

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7453 of 2021

T.R.Vijayalatha

... Petitioner

-vs-

1. Director
Elementary Education, College Road,
DPI Compound
Chennai 600 006.
2. District Elementary Education Officer
Villupuram.
3. The Assistant Elementary Education Officer (Add)
Vikravandi, Villupuram District. ... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent herein to rectify the pay anomaly in respect of the petitioner for incentive increment for obtaining higher educational qualification from the date of acquisition of the respective higher educational qualification, and to consider the petitioner's representation dated 06.10.2020 to re-fix her scale of pay in par with the junior viz K.Sumathi.

For Petitioner : Mr.M.Arunachalam
For Respondents : Mr.P. Raja
Government Advocate

ORDER

This writ petition has been filed, seeking a direction to the second respondent herein to rectify the pay anomaly in respect of the petitioner for incentive increment for obtaining higher educational qualification from the date of acquisition of the respective higher educational qualification, and to consider the her representation dated 06.10.2020 to re-fix her scale of pay in par with the junior viz K.Sumathi.

2. According to the petitioner she is working as a B.T.Teacher in the Panchayat Union Middle School, Vikravandi,

Vikravandi block, Villupuram District. She filed W.P.No.9468 of 2016 before this Court to step up her pay equivalent to that of junior Mrs.K.Sumathi who is working as a B.T Teacher in the Panchayat Union Middle School, Kundalapuliyur, Vikravandi block, Villupuram District on the basis of the fundamental rules and relevant instructions issued by the State Government vide G.O.Ms.No.234 dated 01.06.2009 and also to quash the order in Na.Ka.2054/A3/2014 dated 07.07.2015. The petitioner joined as a Teacher on 18.08.1988 in a school at Anaikattu block, Vellore District and later transferred to the school wherein she is working currently from 29.06.1990. Mrs.K.Sumathi joined in Arani block, Tiruvannamalai District as Teacher and later on transferred to Vikravandi school on 25.09.1994. Petitioner is senior to Mrs.K.Sumathi and said Sumathi was drawing more salary than the petitioner. Hence the petitioner made a representation for equal salary as of paid to her junior Mrs.K.Sumathi as per G.O.Ms.No.234 dated 01.06.2009 and as amended from time to time.

3. The petitioner's representation sent earlier was rejected for the reason that the educational qualification was obtained without prior permission from the authorities. The High Court in W.P.No.9468 of 2016 quashed the order dated 07.07.2015 and stated that her claim cannot be rejected on the ground that the petitioner and her junior hails from different units in the light of the G.O but directed her to make appropriate application to the authorities concerned to rectify the defects of approval with regard to the so possessed higher qualification. The petitioner representation to the respondents dated 06.10.2020 requesting for an approval for her higher educational qualification obtained. Till now the respondents have not considered her representation and also not passed order on her increment considering her higher qualification.

4. This Court has consistently held that similarly placed persons are entitled to receive incentive increments despite the fact that they had undergone higher studies without permission. Since this Court has quashed the order made in Na.Ka.2054/A3/2014 dated 07.07.2015, the petitioner's request for stepping up her pay equal to that of the pay of junior be considered afresh on merits as per the order of this Court made in W.P.No.9468 of 2016. The petitioner's higher educational qualification is B.A., M.A., B.E., for which she is entitled for increment and further request for stepping up her pay to equal the pay of junior Mrs.K.Sumathi shall be considered as per the orders made in the above mentioned writ petition. As per the order made in W.P.No.9468 of 2016, the petitioner sent a representation dated 06.10.2020 requesting for an approval for her higher educational qualification obtained and also for stepping up her pay to equal the pay of the juniors. Since there was no reply from the respondents the petitioner has approached this Court with the present writ petition.

5. Considering the facts and circumstances of the case and taking into account the fact that the petitioner's representation is already pending with the first respondent and if the representation is not already disposed of earlier, the Writ Petition is disposed of with the following directions:

i) A direction is issued to the second respondent herein to consider the representation preferred by the petitioner dated 06.10.2020 if the petitioner is found to be eligible and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of 120 days from the date of receipt of a copy of this order;

ii) In case the petitioner is unable to appear for personal hearing, the petitioner is entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner fails to appear or file a written submission in time, the second respondent shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representation dated 06.10.2020 and this order, to the second respondent forthwith;

v) The second respondent is directed to communicate the decision taken on the representation, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order. No costs.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

dpq

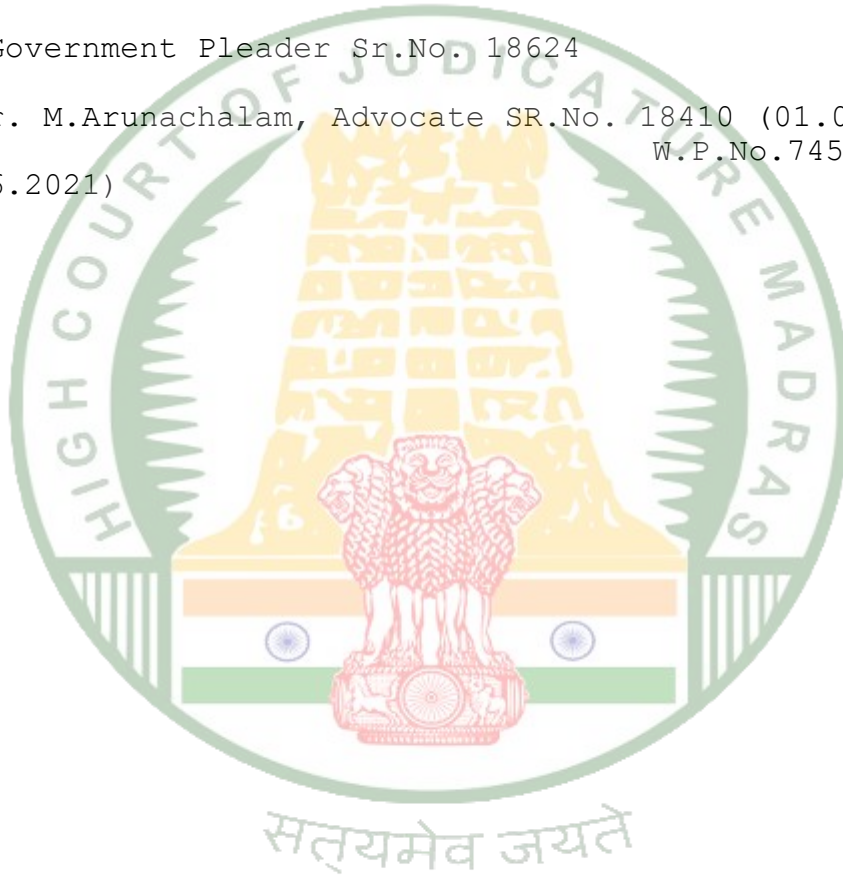
To

1. The Director
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2. The District Elementary Education Officer
Villupuram.
3. The Assistant Elementary Education Officer (Add)
Vikravandi, Villupuram District.

+1 cc to Government Pleader Sr.No. 18624

+1cc to Mr. M.Arunachalam, Advocate SR.No. 18410 (01.07.2021)
W.P.No.7453 of 2021

A.SK(29.06.2021)



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