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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **03.02.2022**
CORAM:
THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
W.P.(MD)No.16062 of 2018
and
W.M.P.(MD)No.16991 of 2018

P.Subburajan ... Petitioner

/Vs./

1.The Block Educational Officer II/
The Additional Elementary Educational Officer,
Block Educational Office,
Kujuilimparai,
Dindigul District.

2.Mr.Arunkumar
Block Educational Officer II,
Block Educational Office,
Kujuilimparai,
Dindigul District. ... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.358/A2/2018, dated 24.05.2018 and quash the same and consequently direct the first respondent to fix any salary on the basis of order passed by the first respondent, dated 13.04.2015.

For Petitioner : Mr.G.Kannan
for M/s. Veera Associates
For R1 : Mr.A.K.Manikkam
Special Government Pleader
For R2 : Mr.C.Karthikeyan
for M/s.T.A.Ebenezer

O R D E R

The petitioner does not press the petition as against R2, the named Block Educational Officer and this writ petition is thus dismissed qua R2 for whom Mr.C.Karthikeyan, learned counsel appears.

2.Heard the detailed submissions of Mr.G.Kannan, learned counsel for the petitioner and Mr.A.K.Manikkam, learned Special Government Pleader for R1.

3.The petitioner was appointed as a Secondary Grade Teacher through regular appointment process conducted by the Tamil Nadu Recruitment Board and posted at the Panchayat Union Middle School.

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Subsequently, he was promoted through the ranks as Headmaster and posted at Panchayat Union Primary School at Mettapatti. He was promoted as a Headmaster of that School on 08.06.2016.

4.In the course of his service, one Latha, a junior of the petitioner, was in receipt of a higher salary and allowances that the petitioner and he thus made a representation seeking re-fixation of his salary on par with her. R1, by his proceeding dated 13.04.2015, accepted the prayer for parity of pay and granted the benefit of the same.

5.While this is so, the incumbent to the post of R2, as against whom the writ petition has been dismissed as not pressed, passed the impugned order dated 24.05.2018 withdrawing the benefit of pay parity granted to the petitioner.

6.The impugned order is assailed on several grounds. Firstly the petitioner would allege that it is antedated. Secondly he would state that the incumbent Block Educational Officer (BEO) being of the same rank as a predecessor officer, who had passed order dated 13.04.2015 could not have reviewed the stand taken by the predecessor officer in the absence of an enabling provision for the same.

7.Furthermore, it is inappropriate for an officer of the same rank to have reviewed an order passed by the predecessor officer and if at all the order called for review, such review ought to have been effected by a superior officer and that too after hearing the parties concerned.

8.The more substantial submissions relate to the merits of the impugned order and I would prefer to address and resolve those points instead. The first ground upon which the review has been undertaken in that the impugned order ought not to have been passed at the original instance by the Pay Fixation Officer.

9.According to the respondent jurisdiction in this regard vested only in the appointing authority and in this regard, reliance is placed on a Government Order in G.O.(Ms.)No.320 Finance (Pay Cell) Department, dated 02.04.1990. This Government Order states that the re-fixation of pay of series under that order shall be done by the appointing authorities.

10.However, my attention is drawn to a clarification that has been issued by the State on 17.08.2009. The clarification, issued by the Principal Secretary to Government Finance (PC) Department in Letter No.45113/Pay Cell/2009-1, dated 17.08.2009, responds to various queries that have been raised by the Treasuries and Accounts Department. One of the clarifications sought for is as follows:

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"In cases where the junior happen to draw more pay than the senior due to sanction of advance increments for passing Departmental Tests / acquiring higher qualification at a later date whether the pay anomaly can be sorted by the pay fixing authorities themselves by stepping up to the pay equivalent to the junior on the date where the junior drawn higher pay. Similarly, if a senior drawn such advance increments in the pre-revised scale on or before 31.12.2005 and happen to draw less pay in the revised scale compared to the junior who happen to draw such advance increments on or after 01.01.2006 can also be rectified by the pay fixing authorities. This presumption may please be confirmed."

10.The response given by way of clarification is as follows:

"No specific rule provision is available under the Tamil Nadu Revised Scales of Pay Rules, 2009. However, on the analogy of the provisions made in Tamil Nadu Revised Scales of Pay Rules, 1998, the said anomaly of junior getting more pay than senior in Tamil Nadu Revised Scales of Pay Rules, 2009 may be set right by the pay fixing authorities as contemplated in the clarifications issued earlier. Hence, the presumption is confirmed."

11.The clarification is to the effect that, in addition to the stipulation in G.O.(Ms.)No.234, that an appointing authority may fix parity of pay, such exercise may also be undertaken by the pay fixing authorities.

12.A tentative attempt is made by learned Special Government Pleader to eschew the clarification is by pointing out that it does not refer to G.O.(Ms.)No.320. This attempt is rejected, since the sum and substance of the clarification sought, relates to pay parity in the sanction of increments.

13.Paragraph 2 of G.O.(Ms.)No.320 reflects the identical subject matter in the following terms.

"On account of revision of pay scales from 01.10.84, the benefit in the form of advance increments to a person with higher qualification entering service after that date is more than similar benefit earned by a person in the pre-revised scale with similar qualification, who entered service prior to 01.10.84. The difference in pay is glaring in the case of any two persons one earning the benefit of advance increment prior to 1.10.84 and the other after 01.10.84 resulting in junior drawing more pay than the senior."

14.To my mind there is absolute identity between the subject matter of G.O.(Ms).No.320 and the clarification sought. Evidently what the Pay and Treasures Department wished to clarify was whether,

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in addition to the appointing authority, the pay fixation authority may also engage in the exercise of according pay parity. This has been answered in the affirmative. Thus, in light of the clarification not given by the State, the first ground in the impugned order to the effect that the assumption of jurisdiction by the pay fixing authority is erroneous, is rejected.

15.The second ground relates to whether seniority of employees is to be determined by way of a State-wide determination or whether it should be qua each individual Panchayat Union.

16.Learned Special Government Pleader would fairly accede to the position that this issue is no longer res integra having been settled by a series of decisions of the Division Bench of this Court holding that seniority would be fixed qua Panchayat Union and not by way of a State- -Wide list. Useful reference may be made in this regard to orders passed in W.A.(MD).No1220 of 2019, dated 14.11.2019 and W.A.No.178 of 2021, dated 18.03.2021. This ground is also rejected.

17.With the rejection of the aforesaid two grounds, the impugned order has no locus to stand and is thus dismissed. The fixation of pay at par with the junior of the petitioner, as per original proceedings dated 13.04.2015 holds the field. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P & A)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.The Block Educational Officer II/
The Additional Elementary Educational Officer,
Block Educational Office,
Kujuilimparai,
Dindigul District.

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2.The Block Educational Officer II,
Block Educational Office,
Kujuilimparai,
Dindigul District.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-4059[F] dated 03/02/2022)

+1 CC to M/s.SPL.GP (SR-4554[F] dated 07/02/2022)

Order made in
W.P.(MD)No.16062 of 2018
Dated: 03.02.2022

RS(17.02.2022) 5P-5C

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