

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM

**The Hon'ble Mrs.Justice Pushpa Sathyanarayana
and**

The Hon'ble Mr.Justice Krishnan Ramasamy

W.A. No.1122 of 2021 &
C.M.P.No.7080 of 2021

1. The Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.

2. The Commissioner of Education,
DPI Campus,
College Road, Chennai-600 006.

3. The Director of Elementary Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai-600 006.

4. The District Educational Officer,
Tiruttani-631 209
Thiruvallur District.

5. The Block Educational Officer-I,
Pallipattu,
Thiruvallur District.

... Appellants

versus

Mr.P.V.Venkatesan

...Respondent

Prayer: Writ Appeal filed under clause 15 of the Letters Patent against the order, dated 08.10.2013, passed in W.P.No.35512 of 2019.

For Appellants : Mr.C.Jayaprakash,
Govt.Advocate
For Respondent : Ms.Swadhi Subramaniam

JUDGMENT

(Delivered by Krishnan Ramasamy, J.)

This intra-Court Writ Appeal is directed against the order passed by the learned Single Judge, in W.P.No.35512 of 2019, dated 08.10.2013.

2. The brief facts, which led to the filing of the present Writ Appeal, can be stated as under:

2(i) The respondent herein is the writ petitioner. According to the respondent, he was appointed as a Secondary Grade Teacher in the year 1987 and later, his services were also regularized with effect from the date of his initial appointment, i.e. 11.09.1987. Subsequently, he was transferred to Pallipattu Union and posted as a Secondary Grade Teacher in Savuttur Panchayat Union Primary School. Thereafter, he was promoted as Secondary Grade Head Master on 18.06.2001 and also as B.T.(Graduate) Head Master on 02.06.2016 and retired as such on 31.03.2019. While so,

according to the respondent, one Mrs.N.B.Indrani was appointed as Secondary Grade Teacher in the same school, i.e. Pallipattu Panchayat Union School on 03.10.1988, much after the appointment of the respondent. The grievance of the respondent is that the said Indrani, has been receiving higher scale of pay than him. Therefore, the respondent wanted to set right the pay anomaly, by stepping up his pay on par with his junior Mrs.N.B.Indrani. In this regard, the respondent made a representation dated 01.08.2015. However, by order, dated 15.09.2015, the 5th appellant herein, has rejected the claim of the respondent.

2(ii) Aggrieved by the same, the respondent has moved the Writ Court, by filing a Writ Petition, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 15.09.2015 passed by the 5th appellant herein, quash the same and consequently, to direct the appellants herein to step up the pay of the respondent on par with his junior Mrs.N.B.Indrani.

2(iii) Upon consideration of the facts and circumstances and after hearing the learned counsel on record, a learned single Judge of this Court, has allowed the Writ Petition, with the following observation:

"5. For a proper understanding of the facts of the case, the service particulars of the petitioner and one N.B.Indrani are tabulated

below:

Particulars regarding the petitioner	Particulars regarding the junior N.B.Indrani
(a) The petitioner was posted as Secondary Grade Teacher at Pallipet Union on 01.06.1988	(a) She was posted as Secondary Grade Teacher on 03.10.1988
(b) The petitioner was promoted as Secondary Grade Head Master on 18.06.2001	(b) She was promoted as Secondary Grade Head Master on 28.03.2003
(c) The petitioner was promoted as BT (Graduate) Head Master on 02.06.2010	(c) She was promoted as the Middle School Head Master on 01.06.2013

6. It is clear from the above Tabular Column that the petitioner was senior to the said Indrani at every stage. The grievance of the petitioner is that the said Indrani was drawing the higher scale of pay and therefore, the petitioner wanted to set right this anomaly by stepping up his pay on par with his junior.

7. The fifth respondent has rejected the claim made by the petitioner only on the ground that this anomaly can be set right only if the petitioner and his junior belong to the same Division. It is not known as to why the fifth respondent returned the file on this ground since from the records, it is clear that both the petitioner and Indrani were working in the same Division at Pallipet Union. Therefore, the very reasoning of the fifth respondent is factually wrong.

8. At this juncture, it will be relevant to rely upon the judgment passed by this Court in the case of K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and Another in WP(MD) No.742 of 2018 dated 07.02.2018, wherein, this Court dealt with a similar issue. The relevant portions of the above judgment is extracted herein:

3. The petitioner was appointed as Secondary Teacher on 08.08.1997 in Pudukottai Panchayat Primary School. On

her request, she got transferred to Kayathar Union on 04.07.1998. The petitioner is presently working as a Headmaster in Kayathar Union. The grievance of the petitioner is that one Shanthi, who was appointed as Secondary Grade Teacher in Kayathar Union on 11.01.1999 is drawing more pay. Citing this pay anomaly the petitioner submitted a representation to the District Elementary Educational Officer on 05.07.2017. The petitioner has also enclosed the comparative chart. It is obvious therefrom that the said Shanthi was appointed in Kayathar Union later in point of time.

4. The learned Counsel appearing for the petitioner drew the attention of this Court to the proceedings dated 25.05.2017, issued by the District Elementary Educational Officer, Tuticorin whereby, a similar pay anomaly in the case of one Mrs.Rani was set right. The petitioner's case is identical. However, the first respondent declined to accept the request of the petitioner.

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."

The above judgment will squarely apply to the facts of the present case. Even in the present case, the petitioner is very much senior to the said Indrani at every stage and therefore, the petitioner is entitled for stepping up of pay on par with his junior.

9. In view of the above discussion, the impugned proceedings of the fifth respondent vide in No.A.Thi.Mu.No.473/A/2015 dated 15.09.2015 is hereby quashed and the fifth respondent is directed to

forward the proposal to the third respondent and the third respondent is directed to pass appropriate orders stepping up the pay of the petitioner on par with his junior and grant the petitioner with all attendant benefits. The petitioner shall make a representation to the fifth respondent along with a copy of this order. The fifth respondent shall collect the particulars and forward the same to the third respondent within a period of four weeks thereafter. The third respondent, on receipt of the proposal shall pass final orders by stepping up the pay within a period of six weeks thereafter, by granting all attendant benefits to the petitioner."

3. Challenging the above order of the learned single Judge, the appellants herein, have preferred the present Writ Appeal.

4. Heard the learned Government Advocate appearing for the appellants and the learned counsel appearing for the respondent and perused the entire record.

5. It is not in dispute that one Mrs.N.B.Indrani is junior to the respondent/writ petitioner, since she was appointed in the year 1988 while the respondent was appointed in the year 1987 and both of them were appointed as Secondary Grade Teachers. In fact, till 31.05.2011, the respondent/writ petitioner was drawing higher scale of pay than his junior. Later, from 10.06.2011 onwards, the said Indrani was drawing higher pay than the respondent. This pay anomaly had occurred due to grant of two increments to her for her acquiring higher qualifications, viz., M.A., B.Ed., with effect from 01.06.2011.

6. Mr.Jayaprakash, learned Government Advocate appearing for the appellants, has fairly admitted that the respondent was also granted two increments for acquiring higher qualifications before 01.06.2011.

7. The learned Government Advocate has brought to our notice a Government Order in G.O.Ms.No.710 Finance (CMPC) Department, dated 23.08.1994, which was issued to rectify these kind of pay anomalies in drawing more pay by a junior than his/her senior due to drawal of advance increments for higher qualifications. The learned Government Advocate further admitted the fact that in the present case also, the junior of the respondent was drawing higher pay due to grant of two advance increments to her and he assured that the same would be rectified in terms of the said G.O.Ms.No.710 dated 23.08.1994.

8. The learned Government Advocate also filed statements/forms, wherein, the calculations have been shown as to how the pay anomaly would be rectified. A copy of the same were furnished to the learned counsel appearing for the respondent/writ petitioner. After getting appropriate instructions, the learned counsel for the respondent has reported no objection for setting right the anomaly in terms of the calculations mentioned in the Forms furnished to him.

9. In view of the submissions made by the learned State Government for the appellants and the learned counsel for the respondent, this Court is of the view that virtually, there is nothing remains to be adjudicated in the Writ Appeal, which are left by the Writ Court. Accordingly, we concur with the findings of the learned single Judge.

10. In the result, the Writ Appeal fails and it is dismissed. We direct the appellants to set right the pay anomaly of the respondent by stepping up his pay on par with the pay of his junior, Mrs.N.B.Indran from the date on which she gets more pay and revise his pension and grant pensionary benefits along with all other attendant monetary benefits thereof. The said exercise shall complete within a period of four months from the date of receipt of a copy of this order and disburse the same to the respondent within a period of two months thereafter. No costs. Consequently, connected CMP is closed.

[P.S.N., J.] [K.R., J.]

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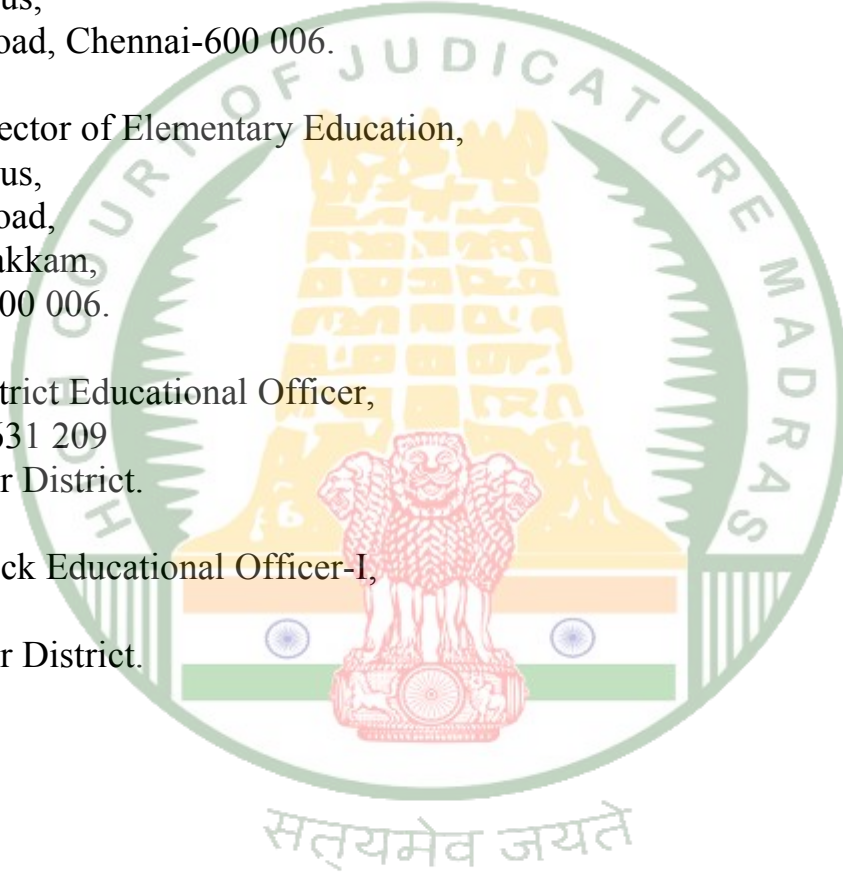
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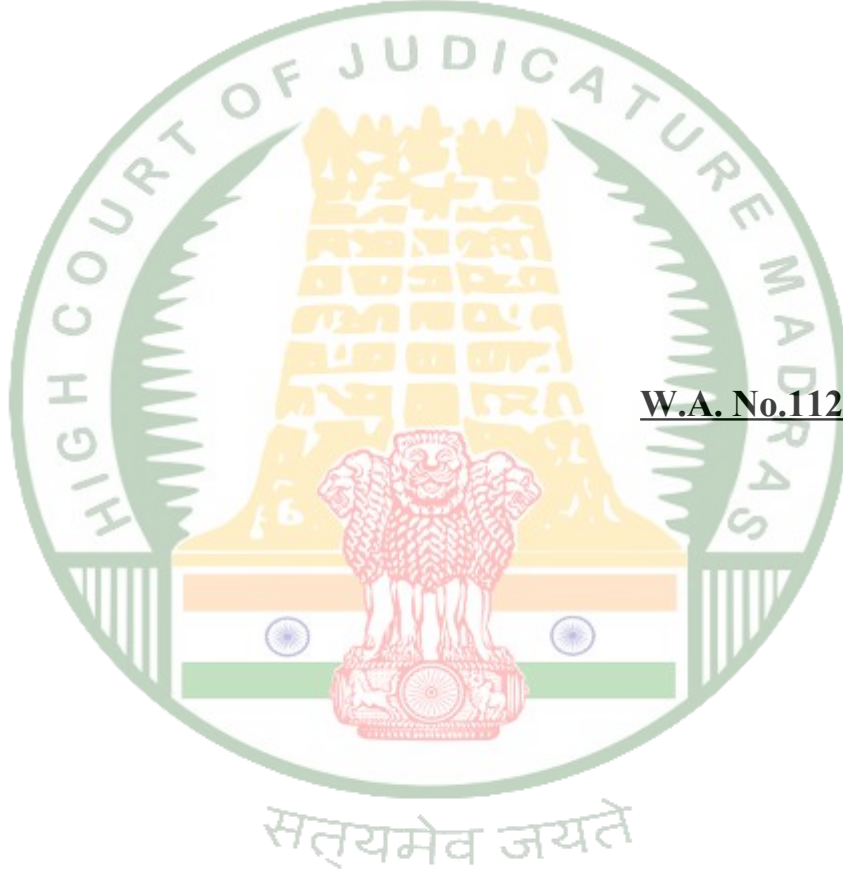


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