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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.02.2021

Judgment Delivered on : 05.03.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.733 of 2019
and
C.M.P.No.5905 of 2019

S.Pitchainathan,
S/o P.S.Sundan .. Appellant
Vs.

1. The Chief Educational Officer, Dindigul.
2. The Director of School Education,
College Road, Chennai-600 006 .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 11.09.2018 passed by the learned Single Judge in W.P.No.30102 of 2004 on the file of this Court.

WP.No.30102 of 2004:Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd Respondent dated 19.03.2004 issued in the Ref.No.O.Mu.No.8396/L1/2004 and quash the same and further direct the Respondent to step up the pay of the petitioner to that of his Junior Mr.Viman's pay with effect from 27.05.99 with all consequential benefits.

For appellant : Mr.S.Nambi Arooran
for M/s.Ajmal Associates
For respondent: Mrs.P.Kavitha, Govt. Advocate (Education)

JUDGMENT

R.SUBBIAH, J

This Writ Appeal is filed as against the order dated 11.09.2018 passed by the learned Single Judge in W.P.No.30102 of 2004 on the file of this Court, in and by which, the said Writ Petition filed by the appellant/writ petitioner praying to quash the order of the second respondent dated 19.03.2004 and further



to direct the respondents to step up the pay of the appellant/writ petitioner to that of his junior Mr.Viman's pay with effect from 27.05.1999 with all consequential benefits, was dismissed.

2. The case of the appellant/writ petitioner is as follows:

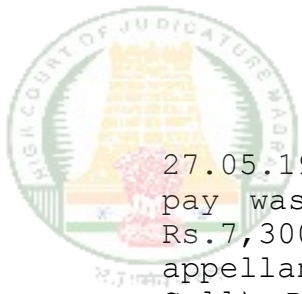
(a) The appellant was appointed as B.T. Assistant with effect from 24.02.1986. The said Mr.Viman was appointed as B.T. Assistant with effect from 29.09.1986. From the date of his appointment, till 01.07.1995, the appellant was drawing higher scale of pay of Rs.1,800 + 50 than that of the said Viman at Rs.1,760 + 60. In the year 1999, one incentive was given to both of them for acquiring higher qualification, consequent thereupon, the pay of Mr.Viman was fixed at Rs.7,700/-, but the appellant/writ petitioner's pay was fixed at Rs.7,300/-.

(b) As per G.O.Ms.No.162, Finance Department, dated 13.04.1998, when a junior's pay was fixed at a higher stage consequent upon getting incentive increment, senior's pay should be stepped up to that of the junior's pay. Based on the said G.O., the appellant made a representation dated 19.11.2003 with a request to step up his pay on par with the said Viman, who is junior to the appellant/writ petitioner.

(c) In the meantime, by proceedings of the first respondent, dated 27.08.2002, the appellant was informed that a clarification was sought for in the matter. Thereafter, by order of the second respondent, dated 19.03.2004, the claim of the appellant/writ petitioner was rejected. Challenging the said proceedings, dated 19.03.2004, the appellant preferred the Writ Petition for the relief stated above.

3. The learned Single Judge, by the order dated 11.09.2018 in W.P.No.30102 of 2004, was of the view that the claim of the appellant/writ petitioner seeking pay parity with Viman, without considering the prior service rendered by the said Viman in the Government Aided School, was without basis. Accordingly, the Writ Petition was dismissed, against which, the Writ Petitioner is before this Court by way of the present Writ Appeal.

4. It is the submission of the learned counsel for the appellant/writ petitioner that the said Viman was junior to the Writ Petitioner and he was appointed nearly seven months after the appointment of the appellant. While the appellant/writ petitioner was appointed as B.T. Assistant on 24.02.1986, the said Viman was appointed on 29.09.1986. Both of them were qualified in M.Ed. While so, when the appellant's junior Viman received the Selection Grade on 15.12.1993, but the appellant was receiving less scale of pay than that of his junior Viman. Further, till 26.05.1999, the appellant/writ petitioner and Viman were receiving the same pay, but with effect from



27.05.1999, consequent upon grant of one incentive, Mr.Viman's pay was fixed at Rs.7,700/-, whereas the appellant's pay was Rs.7,300/-. Further, according to the learned counsel for the appellant/writ petitioner, as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, the appellant's pay should have been stepped up on par with his junior Viman. The learned Single Judge, without considering all these facts, had dismissed the Writ Petition. Hence, the learned counsel appearing for the appellant/writ petitioner prayed for allowing the Writ Appeal.

5. The learned Government Advocate appearing for the respondents, by filing counter affidavit in the present Writ Appeal, submitted that the appellant's junior Viman exercised his VI Pay Commission option from 01.01.1996 itself, as he had already got Selection Grade on 15.12.1993, by including his past service in Government Aided School, whereas, the appellant/petitioner exercised his VI Pay Commission option on the date of his Selection Grade only on 24.02.1996. Further, due to the difference of dates of reaching Selection Grade, Mr.Viman's pay was fixed at Rs.6,700/- on 01.01.1996 and the appellant/writ petitioner's pay was fixed at Rs.6,700/- only on 24.02.1996. The learned Government Advocate further submitted that as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, the date of exercising option cannot be modified in future. Hence, as per the relevant Rule, the difference of pay cannot be rectified. The rejection of the request of the appellant/writ petitioner by the order under challenge in Writ Petition, dated 19.03.2004, was solely on the ground of exercising the VI Pay Commission option alone. But, in the said order passed by the second respondent, it is clearly stated that as the opted date for pay fixation cannot be altered and the rule relating to correction of pay disparity of senior to get pay equal or higher pay than the junior during service period, was not fulfilled. Hence, the request of the appellant/writ petitioner for stepping up of his pay on par with the said Viman, was not considered by the second respondent by the said order dated 19.03.2004. The contention of the appellant/writ petitioner that Mr.Veeman was junior than him, is not correct, as it was a mere presumption without taking into account the said Viman's past service. Further, the said Viman was previously appointed as B.T. Assistant in the Government Aided School from 14.12.1983 to 27.09.1986 and his post was upgraded as Selection Grade B.T.Assistant on 15.12.1993 itself, by including both the Government School Service and Aided School Service. But the appellant/writ petitioner was appointed as B.T. Assistant only on 24.02.1986 in Government service. Therefore, the appellant/writ petitioner cannot be considered as senior to Mr.Viman. Thus, the learned Government Advocate appearing for the respondents submitted that absolutely, there is no infirmity in the order passed by the learned Single Judge and prayed for



dismissal of the Writ Appeal.

6. Keeping in mind the submissions made on either side, we have carefully gone through the entire materials available on record.

7. It is the submission of the learned counsel appearing for the appellant/writ petitioner that the appellant/writ petitioner was appointed as B.T. Assistant on 24.02.1986, whereas, his junior Mr.Viman was appointed as B.T. Assistant on 29.09.1986. Originally, the appellant/writ petitioner was receiving higher pay of Rs.1800+50, whereas the said Viman was receiving Rs.1760+60. In the year 1999, one incentive increment was given to Viman for acquiring higher qualification and consequently, the said Veeman's pay was fixed at Rs.7,700/-, whereas the appellant/writ petitioner's pay was fixed only at Rs.7,300/-. The appellant/writ petitioner is also having equal higher qualification to that of the said Viman and hence, he had come forward with the present Writ Petition to quash the order of the second respondent, dated 19.03.2004 and to direct the respondents to step up his pay than that of his junior Mr.Veeman's pay with effect from 27.05.1999, with all consequential benefits.

8. On a careful perusal of the materials available on record, we find that the appellant/writ petitioner was appointed as B.T. Assistant on 24.02.1986 in Government High School, Veeraperumakkalur in Panruti Taluk, whereas Mr.Veeman was appointed as B.T. Assistant on 29.09.1986 in the Government Higher Secondary School, Nilakottai in Dindugal District and the said Mr.Viman was previously appointed as B.T. Assistant in Government Aided School on 14.12.1983 itself in Pachaiyappa Nadar High School in Kamatchipuram. As per G.O.Ms.No.992, Education Department, dated 22.06.1979, the services rendered by a Teacher under all kinds of managements, viz., Government, Panchayat, Municipal, Corporation and Aided agencies and also in/under the control of Director of Backward Classes and of Harijan and Tribal welfare prior to his/her resignation, termination, transfer or migration, should be counted for the required period of ten years of service for the purpose of granting Selection Grade in that post excluding the period of breaks, if any. Therefore, by taking the past service of Mr.Viman, he was granted Selection Grade in 1993, whereas, the appellant/writ petitioner had joined the service only in 1986. Therefore, it is incorrect to state that the said Viman was junior to the appellant/writ petitioner.

9. Further, the difference in pay between the appellant/writ petitioner and Mr.Viman is due to exercise of



option to get the benefits of VI Pay Commission. The appellant/writ petitioner, having exercised the option to avail certain benefits of the said VI Pay Commission later to the said Mr.Viman, cannot now complain regarding the parity in pay with Mr.Viman.

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10. Under such circumstances, we do not find any infirmity in the rejection order passed by the second respondent in refusing to step up the pay of the appellant/writ petitioner with that of the said Veeman.

11. All the above aspects were properly considered by the learned Single Judge and the Writ Petition was correctly dismissed by the learned Single Judge. Nothing is warranting for interference with the order passed by the learned Single Judge. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

cs

To

1. The Chief Educational Officer, Dindigul.

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

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W.A.No.733 of 2019

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