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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P. No.15298 of 2017
and
W.M.P.No.16582 of 2017

S.Rajaiah ... Petitioner
Vs.

1.The Director of Elementary Education,
DPI Complex, College Road,
Nungambakkam,
Chennai.

2.The District Elementary Education Officer,
Thiruvvarur

3.The Assistant Elementary Education Officer,
Valangaiman
Thiruvvarur District.

... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with his order of rejection in proceedings in A.Thi.Mu.No.1410/2015/A2 dated 29.06.2016 and quash the same and consequently direct the respondent to rectify the pay anomaly by stepping up the pay of the petitioner on par with junior as done in a similar case consequent to judgment dated 18.06.2012 in W.P.No.3698 to 3700 of 2007.

For Petitioner : Ms.T.Aananthi

For Respondents : Mr.K.V.Sajeev Kumar
Government Counsel

O R D E R

The petitioner herein is working as B.T. Assistant in the Panchayat Union Middle School, Perungudi, Valangaiman, Thiruvvarur District. The claim of the petitioner is that his junior A.Sathiyamoorthy, who is working as a B.T. Assistant in Manickamangalam, Valangaiman Union, is drawing a higher pay than him and therefore, seeks for rectification of the pay anomaly.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The stand taken by the respondents in their counter



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affidavit is that as per the Government instructions dated 11.08.2016 and G.O.Ms.No.25 P & AR Department dated 23.03.2015, the petitioner cannot compare the pay of A.Sathiyamoorthy, who comes from another Union establishment and therefore, cannot seek junior/senior pay fixation variation. The issue involved in this writ petition as to whether the pay anomaly can be rectified between the junior and senior B.T. Assistants, insofar as it relates to the junior being transferred from another establishment is concerned, came before this Court on many occasions and in one of the orders passed by this Court in W.P.(MD) No.24551 of 2018 dated 19.02.2019, the learned Single Judge had held that even after the transfer of the Teacher to a new Division and placing the Teacher at the bottom of the seniority list, the fact remains that the junior had entered a new division at a later point of time and therefore cannot be permitted to take a march over the senior Teacher. The decision of the learned Single Judge came to be followed by another Single Judge in the case of S.Premavathi v. Director of School Education and two others passed in W.P.No.34455/2019 and the proposition was reiterated by following the decision in W.P.(MD) No.24551/2018. The relevant portions of the order read thus:

"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 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:



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"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 Teachers 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 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.



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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



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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.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



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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 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."

3. The order of the learned Judge passed in the case of S.Premavathi (supra) came to be upheld by the Hon'ble Division Bench of this Court through an order dated 18.03.2021 passed in W.A.No.178/2021. The relevant portions of the order of the learned Division Bench read as follows:

"3. The writ petitioner-respondent has relied on the Division Bench order passed in Madurai on November 14, 2019. Paragraph 2 of the relevant order reveals that the appeal was directed against an order of March 13, 2019 made in W.P.(MD) No.4231 of 2019. It was also recorded in the second paragraph that the learned Judge had allowed the writ petition by taking note of the directions issued in W.P.(MD) No.742 of 2018 dated February 07, 2018.

"4. By the order of November 14, 2019, the Madurai Bench held that the writ petitioner had to be set out over her juniors and refused to interfere with the order impugned in that case. In view of such finding, the order dated January 06, 2020, which is in consonance with



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the order affirmed in the appeal by the Madurai Bench, cannot be questioned. As a consequence, W.A.No.178 of 2021 is dismissed. There will be no order as to costs. CMP No.835 of 2021 is closed.

4. The aforesaid extracts are self-explanatory, as such the claim made by the respondents that the petitioner cannot compare himself with the pay of his junior K.Sathiyamoorthy, who has come from another establishment, cannot be sustained.

5. In the result, the proceedings of the third respondent in A.Thi.Mu.No.1410/2015/A2 dated 29.06.2016 is quashed and consequently the respondents are directed to rectify the pay anomaly of the petitioner by stepping up his pay on par with his junior, which exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

6. The writ petition stands allowed. However, there will be no order as to costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

RR

To

1.The Director of Elementary Education,
DPI Complex, College Road,
Nungambakkam, Chennai.

2.The District Elementary Education Officer,
Thiruvarur

3.The Assistant Elementary Education Officer,
Valangaiman, Thiruvarur District.

+1cc to Mr.T.Aananthi, Advocate, S.R.No. 33379

W.P.No.15298 of 2017

GPL (CO)
GN(13/08/2021)