



W.P.(MD).No.19704 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.19704 of 2018

Valliammai

... Petitioner

Vs.

1.The District Educational Officer,
Thoothukudi Educational District,
Thoothukudi District.

2.The Block Educational Officer,
Karunkulam Union,
Thoothukudi Educational District,
Thoothukudi District,
Formerly known as
Additional Assistant Elementary Educational Officer,
Karunkulam Union,
Thoothukudi District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire record pertaining to the impugned order in Oo.Muu.No.311/A2/2018 dated 31.07.2018 passed by the second respondent and quash the same as illegal and consequently direct the first and second respondents to re-fix the petitioner salary as on 14.09.2007, on the basis of her representation dated 02.05.2018 as per the proceedings of the first respondent in Na.Ka.No.2749/Aa3/2018 dated 28.06.2018, within the time stipulated by this Court.



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For Petitioner : Mr.P.M.Vishnuvarthanan
For Respondents : Mr.A.Kannan,
Additional Government Pleader.

ORDER

The petitioner herein was initially appointed as a Secondary Grade Teacher in Arimalam Panchayat Union on 14.03.1986 by the District Educational Officer, Pudukottai. Thereafter, one R.Meeriam was appointed as a Secondary Grade Teacher on 14.09.1987 in Pudur Union by the first respondent herein. The petitioner herein claims rectification of the pay anomaly between herself and R.Meeriam, who is her junior. Through the impugned order, dated 31.07.2018, the petitioner's request came to be rejected by stating that both the petitioner and her junior had relinquished their seniority on the basis of their date of joining and got transfer to Karunkulam Union as Secondary Grade Teachers on 20.06.1988 and 10.10.1991 respectively. The petitioner herein was promoted as a Middle School Headmaster on 12.07.2005. Since R.Meeriam was working in a lower post as on 12.07.2005, the petitioner herein cannot compare the pay anomaly with that of R.Meeriam.



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2. The issue involved in the present Writ Petition as to whether two different Unions can be treated as two units came before this Court in the case of ***S.Premavathi Vs. Director of School Education, Chennai***, wherein, it was held that the senior was entitled to seek for rectification of pay anomaly on par with her junior in identical circumstances and this decision passed in ***S.Premavathi's*** case came to be affirmed by an Hon'ble Division Bench of this Court in W.A.No.178 of 2021, dated 18.03.2021. This position was reiterated in various decisions of this Court, including the case of ***S.Thangabalu Vs. The District Educational Officer, Karur, Karur District and another***, passed in ***W.P.(MD).No.15924 of 2020***, dated ***20.07.2022***. The relevant portion of the order reads as follows:

*“2. The issue involved in the present writ petition, as to whether two different unions can be treated as two units has come before this Court in various decisions, including the case in ***S.Premavathi Vs. Director of School Education, Chennai***, wherein it was held that the senior was entitled to seek for rectification of pay anomaly on par with his junior in identical circumstances. The relevant portion of the order reads as follows:*

“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:

“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 Shanthy got appointment as Secondary Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthy 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 Teaches 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”.

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



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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 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 Shanthy got appointment as Secondary Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthy 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 Shanthy. Such an order shall be issued by the respondents within a period of eight weeks.



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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 judgment that even after the transfer of the teacher to 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 Sabestian both in terms of joining service and also joining the new division, the above judgment also clearly covers the facts of the present case.



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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 aforesaid decision in **S.Premavathi's case** (supra) came to be affirmed by an Hon'ble Division Bench of this Court in W.A.No.178 of 2021, dated 18.03.2021. The facts involved in the aforesaid case is identical to the facts in the present case also. As such, the reason assigned in the impugned endorsement cannot be proper.”*

3. The aforesaid extract is self explanatory. As such, the reasoning adopted by the respondents that the petitioner cannot compare her scale of pay with that of her junior, cannot be sustained.



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4. Accordingly, the impugned order, dated 31.07.2018, on the file of the second respondent is set aside. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, re-fixing the petitioner's salary as on 14.09.2007, on par with her junior, namely, R.Meeriam, within a period of eight (8) weeks from the date of receipt of a copy of this order.

5. This Writ Petition stands allowed accordingly. There shall be no order as to costs.

22.08.2022

Index : Yes / No
Internet : Yes/ No
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2.The Block Educational Officer,
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