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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.12125 OF 2020

AND

W.M.P.NO.14869 OF 2020

B.Chenni Veerappa,  
Head Master,  
Panchayat Union Middle School,  
Nellukunthi,  
Kelamangalam Panchayat Union,  
Krishnagiri District.

...Petitioner

Vs

1.The District Educational Officer,  
Thenkanikottai,  
Krishnagiri District.

**2.\* The Block Educational Officer,**

Kelamangalam Union,  
Krishnagiri District.

...Respondents

**(R2 Cause Title Amended vide order dated 20/04/2022 made in  
WMP.No.9433 of 2022 in WP.12125 of 2020)**

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent A.T.Moo.No.94/Aa3/19 dated 11.11.2019 and quash the same and consequently direct the respondent to step up the pay of the petitioner on par with his junior Parvathi Sundari with effect from the date on which the discrepancy has arisen.

|                 |   |                                |
|-----------------|---|--------------------------------|
| For Petitioner  | : | Mrs.Dakshayani Reddy           |
| For Respondents | : | Mr.Abishek Murthy              |
|                 |   | Government Advocate for R1     |
|                 |   | Mr.L.S.M.Hasan Fizal,          |
|                 |   | Addl.Government Pleader for R2 |

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent A.T.Moo.No.94/Aa3/19 dated 11.11.2019 and quash the



same and consequently direct the respondent to step up the pay of the petitioner on par with his junior Parvathi Sundari with effect from the date on which the discrepancy has arisen.

2. The case of the petitioner is that he was originally appointed as Secondary Grade Teacher with effect from 07.10.1996. He was granted incentive increment as he had acquired higher qualification and his probation was also declared with effect from 06.10.1998. Subsequently, the petitioner was promoted as Elementary School Headmaster with effect from 07.09.2004 and promoted to the post of Middle School Headmaster with effect from 02.08.2010. The petitioner's junior one Parvathi Sundari was appointed as Secondary Grade Teacher with effect from 13.08.1997 which was later to the appointment of the petitioner on 07.10.1996. She was promoted to the post of Elementary School Headmaster with effect from 14.10.2005 and also as Middle School Headmaster with effect from 23.12.2011 which was later to the similar promotion of the petitioner as Elementary School Headmaster and Middle School Headmaster. The said Parvathi Sundari acquired higher qualification only after being promoted to the post of Middle School Headmaster. She was granted incentive increment while she was working in the said post.

3. While fixing the pay, there was pay anomaly as between the petitioner and the said junior and therefore, the petitioner submitted a representation for stepping up of pay on par with his junior in terms of the provisions of the Fundamental Rules. The 2nd respondent appeared to have also recommended the case for stepping up of pay vide his proceedings dated 06.09.2019. However, the 1st respondent rejected the claim of the petitioner only on the ground that the said Parvathi Sundari has been transferred to Kelamangalam Panchayat Union and the petitioner was working in the same Panchayat Union. Challenging the rejection order, this writ petition has been filed.

4. On behalf of the respondents, Mr. Abishek Murthy, the learned Government Advocate appeared for the 1st respondent and Mr. L.S.M. Hasan Fikal, the learned Additional Government Pleader appeared for the 2nd respondent and filed a detailed counter affidavit.

5. The substance of the objection to the grant of relief placed on behalf of the respondents is reflected in paragraph 14 of the counter affidavit which are extracted hereunder.

14. It is submitted that the Director of Elementary Education, Chennai in proceedings Rc.No.16907/ E1/2016 dated 11.08.2016 issued instructions to all the subordinate officers stating that as per Para 6 in G.O.Ms.No.320/Fin.(PC) dept.



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dated 2.4.1990 the re-fixation of pay of seniors shall be done by the appointing authorities. In respect of Elementary Education, the District Elementary Educational Officers are appointing authorities for appointing Secondary Grade Teachers, Physical Education Teachers, craft Teachers and B.T.Assistants, and therefore, the District Elementary Educational Officers may issue order on stepping up of pay of a senior on par with junior provided that

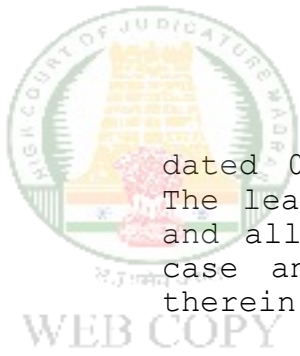
a) Both the senior and junior should belong to same unit of appointment. If senior and junior got initial appointment in separate appointment unit such persons are eligible to get stepping up of senior pay on par with junior. Unit of appointment must be the same for both senior and junior.

b) Seniors who got appointment in an appointment unit and then got transfer to another the unit of appointment are not eligible to get their pay stepped up on par with the junior working the appointment unit to which the senior came on transfer.

c) Accordingly, both senior and junior who got their initial appointment in separate unit of appointment and then both of them came on transfer to one unit of appointment, are also not also eligible to get their pay stepped up on par with junior, as their initial appointment is in different Appointment Unit.

With reference to the above rules, the writ petitioner is not eligible to compare A.Parvathi Sundari as his junior, and request to fix his pay on par with her junior as on 27.12.2012 - the date from which the junior is getting salary of Rs.22250/- whereas the senior is getting salary of Rs.21250/- (Difference of pay Rs.1000/-) as their units of initial appointment are not the same. If both the senior and the junior have got their initial appointment in the same Unit of Appointment the writ petitioner's request would be considered with reference to the above rules.

6. The above objection has been strongly reiterated by the learned counsel for the respondents. At this, the learned counsel for the petitioner would submit that the issue has been settled by the learned Judge of this Court in its recent order



dated 06.01.2020 passed in W.P.No.34455/2019 dated 06.01.2020. The learned Judge, had occasion to deal with an identical claim and allowed the writ petition. The arguments advanced in that case and the consideration of the learned Judge as recorded therein in paragraph 4 onwards are extracted hereunder.

4.Mrs.Dakshayani Reddy, learned counsel appearing on behalf of the petitioner submitted that the impugned order passed by the 2nd respondent suffers from non-application of mind. The learned counsel submitted that even if the reasoning given in the impugned order is taken to be correct, even then the petitioner is very much senior to the said Prabhu Sabastian and therefore, in any case, the pay of the petitioner must be stepped up on par with that of the junior. The learned counsel submitted that both in terms of entry into service as well as joining into the new division, the petitioner is way ahead in the seniority and therefore the impugned order passed by the 2nd respondent requires interference.

5.Per contra, Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the seniority can be determined only division wise. Once a teacher is transferred from one division to another, the teacher loses the seniority in the earlier division and her seniority can be reckoned only in the division. The learned counsel submitted that it is only based on this rule, the impugned order was passed by the 2nd respondent.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.It is seen from records that the petitioner joined at Ammapettai on 31.01.1991 and Prabhu Sabastian had joined the services only on 04.10.1996. Thereafter, the petitioner was transferred to Oothukuli Block and even there, she had joined on 18.11.1991 and her present block on 02.03.1994 but Prabhu Sabastian had joined only on 04.10.1996 in Kangeyam. This is clearly borne out by records.

8. It is therefore clear from the above that both in terms of joining service and in terms of being transferred into a different block, the petitioner is senior to the said



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Prabhu Sabastian.

9.It will be relevant to refer the judgment of this Court in WP (MD).No.24551 of 2018 dated 19.02.2019. The relevant portions of the judgment is extracted hereunder:

5.Further, the learned Counsel for the petitioner relied on the judgment passed by this Court in W.P(MD).No.742 of 2018 dated 07.02.2018 in the case of K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and another, wherein at paragraph No.5, it has been held as follows:

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 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.The second respondent had filed a Counter affidavit, wherein it has been stated as follows:

11. It is to be noted that B.Anuradha (Panchayar Union Area, S.Pudhur) was appointed in the very same S.Pudhur Union, ie., on 27.07.1999 and got transferred to the same Thirupathur Union on 01.11.2000. These two panchayat Union areas are same distinct and that the Teacher appointed in the same Union area, compared for fixation of pay with his junior, who came from one Unit to another Unit, cannot be done.

12.So even basically, the question of



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comparison cannot be entertained and her request cannot be entertained and his request cannot be considered even at the initial stage. So, the prayer of the petitioner can be set aside even at the primary stage.

7. Following the decisions as mentioned above, this Court had, in WP(MD)No.8046 of 2018, also 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 unsustainable in law. Even though the writ petitioner came to Kayathar Union by way of transfer and has to be placed at the bottom of



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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 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.

8.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 being a valid one and therefore, on that ground, this impugned order is liable to be quashed and accordingly, the same is quashed.

10.The above judgment was also subsequently followed in WP(MD).No.6358 of 2019 dated 25.04.2019.

11. It is clear from the above judgments that even after the transfer of the teacher to the new division and placing the teacher at the bottom of the seniority list, the fact remains that the junior had got into the new division only at a later point of time. Therefore, the junior cannot be permitted to take a march over a senior teacher.

12. In the present case, apart from the facts which clearly demonstrates that the petitioner is very much senior to Prabhu Sabastian both in terms of joining service and also joining the new division, the above judgment also clearly covers the facts of the present case.

13. In view of the above discussion, this



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Court is of the considered view that the impugned order passed by the 2nd respondent dated 19.09.2018, requires interference and accordingly the same is quashed and the petitioner is entitled to seek pay parity on par with her junior Prabhu Sabastian, who according to the petitioner is getting a higher pay. The 2nd respondent is directed to rectify the pay anomaly in the case of the petitioner and accordingly, step up the pay of the petitioner on par with her junior Prabhu Sabastian and extend all the consequential benefits. Necessary orders shall be passed in this regard by the 2nd respondent within a period of six weeks from the date of receipt copy of this order.

Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

7. According to the learned counsel, the above ruling of the learned Judge would squarely apply to the facts of this case. On behalf of the respondents, the above ruling has not been disputed.

8. In view of the issue being settled by the order of the learned Judge as aforementioned, the present Writ Petition is also to be covered under the directions as contained in the aforementioned order. Therefore, the impugned order passed by the 1st respondent dated 11.11.2019 is hereby set aside.

9. The respondents are directed to pass appropriate orders granting stepping up of pay to the petitioner as admissible under the Fundamental Rules within a period of six weeks from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)  
dated: 17/12/2021

**\* Corrected as per order of this  
Court dated 20/04/2022 made in  
WMP.No.9433 of 2022 in WP.No.12125 of 2020**

**Sd/-Assistant Registrar ( CS VII)  
Dated 24/05/2022**

// True Copy //

Sub Assistant Registrar

vsi



To

1. The District Educational Officer,  
Thenkanikottai,  
Krishnagiri.

2. The Block Educational Officer,  
Kelamangalam Union,  
Krishnagiri District.

To be Substituted to the  
order already despatched  
On 20/12/2021

+1cc to M/s. Dakshayani Reddy, Advocate SR.No. 26974

+1cc to the Government Pleader SR.No. 64042

W.P.No. 12125 of 2020

NMI (CO)  
RVM (20/12/2021)  
**GN (25/05/2022)**