



W.P.No.21460 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.21460 of 2019

K.Vijayakumar,
Head Master,
Panchayat Union Elementary School,
Samanthipuram, Polur Block,
Thiruvannamalai District.

... Petitioner

..Vs..

1.The District Educational Officer,
Polur, Tiruvannamalai District.

2.The Block Educational Officer – II,
Polur, Tiruvannamalai District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to 2nd respondent in his proceedings in O.Mu.No.2406/A2/2018, dated 29.05.2019 to quash the same and consequently permit the petitioner to resubmit his representation dated 27.11.2018, to 2nd respondent and forward the same to 1st respondent to reconsider the claim of the petitioner's representation dated 27.11.2018, in the light of judgment in WP.No.3698 of 2007 and batch, within a time frame.



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For Petitioner : Mr.P.Murali

For Respondents : Mr.R.Neethiperumal
Government Advocate

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus relating to 2nd respondent in his proceedings in O.Mu.No.2406/A2/2018, dated 29.05.2019, to quash the same and consequently permit the petitioner to resubmit his representation dated 27.11.2018, to 2nd respondent and forward the same to 1st respondent to reconsider the claim of the petitioner's representation dated 27.11.2018, in the light of judgment in WP.No.3698 of 2007 and batch, within a time frame.

2. The petitioner was appointed as Secondary Grade Teacher on 07.10.1996. Thereafter, he acquired higher qualification namely M.A.B.Ed., for which incentive increments were given to him on 15.12.2011. Thereafter as per the seniority, the petitioner was promoted as Primary School Headmaster with effect from 30.06.2012.

3. Whereas one Mrs.R.Kokila was appointed as Secondary Grade



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Teacher on 10.10.1996 and after attaining seniority, she was promoted as Primary School Headmaster w.e.f., 01.06.2017.

4. However, insofar as fixation of pay for the petitioner in the post of Elementary School Headmaster is concerned, it was fixed only at Rs.65,500/-, whereas in the same position in respect of said individual Mrs.R.Kokila, who subsequently has been promoted as Elementary School Headmaster, the pay was fixed at Rs.71,600/-.

5. Therefore, in order to rectify the pay anomaly between the senior and junior, the petitioner has given a detailed representation along with comparative table in the form and forwarded the same to the second respondent on 19.11.2018. Having considered the said request made by the petitioner to set right the pay anomaly between the petitioner and his junior, the second respondent passed an order on 29.05.2019 rejecting the plea of the petitioner, which is impugned in this writ petition.

6. Heard the learned counsel for the petitioner, who would submit that, from the date of appointment till date, the petitioner all along had been traveling as senior to the said individual and in fact



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the petitioner had been given promotion to the post of Headmaster in Elementary School as early as on 30.06.2012, whereas, after five years only, the said individual was given promotion on 01.06.2017. Therefore, at no stretch of imagination she could be getting higher pay than the petitioner.

7. Therefore, if at all the pay fixation to the said individual i.e., Rs.71,600/- per month is the correct pay payable, the same pay atleast shall be paid to the petitioner, who is comparatively very senior to the said individual. Therefore, in order to rectify the same, when a detailed representation with a comparative table as per the requirement in format, though was given by the petitioner which was duly forwarded by the Headmaster i.e., the petitioner himself to the second respondent, who without considering the disparity among the petitioner and his junior has given a reason, which is either flimsy or unconnected with the issue. Therefore, the learned counsel for the petitioner would seek indulgence of this Court against the impugned order.

8. Per contra, Mr.Neethi Perumal, the learned Government Advocate appearing for the respondent would submit that, the said



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individual i.e., Mrs.R.Kokila though joined in service three days after the petitioner joined in service, she did not get the promotion to the post of Headmaster, Elementary School immediately, for want of vacancy, as per her seniority. Therefore, during the said time, when she was completing 10 years of secondary grade Teacher Post, she was conferred with the selection grade and thereafter only promotion was given on 01.06.2017. Based on the 7th Pay Commission recommendation, for the Elementary School Headmaster post the pay was fixed taking into account the earlier pay received along with advanced incentive increments for the higher qualifications acquired by the individuals and therefore pay of Rs.71,600/- was paid. Whereas, in respect of the petitioner, though he also acquired higher qualification for which advance incentive increments were given to him on 15.12.2011, since he got promotion on 30.06.2012 as Headmaster, therefore based on such pay, he was fixed at Rs.65,600/-. In this context, if at all any pay anomaly is found between these two, that can be rectified only if both the candidates are appointed in the same panchayat union, as in respect of the Secondary Grade Teacher and the Elementary School Headmaster are concerned, the panchayat union will be unit and in that unit, when they were appointed and got promotion, then only disparity would be



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rectified and that is the reasons stated by the second respondent rejecting the plea by the petitioner. Therefore, the learned Government Advocate made the said submissions to sustain the order impugned.

9. I have considered the rival submissions made by the respective counsels and perused the materials placed before this Court.

10. Infact, the issue raised in this writ petition is no more *res integra* as many a number of pay anomaly cases between the senior and junior have come earlier before this Court and number of judgments have been passed by this Court which were confirmed by the various Division Benches of this Court.

11. In this context, the learned counsel for the petitioner has relied upon the following decisions;

(i) ***K.Vijayarani Vs. The District Elementary Educational Officer & another*** dated **07.02.2018** in ***W.P.(MD).No.742 of 2018.***

(ii) ***S.Premavathi Vs. Director of School Education & others***



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dated **06.01.2020** in **W.P.No.34455 of 2019.**

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(iii) **R.Paul Murugan Vs. The District Educational Officer & another** dated **27.07.2020** in **W.P.(MD).No.7472 of 2020.**

(iv) **The Director of School Education & others Vs. S.Premavathi** dated **18.03.2021** in **W.A.No.178 of 2021.**

(v) **V.Tamilmani Vs. The District Elementary Educational Officer & other** dated **22.03.2021** in **W.P.No.28659 of 2017.**

(vi) **S.Meena & others Vs. The Director of Elementary Education & others** dated **12.01.2022** in **W.P.No.36693 of 2016.**

12. Among the afore-stated decisions, I had an occasion to consider one similar issue in W.P.(MD).No.7472 of 2020 and an order was passed on 27.07.2020, where, I had passed the following order;

"8.I have considered the submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

*9.In order to appreciate the earlier order passed by this Court, where, in the aforesaid cited judgments, I had an occasion to consider the similar issue, especially in W.P(MD).No.9647 of 2018 in the matter of **V.Helon Baby Vs., The District Elementary Educational Officer, Nagercoil and another**, dated 26.04.2018, where I have passed the following order:*



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"5.I have heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader.

6. Both the learned counsel for the parties would submit that the issue raised in this writ petition is covered by a number of decisions already passed in this regard. As in those cases, the similar reason given by the respective authorities for rejecting the pay parity had been found to be unlawful and unjustifiable and accordingly, the reliefs were given to the individual employees.

*7. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of this Court in W.P(MD).No.742 of 2018 dated 07.02.2018 in the matter of **K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and another**, where the following order was passed:*

"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



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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 a 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."

8.Following the similar orders passed by this Court, I had an occasion to consider this issue in W.P.(MD) No. 8046 of 2018 and I have passed an order in the following terms:-

"9.Therefore, it became obvious that the



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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



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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 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 a march over the petitioner. The order impugned in this writ petition is quashed. The respondents are directed to set



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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. "

9.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 be a valid one and therefore, on that ground, this impugned order is liable to be quashed. Accordingly, it is quashed.



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10.In the result, the respondent, especially, the first respondent is directed to rectify the pay anomaly in respect of the petitioner and accordingly, step-up her pay on a par with her junior, who is getting higher pay irrespective of the place of joining office at the first instance, after selection to the post of Teacher and after calculating the same, the difference of pay shall be paid to the petitioner and the needful shall be done, within a period of six weeks from the date of receipt of a copy of this order.

11.With the above directions, the Writ Petition stands allowed. No costs. "

10.Similar order has been passed in number of cases.

11.More over, as per the dates, which have been referred to above, from the date of joining till the date of getting promotion as Primary School Headmaster, the petitioner has travelled ahead of the individual, who has admittedly travelled behind him. Therefore, once the other individual namely, Kanagaraj is getting higher pay,



certainly the pay disparity between these two i.e., the senior and junior have to be rectified.

12.The said reason cited in the impugned order that, those who have not been appointed in one single Union, are not entitled for pay parity, is palpably wrong, because, in the case of the petitioner, on 22.07.1998, the petitioner was brought to the Valliyoor Panchyat Union and in the case of the other individual, he was brought to the said union on 07.07.1999. Therefore, before the other individual comes to the present Union, the petitioner came to the Union and has been working. Therefore, the said reason cited in the impugned order, in the considered opinion of this Court, would not be sustained. Hence, this Court is inclined to interfere with the impugned order.

13.Resultantly, the impugned order is set aside and the matter is remitted back to the respondents for reconsideration. By making such reconsideration, the respondents shall borne in mind that from the date of appointment till the date the petitioner reached the position of Primary School Headmaster, the petitioner is ahead of the individual one Kanagaraj. However, the latter is getting higher pay than the petitioner. It should be considered and rectified by removing the disparity of pay between these two. Necessary order to that effect shall be passed by the respondents within a period of eight(8)



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weeks from the date of receipt of a copy of this order.

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13. One such order passed by this Court, when was appealed before a Division Bench of this Court in W.A.No.178 of 2021 (cited supra), the First Division Bench of this Court have passed the following order in that writ appeal, which reads as follows;

"2. The order impugned in the present case is founded on an order of February 19, 2019 passed in W.P.(MD) No.24551 of 2018. As it would be evident from paragraph 9 of the order impugned, the relevant order in W.P.(MD) No.24551 of 2018 relied on a judgment passed in W.P.(MD) No.742 of 2018 dated February 07, 2018.

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



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impugned in that case. In view of such finding, the order dated January 06, 2020, which is in consonance with 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.

14. That apart, several orders of this nature have been passed by this Court at various occasions. Therefore, the issue as to the pay anomaly between senior and the junior is no more *res integra* and in this context, if there is no pay parity between the petitioner and the junior, then certainly that pay anomaly has to be rectified by the respondents.

15. In this context the reason cited by the respondent that both does not belong to same panchayat union is absolutely an unconnected reason because insofar as the petitioner case is concerned, he is admittedly the senior person appointed on 07.10.1996 and got promoted on 30.06.2012, whereas the other individual i.e., Mrs.R.Kokila appointed only on 10.10.1996 and got promoted only w.e.f., 01.10.2017. Therefore, at no stretch of imagination the petitioner can get lesser pay than the said individual



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that too this much of difference between Rs.65,500/- and Rs.71,600/-

. Therefore, the said anomaly has to be rectified necessarily by the respondents and hence the present reason cited in the impugned order refusing to rectify such pay anomaly as prayed for by the petitioner is untenable and hence the said impugned order is liable to be set aside.

16. In the result, the impugned order is set aside and the matter is remitted back to the respondents, where a direction is hereby given to the respondents to consider the request of the petitioner for rectifying the pay anomaly between the petitioner and his junior referred to above and accordingly after rectifying the same, the difference of pay and pay arrears shall be paid and continued to be paid as per the eligibility and entitlement of the petitioner.

17. The needful as indicated above shall be undertaken by the respondents within a period of eight (8) weeks from the date of receipt of copy of this order.

18. With the above directions, the writ petition stands disposed of. No costs.



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Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

To

1.The District Educational Officer,
Polur, Tiruvannamalai District.

2.The Block Educational Officer – II,
Polur, Tiruvannamalai District.



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R.SURESH KUMAR., J

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