



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.02.2020
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.14950 of 2014

WEB COPY

Raya Xavier(Died)
R.Amalarani

... Petitioner

(The petitioner substituted as LR's of the deceased sole petitioner vide order of this court dated 16.12.19 made in WMP(MD)No.18805 of 2019)

vs.

1) The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009..

2) The Director of Elementary Education,
College Road, Chennai-600 006.

3) The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District-627 006.

4) The Assistant Elementary Educational Officer,
Sankarankovil,
Tirunelveli District-627 802.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 4th respondent Assistant Elementary Educational Officer, Sankarankovil, in Na.Ka.No.554/A1/2012 dated 28.06.2013, quash the same and further direct the respondents to sanction and disburse salary to the petitioner by re-fixing the scale of pay on a par with that of his juniors with all attendant benefits including the arrears of salary and allowances.

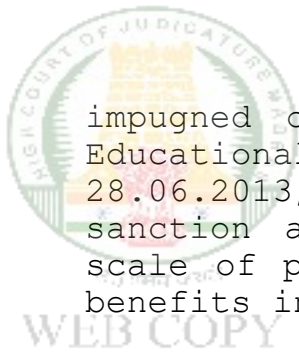
For Petitioner : Mr.K.Ragatheesh Kumar for
M/s.Isaac Chambers

For Respondents : Mr.N.Shanmuga Selvam
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the

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impugned order issued by the 4th respondent Assistant Elementary Educational Officer, Sankarankovil, in Na.Ka.No.554/A1/2012 dated 28.06.2013, quash the same and further direct the respondents to sanction and disburse salary to the petitioner by re-fixing the scale of pay on a par with that of his juniors with all attendant benefits including the arrears of salary and allowances.

2.The petitioner would submit that he joined the service as Secondary Grade Teacher in the Municipality Primary School, Gandhinagar, on 06.12.1990 and on the same day, one Mrs.C.Annathai was also appointed as Secondary Grade Teacher. On completion of 10 years of uninterrupted service, he was given selection grade on 07.12.2000 and the said Annathai was also granted selection grade on 07.12.2000. While so, the petitioner was directly promoted as Middle School Headmaster and posted in the present Municipality Middle School (West), Sankarankovil, Tirunelveli District, on 01.06.2008. The normal course of promotion for a Secondary Grade Teacher would be either to the post of Primary School Headmaster or B.T Assistant. Thereafter, they will become eligible to be promoted as Headmaster of Middle School. However, the petitioner was directly promoted to the post of Middle School Headmaster before getting promotion to the post of Primary School Headmaster or BT Assistant, as there was no eligible person available in the Union. He was placed in the salary admissible for the post of Middle School Headmaster w.e.f. 01.06.2008, which is identical to that of B.T. Assistants i.e., Rs. PB2 9300-34800+GP4500/- (Gross Amount of Rs. 21,550/-).

3.According to the petitioner, had he been given promotion in the normal course viz., first as BT Assistant / Primary School Headmaster and later as Middle School Headmaster, he would have been placed in the higher scale of pay of Rs. PB2-9300-34800+GP4700/- (Gross Amount of Rs. 23,570/-). However, the above said Annathai, who came to be appointed as Secondary Grade Teacher along with the petitioner, was promoted to the post of BT Assistant on 16.06.2008. After four years from petitioner's promotion to the post Headmaster, Tmt.C.Annathai was promoted as Headmaster of Middle School on 01.04.2012. She was placed in a higher scale of Rs.PB2 9300-34800+GP4700 and she was drawing the salary of Rs.23,570/- per month, whereas the petitioner who is much senior to the said C.Annathai was drawing only Rs.21,550/-.

4.Therefore, the petitioner made a representation to the respondents requesting to re-fix his scale of pay on a par with his juniors. On 01.04.2013, the 3rd respondent DEEO vide proceedings in O.Mu.No.61582/A5/2012, recommended the request of the petitioner stating that anomaly can be settled by the pay fixing authority namely, the 4th respondent, as per the rules. On 28.06.2013, the 4th respondent rejected petitioner's request vide impugned proceedings in Na.Ka.No.554/A1/2012 stating that as per para 4(f) in



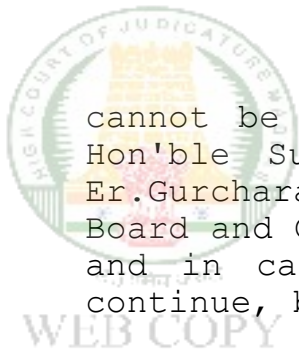
cannot be placed in the higher scale of pay since he came to be promoted as Middle School Headmaster directly and not from the feeder category, against which, this writ petition has been filed.

5.Learned counsel for the petitioner would submit that since no eligible person was available in the feeder category post, the petitioner was directly promoted to the post of Middle School Headmaster and since the petitioner has not personally opted for such direct promotion, the 4th respondent ought to have fixed his scale of pay on par with Annathai. He would also state that had the petitioner been given promotion in the normal course i.e., after promoting as Primary School Headmaster or B.T. Assistant, then to the present post of Middle School Headmaster, the petitioner also could have drawn the same pay that his juniors are drawing. Thus, he would pray for setting aside the impugned order.

6.The respondents have filed counter affidavit. Learned Additional Government Pleader appearing for the respondents would state that both the petitioner and C.Annathai were appointed as Secondary Grade Teachers on the same day on 06.12.1990. After the direct promotion of the petitioner to the post of Middle School Headmaster on 01.06.2008, the said Annathai was promoted as Tamil Pandit on 16.06.2008 and then as Middle School Headmaster on 01.04.2012. When the said Annathai was working as Tamil Pandit, she received two advance increments for her M.A., Degree from 28.05.2009 and for her B.Ed., degree from 14.07.2011 and therefore, she is entitled to have her pay fixed in the post of Middle School Headmaster with 3% increase in her pay, thereby, she happened to draw more pay than the petitioner, as such, it is not an anomaly as per G.O.No.859, Finance (Pay Cell) Department, dated 11.09.1986 to be rectified and the 4th respondent rightly considering the same, has rejected the request of the petitioner to step up his pay on par with C.Annathai stating that the said Annathai is bound to receive more pay than the petitioner. Thus, he would pray for dismissal of the writ petition.

7.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondents.

8.Perusal of record shows that the petitioner and Mrs.C.Annathai joined the service on the same date namely, 06.12.1990 and admittedly, the petitioner is the senior most person. Since no qualified Primary School Headmaster was available in the panchayat union, the petitioner was directly promoted as Middle School Headmaster from the post of Secondary Grade Teacher and the said promotion was not made at the instance of the petitioner and had the petitioner been given promotion in the normal course namely, B.T Assistant/Primary School Headmaster and later as Middle School Headmaster, he would have been placed in the scale of pay on par with his junior C.Annathai and therefore, the fault can be



cannot be put to prejudice. Further, as per the judgment of the Hon'ble Supreme Court in a case reported in (2009) 3 SCC 94, Er.Gurcharan Singh Grewal and Ors. vs. Punjab State Electricity Board and Ors, a senior cannot be paid lesser salary than his junior and in case of any anomaly, the same should not be allowed to continue, but should be rectified.

9.In my considered opinion, the respondents are bound to fix the petitioner's scale of pay on par with Mrs.C.Annathai who was appointed on the same day as that of the petitioner. During the pendency of the present writ petition, the petitioner died and his wife has impleaded herself as 2nd petitioner. Therefore, I am inclined to interfere with the impugned order.

10.Accordingly, the impugned order issued by the 4th respondent in Na.Ka.No.554/A1/2012 dated 28.06.2013, is quashed and the respondents are directed to re-fix the scale of pay of the petitioner on a par with his juniors and disburse the same with all attendant benefits including the arrears of salary and allowances to the 2nd petitioner who is the wife of the deceased petitioner. The said exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

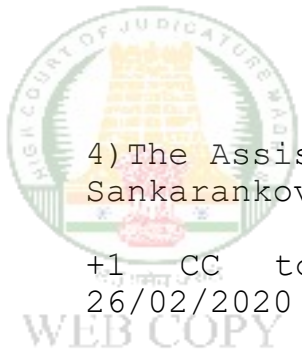
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To

1)The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai-600 009..

2)The Director of Elementary Education,
College Road, Chennai-600 006.

3)The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District-627 006.



4)The Assistant Elementary Educational Officer,
Sankarankovil, Tirunelveli District-627 802.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-8487[F] dated
26/02/2020)

ORDER MADE IN
W.P (MD) No.14950 OF 2014
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MK (13.03.2020) 5P 6C