



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2020

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No. 7472 of 2020

R.Paul Murugan

... Petitioner

-Vs-

1.The District Educational Officer,
Vallioor, Tirunelveli District.

2.The Block Educational Officer II,
Vallioor, Tirunelveli District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned proceedings of second respondent herein in Na.Ka.No.90/2020 dated 16.06.2020 and quash the same and consequently direct the respondents herein to step up the pay of the petitioner on par with petitioner's junior with effect from 05.12.2016 with all monetary benefits.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.A.Thiyagarajan
Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records relating to impugned proceedings of the second respondent herein in Na.Ka.No.90/2020, dated 16.06.2020 and quash the same and consequently, direct the respondents herein, to step up the pay of the petitioner on par with petitioner's junior with effect from 05.12.2016 with all monetary benefits.

2.The short facts leading to file this writ petition are that, the petitioner was initially appointed as Secondary Grade Teacher on 01.08.1995, subsequently, his service was regularized with effect



from 01.08.1995. He has completed the probation period on 31.07.1997 and he has been brought to the Valliyoor Panchayat Union on 22.07.1998, subsequently, he reached the selection grade on 01.08.2005 and has been promoted as Primary School Head Master on 01.06.2013. However, one M.kanagaraj, who was appointed as Secondary Grade Teacher on 14.08.1995 and his service was regularized on 14.08.1995 and he completed the probation period on 13.08.1997, he was brought to the same Valliyoor Union on 07.07.1999 and he reached the selection grade in Secondary Grade post on 14.08.2005 and Special Grade on 14.08.2015 and he was promoted as Primary School Headmaster on 08.08.2016. Therefore, the grade for both the petitioner and his junior if is compared, in all aspects he travelled only behind the petitioner. However, the said individual Kanagaraj is getting a higher pay, whereas the petitioner is getting a lower pay. Therefore, this pay disparity has to be removed and the correct pay has to be paid to the petitioner and in this regard, when the petitioner approached the respondents, the respondents passed the impugned order dated 16.06.2020 stating the following:

“திருநெல்வேலி மாவட்டம் வள்ளியூர் ஒன்றியம் செட்டிகுளம் புதுமனை ஊராட்சி ஒன்றிய ஆரம்பப் பள்ளி தலைமையாசிரியர் திரு.சு.பால் முருகன் என்பார் மாறன் குளம் ஊராட்சி ஒன்றிய ஆரம்பப் பள்ளி தலைமையாசிரியர் திரு.ஆ.கனகராஜை ஒப்பிட்டு முத்தோர் இளையோர் கண்கிட்டு ஊதிய முரண்பாடுகளைய வேண்டி விண்ணப்பம் செய்துள்ளார். பார்வை செயல் முறைகளின்படி ஒரே ஒன்றியத்தில் நியமனம் பெற்றவர்களுக்கு மட்டுமே இளையோர் முத்தோர் ஊதிய முரண்பாடுகளை சரி செய்ய இயலும் என்பதனால் கருத்துரு இத்துடன் திருப்பப்படுகிறது.

வட்டாரக் கல்வி அலுவலர்
வள்ளியூர் ”

Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner would submit that, the reason cited in the impugned order stating that, for those who have been appointed in the same Panchayat Union alone the comparison of junior-senior pay disparity can be made and for those, who are appointed in various Unions, such comparison cannot be made.

4.The said reason, according to the learned counsel for the petitioner, may not be justifiable and sustainable as this issue has engaged before this Court in several writ petitions, where number of orders have been passed.



5. In this regard, the learned counsel appearing for the petitioner relied upon the judgments made in the following writ petitions:

(i) W.P(MD).No.742 of 2018, dated 07.02.2018

(ii) W.P(MD).No.8046 of 2018, dated 24.4.2018

(iii) W.P(MD).No.9647 of 2018, dated 26.04.2018

6. By relying upon these judgments, the learned counsel for the petitioner would submit that, the issue is already covered in those judgments and the number of other judgments. Therefore, the reasons cited in the impugned order cannot be sustained.

7. Heard the learned Government Advocate appearing for the respondents, who would submit that, the said impugned order stating the reason that those who have been appointed in different places and have been brought into the same Union cannot be compared for the purpose of pay parity and therefore, the said reason cited in the impugned order would very well be sustainable. Hence, the impugned order does not require any interference from this Court.

8. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

9. In order to appreciate the earlier order passed by this Court, where, in the aforesaid cited judgments, I had an occasion to consider the similar issue, especially in W.P(MD).No.9647 of 2018 in the matter of **V.Helon Baby Vs., The District Elementary Educational Officer, Nagercoil and another**, dated 26.04.2018, where I have passed the following order:

"5. I have heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader.

6. Both the learned counsel for the parties would submit that the issue raised in this writ petition is covered by a number of decisions already passed in this regard. As 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.

7. In this regard, the learned counsel appearing for the petitioner relied upon the



judgment of this Court in W.P(MD).No.742 of 2018 dated 07.02.2018 in the matter of **K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and another**, where the following order was passed:

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"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."

8.Following the similar orders passed by this Court, I had an occasion to consider this issue in W.P.(MD) No.8046 of 2018 and I have 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. "

9. 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 be a valid one and therefore, on that ground, this impugned order is liable to be quashed. Accordingly, it is quashed.

10. In the result, the respondent, especially, the first respondent is directed to rectify the pay anomaly in respect of the petitioner and accordingly, step-up her pay on a 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 after calculating the same, the difference of pay shall be paid to the petitioner and the needful shall be done, within a period of six weeks from the date of receipt of a copy of this order.

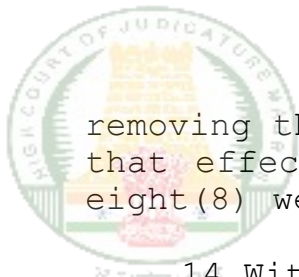
11. With the above directions, the Writ Petition stands allowed. No costs. "

10. Similar order has been passed in number of cases.

11. More over, as per the dates, which have been referred to above, from the date of joining till the date of getting promotion as Primary School Headmaster, the petitioner has travelled ahead of the individual, who has admittedly travelled behind him. Therefore, once the other individual namely, Kanagaraj is getting higher pay, certainly the pay disparity between these two i.e., the senior and junior have to be rectified.

12. The said reason cited in the impugned order that, those who have not been appointed in one single Union, are not entitled for pay parity, is palpably wrong, because, in the case of the petitioner, on 22.07.1998, the petitioner was brought to the Valliyoor Panchyat Union and in the case of the other individual, he was brought to the said union on 07.07.1999. Therefore, before the other individual comes to the present Union, the petitioner came to the Union and has been working. Therefore, the said reason cited in the impugned order, in the considered opinion of this Court, would not be sustained. Hence, this Court is inclined to interfere with the impugned order.

13. Resultantly, the impugned order is set aside and the matter is remitted back to the respondents for reconsideration. By making such reconsideration, the respondents shall borne in mind that from the date of appointment till the date the petitioner reached the position of Primary School Headmaster, the petitioner is ahead of the individual one Kanagaraj. However, the latter is getting higher pay than the petitioner. It should be considered and rectified by



removing the disparity of pay between these two. Necessary order to that effect shall be passed by the respondents within a period of eight (8) weeks from the date of receipt of a copy of this order.

14. With the above direction, this Writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The District Educational Officer,
Vallioor, Tirunelveli District.

2. The Block Educational Officer II,
Vallioor, Tirunelveli District.

+1 CC to M/s. T. PON RAMKUMAR, Advocate (SR-13313[F] dated 29/07/2020)

W.P. (MD) No. 7472 of 2020
27.07.2020

rmk

SDS (12.08.2020) 7P-4C