade Teacher at Kayathar Union only later in point of time. Therefore, by no stretch of imagination the said Shanthy could have stolen 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 Shanthy. 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 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 unsustainable 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 Shanthy got appointment as Secondary Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthy 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 Shanthy. 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.

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 Prabhu Sabastian 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 19.09.2018, requires interference and accordingly the same is quashed and the petitioner is entitled to seek pay parity on par with her junior Prabhu Sabastian, 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 Prabhu Sabastian 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.

Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

1. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
2. The District Educational Officer,
Palladam.
3. The Block Educational Officer,
Kangayam.

+1cc to M/s. Dakshayani Reddy, Advocate SR.No.1564

AKM/04.03.2020 /6P-5C/

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