



WEB COPY

W.A.(MD)No.255 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2021

CORAM :

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A.(MD) No.255 of 2021

and

CMP(MD).No.821 of 2021

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
2. The Director of Elementary Education,
College Road, Chennai - 600 006.
3. The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District - 627 006.
4. The Assistant Elementary Educational Officer,
Sankarankovil, Tirunelveli District-627 802.

... Appellants/Respondents 1 to 4

Vs

Raya Xavier, (Died)
R.Amalaram

... Respondent/Writ Petitioner

Prayer : Appeal under Clause 15 of the Letters Patent, against the order dated 24.02.2020, passed in W.P.(MD) No.14950 of 2014.

Prayer in WP(MD). 14950/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 4th Respondent Assistant Elementary Educational officer, Sankarankovil in Na.Ka.NO. 554/ A1/ 2012 dated 28.06.2013 Quash the same, and further direct the respondents to sanction and disburse salary to the petitioner by re- fixing the scale of pay on a par with that of his juniors with all attendant benefits including the arrears of salary and allowance.



For Appellants

: Mrs.S.Srimathy,
Special Government Pleader

For Respondent

: Mr.K.Ragatheesh Kumar,
for M/s.Isaac Chambers

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J U D G M E N T

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This appeal filed by the Education Department is directed against the order dated 24.02.2020, passed in W.P(MD).No.14950 of 2014.

2. The order impunged in the writ petition is dated 28.06.2013, by which, the respondent-writ petitioner's request for stepping up his pay on par with his junior, was declined solely on the ground that the petitioner was promoted from secondary grade teacher. The reason is not sustainable. The seniority only commence from the date of joining in the promotional post. The correctness of such a stand has been tested in several cases and the learned Writ Court by following the decision in W.P(MD).No.742 of 2018 dated 07.02.2018, allowed the writ petition and aggrieved over the same, the Department is before us.

3. We have elaborately heard Mrs.S.Srimathy, learned Special Government Pleader for the appellants and Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers, learned Counsel appearing for the respondent.

4. Similar issue came up for hearing before this Court on earlier occasions and one such decision in W.P(MD).No.742 of 2018 dated 07.02.2018, was followed by the learned Single Bench. Identical issue was considered by the Division Bench of this Court in W.A(MD).No.1220 of 2019, which was filed by the Education Department challenging the order passed in W.P(MD).No.4231 of 2019 and the Department appeal was dismissed holding that the distinction sought to be drawn by the Department on the ground that the two teachers are working in two different Panchayat Union Schools, is not sustainable. Therefore, we find that there is no error in the order passed in the writ petition.

5. The learned Special Government Pleader appearing for the appellants-Department would vehemently contend that though the reason given in the order impugned in the writ petition may not be fully sustainable, yet the question of stepping up of the pay would not arise, as all pay anomaly issue consequent upon revision of pay



and allowances pursuant to the recommendations of the pay commissions are governed by the Tamil Nadu Revised Pay Rules 2017, issued by the Government in G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017.

6. The learned Special Government Pleader has drawn our attention to the relevant portions of the Government Order and submitted that if the issue is considered in terms of the guidelines laid down in the Rules, the question of stepping-up of the pay would not arise. We cannot accept this submission made by the department at this juncture for more than one reason. Firstly, the order impugned in the writ petition does not refer to G.O.Ms.No.303, for declining stepping up of pay. Secondly in the writ petition, no such argument was advanced by the department and though in other cases counter affidavits have been filed, this contention was never raised. Thirdly, G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017, is much after the order impugned in the writ petition.

7. Therefore, based on G.O.Ms.No.303, we cannot interfere in the order passed in the writ petition. As in our opinion, if according to the appellants-Department the stepping up cannot be done in terms of the Tamil Nadu Revised Pay Rules 2017, it gives a separate cause of action and therefore, the request of the respondents-teachers should be processed in accordance with the Rules and not for the reasons cited in the impugned order passed in the writ petition, which has been rightly quashed.

8. Accordingly, while confirming the order passed in the writ petition quashing the impugned order therein, we give liberty to the appellants-Department to consider the case of the respondent-teacher based on the Tamil Nadu Revised Pay Rules 2017, in accordance with law and if so advised, by taking into account the relevant Government Orders. Accordingly, order in the Writ Petition is confirmed.

9. The Writ Appeal stands dismissed with the aforementioned observation and consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

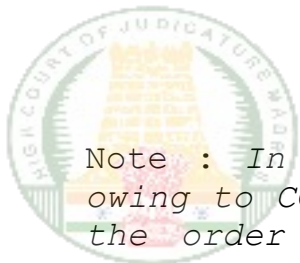
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/ /2021

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To.

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Rep. by its Secretary,
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+1 CC to M/s.ISAAC CHAMBERS, Advocate
(SR-15941[F] dated 16/04/2021)

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CN(20.05.2021) 4P 6C