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W.P. No.11070 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.11070 of 2012

K.Jeyakumar

.....Petitioner

Vs.

- 1.The Director of School Education,
College Road, Chennai-600006
- 2.The Chief Educational Officer,
Thiruvannamalai, Thiruvannamalai District.
- 3.The Headmaster,
Municipal Girls Higher Secondary School,
Thiruvannamalai District – 606 601.
- 4.G.Arul,
B.T.Assistant (Maths),
Government Boys Higher Secondary School,
Kannamangalam, Thiruvannamalai District.

.....Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent



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O.Mu.No.14451/A4/2011 dated 07.02.2012 and quash the same and direct the respondents 1 to 3 to fix the petitioner's pay on par with his junior, Mr.G.Arul.

For Petitioner : Mr.P.Mohanraj

For Respondents 1 to 3 : Mr.M.G.Ameedius
Government Advocate

ORDER

Through the impugned order dated 07.02.2012, the request of the petitioner for stepping up his pay on par with the respondent No.4 was negatived by the respondents on the ground that the higher qualification acquired by the respondent No.4 is different than the higher qualification acquired by the petitioner.

2. The brief and admitted facts that are relevant for the disposal of this writ petition are as under:

The petitioner herein is senior to the respondent No.4, in the cadre of Secondary Grade Teacher. The petitioner herein acquired the qualification of B.Ed and M.Ed ahead of the respondent No.4 and he was awarded with two



advance increments for each of such qualification with effect from 01.08.1996 and 26.05.1998 respectively. Whereas, the respondent No.4 herein, who acquired higher qualification of B.Ed and M.Com was awarded two advance increments for each of such qualification with effect from 29.12.2006 and 06.01.2008 respectively. The petitioner was granted with advance increments under the pre-revised scales and the respondent No.4 was awarded with the advance increments under the revised scales. Thereby, pay of the respondent No.4 stood fixed higher than the pay of the petitioner herein. Under those circumstances, the petitioner made a request for stepping up of his pay on par with the respondent No.4 who is admittedly junior to the petitioner. The same was negatived on the ground that the higher qualification of Post Graduation acquired by respondent No.4 is M.Com and the qualification acquired by the petitioner herein is M.Ed. Thus, the respondents intended to draw a classification between the petitioner and the respondent No.4.

3. The learned counsel for the petitioner has brought to the notice of this Court that under similar circumstances, when an issue came up for



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consideration before this Court in W.P.No.11623 of 2007, a learned Single Judge of this Court, having considered the issue elaborately, ordered for stepping up the pay of the Senior on par with his Junior. A copy of the same is also placed before this Court. It is also further informed that the said order of the learned Single Judge in W.P.No.11623 of 2007 dated 16.09.2009 was appealed against in W.A.No.174 of 2011 and the said W.A.No.174 of 2011 was dismissed by an order dated 05.02.2016, by the learned Division Bench of this Court.

4. This Court has gone through the counter affidavit filed by the respondent and also the order in W.P.No.11623 of 2007 dated 16.09.2009 and the order in W.A.No.174 of 2011 dated 05.02.2016. In the considered view of this Court, the issued involved in the present writ petition is squarely covered by the order passed in W.P.No.11623 of 2007 dated 16.09.2009, as confirmed by the Division Bench in W.A.No.174 of 2011. The learned Single Judge, in the order dated 16.09.2009 in W.P.No.11623 of 2007, held as under:

“9.Further, the learned counsel for the petitioner has brought to my notice Rule 5(2) of the Tamil Nadu Revised



Scales of Pay Rules, 1998 and the same is extracted hereunder:

“(2) In cases where a senior employee who had drawn incentive increments in the pre-revised scale and drawn more pay than his junior prior to 1st January 1996 draws lesser pay than his junior in the revised scales of pay consequent on the sanction of incentive increments in the revised scales of pay to the junior for acquiring the same higher/special qualification after introduction of revised scales of pay, then the pay of the senior may be stepped up to the level of that of the junior from the date from which the junior draws such higher pay.”

10. This Rule provides an answer to the problem. As per this Rule, if a junior receives more pay pursuant to his acquiring higher qualification after the revision of pay on 01.01.1996, the senior should also be brought on pay with the junior, particularly when the senior was granted incentive increments for higher qualifications, which he obtained prior to 01.01.1996.

11. Further, the right of the seniors claiming parity with juniors pay is a constitutional right guaranteed under Article 39(d) read with Article 14 of the Constitution. However, if junior is granted incentive increment for acquiring higher qualifications and the senior does not acquire such a higher qualification, the senior cannot claim



parity. But, if the senior obtained higher qualification prior to the junior and the junior acquires higher qualification later, the scale of pay of senior should be brought on par with the junior, if the junior's pay became more due to the sanction of incentive increment for acquiring higher qualification. Otherwise, it amounts to punishing the senior for acquiring higher qualification at the earlier point of time and it also defeats the very purpose of granting incentive increments for acquiring higher qualification. The very purpose is to persuade the teachers to obtain higher qualification, so that they render better service to the students. Thus, if acquiring higher qualification earlier is put to disadvantage to a person, the very scheme of providing incentive increment for acquiring higher qualification gets defeated.

12. In the result, the impugned order is quashed and the writ petition is allowed. No costs ”

The above said order of the learned Single Judge, is admittedly, confirmed in W.A.No.174 of 2011.

5. In the light of the detailed order dated 16.09.2009, passed in W.P.No.11623 of 2007, the ground on which the request of the petitioner was negated by the respondent is wholly unsustainable and arbitrary.



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6. In the circumstances, the impugned order is set aside and the respondents 1 to 3 are directed to step up the pay of the petitioner on par with the pay of the respondent No.4 and pay all the consequential benefits as expeditiously as possible, at any rate, within a period of 3 months from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. The miscellaneous applications, if any, shall stand closed. No costs.

19.12.2023

Index : Yes/No
Speaking Order : Yes/No

dpa

To

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MUMMINENI SUDHEER KUMAR,J.

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