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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.8243 of 2014

M.Suguna

... Petitioner

Vs

1. The Additional Assistant Elementary
Educational Officer, Pernampet,
Vellore District, Pin - 635 810.
2. T.Nalini,
Headmaster,
Panchayat Union Middle School,
Periyavarikkam, Pernampet Panchayat Union,
Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first respondent to fix the petitioner's pay on par with her junior, Tmt.T.Nalini (the second respondent herein) and grant her all consequential benefits.

For Petitioner : Mr.P.Rajendran

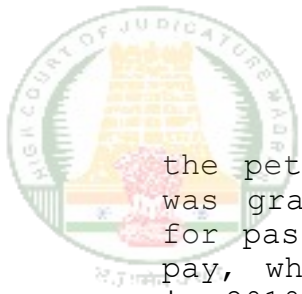
For R1 : Mr.A.Rajaperumal, AGP

For R2 : No appearance

ORDER

The Petitioner has come up with this Writ Petition seeking a direction to the first respondent to fix the petitioner's pay on par with her junior, T.Nalini (the second respondent herein) and grant her all consequential benefits.

2.It is the case of the petitioner that she was initially appointed as Secondary Grade Teacher on 07.09.1988 in Pernampet Panchayat Union, whereas the second respondent was appointed as Secondary Grade Teacher on 21.09.1988 in Vellore Panchayat Union; in the seniority list of Secondary Grade Teachers, the petitioner was placed at Sl.No.23 and the second respondent was placed at Sl.No.28; and thus, the second respondent is junior to



the petitioner. It is the grievance of the petitioner that she was granted incentive increments for passing B.Ed in 1994 and for passing MA examination in 1998, in the pre-revised scale of pay, whereas the second respondent was granted such increments in 2010 and 2012 respectively, in the revised scale of pay and therefore, the second respondent is drawing higher pay than the petitioner. To rectify the said pay anomaly and fix her pay on par with her junior, the petitioner made a representation dated 06.12.2013 to the first respondent. However, the said representation was not considered. Hence, this writ petition.

3.Upon notice, the first respondent filed a detailed counter affidavit, wherein, it is stated that as per Rule 9B of the Tamil Nadu Elementary Education Subordinate Service Rules, G.O.Ms.No.1383, Education Science and Technology Development dated 23.08.1988 came to be issued, according to which, the pay of the senior cannot be compared with the pay of the junior, those who were appointed in different blocks; and therefore, though in all aspects i.e., date of initial appointment, date of regularisation, date of completion of probation, date of selection grade, date of special grade and date of promotion, the petitioner is the senior to the second respondent, she cannot be compared with the second respondent, since they were initially appointed in different block. Hence, this respondent sought to dismiss this writ petition.

4.The aforesaid averments made in the counter affidavit filed by the first respondent have been seriously refuted by the learned counsel for the petitioner. Referring to the order dated 17.06.2010 passed in WP.No.42396/2006 (T), wherein, this Court considered the similar issue and allowed the said writ petition, the relevant portion of which, is usefully extracted below:

"7.The contention of the learned Additional Government Pleader appearing for the respondents at the threshold cannot be accepted for two main reason. Firstly, the petitioner was appointed as Secondary Grade Teacher on 01.06.1979. whereas, V.Sampath become Higher Secondary Teacher only on 04.06.1979 in Madhuranthakam Panchayat Union. Thereafter, on 10.11.1982, the petitioner-Neelavathi, was transferred to Madhuranthakam Panchayat Union from Vedaranyam. After the petitioner's transfer from Vedaranyam to Madhuranthakam Panchayat Union, admittedly, on 20.01.1985, the petitioner for having acquired B.Ed higher qualification, was granted incentive increments, whereas V.Sampath, working in Madhuranthakam Panchayat Union, also acquired B.Ed, degree as higher qualification on 31.12.1989 for which also incentive increments were paid to him.



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Subsequently, the petitioner had acquired M.Ed as the second higher qualification on 22.06.1992, and before the petitioner acquired M.Ed. Degree as second higher qualification, the said V.Sampath also acquired second higher qualification viz., M.A. 25.09.1981. In spite of all those two higher qualifications, possessed by both, as on 01.06.1979, the petitioner - Neelavathi, was paid a scale of pay at the rate of Rs.1,260/- whereas V.Sampath, Secondary Grade Teacher was paid a scale of pay at the rate of Rs.1,230/- on 01.06.1998. While so, after coming into force of the 5th Pay commission, there is no justification on the part of the respondents to pay higher scale of pay of Rs.1,500/- to V.Sampath, while paying lesser scale of pay of Rs.1,400/- to Neelavathi. Secondly, the reasons mentioned by the respondents stating that the petitioner Neelavathi is junior to V.Sampath is neither convincing nor justifiable for not stepping up to the scale of pay of the petitioner on par with her junior V.Sampath, who is also a Secondary Grade Teacher, who received lesser pay as on the date of transfer of the petitioner on 10.02.1982 from Vedaranyam to Madhuranthakam Panchayat Union. Admittedly, the petitioner was appointed as Secondary Grade Teacher on 01.06.1979, which is prior to the date of appointment of V.Sampath on 04.06.1979. In that view of the matter, this writ petition deserves to be allowed by setting aside the impugned order passed by the respondent.

8. In view of the above reasons, the impugned order passed by the respondents is set aside and the writ petition is allowed. No costs. In view of the pendency of the matter for a long time, the first respondent is directed to step up the scale of pay of the petitioner on par with V.Sampath within a period of six weeks from the date of receipt of a copy of this order."

Hence, the learned counsel submitted that the petitioner may be granted liberty to make a fresh representation enclosing all the required documents to the first respondent and on such representation being made, the first respondent may be directed to consider the same, in the light of the said earlier order passed by this Court, for which, the learned Additional Government Pleader appearing for the first respondent has no serious objection.

5. In view of the limited relief now sought by the learned counsel for the petitioner, which has not been seriously opposed on the side of the first respondent, this Court grants liberty



to the petitioner to make a fresh representation enclosing all the required documents within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the petitioner as well as the second respondent and also in the light of the aforesaid earlier order dated 17.06.2010 passed by this Court in WP.No.42396 of 2006 (T), within a period of four weeks thereafter.

6. Accordingly, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Assistant Elementary Educational Officer, Pernampet, Vellore District, Pin - 635 810.

+1cc to Mr.P.Rajendran, Advocate, S.R.No. 17071
+1cc to the Government Pleader, S.R.No. 16913

W.P.No.8243 of 2014

GSM(CO)
GN(20/07/2021)