



W.P.No.13232 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.13232 of 2016

M. Seetha

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai – 600 009.

2.The Director of Elementary Education,
College Road, Chennai – 600 006.

3.The District Elementary Education Officer,
Thiruvannamalai District, Thiruvannamalai.

4.The Assistant Elementary Education Officer,
Vembakkam Panchayat Union,
Thiruvannamalai District.

5.Thiru A. Sampath

6.The District Educational Officer,
Cheyyar Educational District,
Cheyyar, Tiruvannamalai District.

... Respondents

*[6th respondent impleaded as per the order of this Court dated
23.01.2023 in WMP.No.6965 of 2020]*



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent in connection with the impugned order passed by him in O.Mu.737/B2/2016 dated 29.02.2016 and quash the same and direct the respondents to fix the salary of the petitioner at par with her junior, the fifth respondent herein, in the scale of pay of Rs.15560-GP 4500-20600, w.e.f., 24.07.2012 and further direct the respondents grant increments and to draw and disburse the arrears of salary within a reasonable time.

For Petitioners : Mr.P.M. Vishnuvanthanan

For Respondents : Mr.T. Chezhiyan,
Additional Government Pleader [R1 to R4]
No appearance [R5]
Mr.M. Muthappan [R6]

ORDER

The petitioner herein was initially appointed and regularized as a Secondary Grade Teacher in the Primary School at Vembakkam Panchayat Union, Tiruvannamalai District on 08.10.1996. Her probation was declared in the said post on 07.10.1998 and the Selection Grade Pay in the post of Secondary Grade Teacher was awarded on 08.10.2006. Subsequently, she was promoted to the post of Primary School Headmaster on 30.06.2012.



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2. The fifth respondent herein was initially appointed and regularized as a Secondary Grade Teacher in the Panchayat Union Primary School at Mettuchery, Uthiramerur Panchayat Union, Kancheepuram District on 04.08.1997. His probation was declared in the post of Secondary Grade Teacher on 03.08.1999 and Selection Grade Pay in the post of Secondary Grade Teacher was awarded on 04.08.2007. Subsequently, he was promoted to the post of Primary School Headmaster on 24.07.2012.

3. When the scale of pay of both the petitioner and the fifth respondent was fixed in the year 2012, there arose an anomaly whereby, the fifth respondent, being the junior of the petitioner herein, was drawing more salary than the petitioner. Subsequently, through the proceedings of the third respondent dated 29.07.2013, the anomaly was rectified and the petitioner was drawing the scale of pay on par with her junior. Thereafter, the fifth respondent's scale of pay was once again revised whereby, he was drawing more salary than the petitioner herein.



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4. To the representation dated 31.12.2013 made by the petitioner to the third respondent seeking for rectifying the disparity, the request was rejected on 29.02.2016 through the impugned order, by stating that since both the petitioner and the fifth respondent herein, belong to two different unions, she cannot seek for rectification of the anomaly.

5. The learned counsel for the petitioner placed reliance on various decisions of this Court which had dealt with the issue as to whether two different unions can be treated as two units and thereby, the denial of rectification of the pay anomaly can be substantiated was dealt in favour of the petitioner and therefore, he sought for quashing of the impugned order and a consequential relief of rectifying the pay anomaly.

6. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 4, placed reliance on the averments of the counter-affidavit, as well as the stand taken by the respondents in the impugned order and submitted that since both the petitioner and the fifth respondent herein, were appointed in two different unions, the same requires to be treated as two separate units and therefore, the petitioner cannot seek for



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pay anomaly.

7. This issue, as to whether the two different unions can be treated as two different units, has come up before this Court in various decisions wherein, it was held that the senior was entitled to seek for pay anomaly on par with his juniors. In one such decision of the Madurai Bench of this Court in the case of '**S. Thangabalu Vs. The District Educational Officer & another**' passed in '**W.P.(MD).No.15924 of 2020**' dated **20.07.2022**, such an order came to be passed in the following manner:-

.... “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



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Block and even there, she had joined on 18.11.1991 and her present block on 02.03.1994 but Prabhu Sabestian 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 Sabestian.

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 unsustainable 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



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Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthi 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:-



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“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 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



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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 unsustainable 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 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.This Writ petition is allowed accordingly. No costs.

10.In view of the legal position



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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.



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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.

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 Sabestian, 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 Sabestian 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*



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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.

4. At this point of time, the learned Additional Government Pleader appearing for the respondents placed reliance on the counter affidavit and submitted that apart from the reason assigned in the impugned order, it is found that the petitioner was holding the post of Secondary Teacher at the time of promotion as BT Assistant, whereas, his junior K.Selvaraj was holding the post of Primary School Headmaster at the time of promotion as B.T.Assitant and therefore, the anomaly in the pay scales cannot be rectified.

5. I am not in agreement with such a stand taken by the respondents. The ground that is now sought to be raised in the counter affidavit for the purpose of rejecting the petitioner's claim to rectify the pay anomaly is not a reason assigned in the impugned order. In service jurisprudence, it is a settled proposition of law that the counter affidavit of the authorities cannot improve the reasons assigned in the impugned order, particularly, if such reasons were already available at the time when the order was passed. Thus, the attempt made by the respondents to improve the case through their counter affidavit, cannot be sustained....”



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8. The aforesaid extract is self-explanatory. As such, the stand taken by the respondents in their impugned order that the two unions under which, the petitioner and the fifth respondent were appointed, should be treated as two separate units, cannot be sustained.

9. In the light of the above observations, the impugned order dated 29.02.2016 passed by the third respondent herein, is quashed. Consequently, there shall be a direction to the third and sixth respondents, to pass appropriate orders, stepping up the pay of the petitioner on par with her immediate junior namely the fifth respondent herein, rectifying the pay anomaly between the petitioner and the fifth respondent herein and revise the petitioner's pay scale. Such orders shall be passed atleast within a period of six (6) weeks from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition stands allowed. No costs.

23.01.2023

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Speaking/Non-speaking Order
Neutral Citation: Yes/No



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Index: Yes/No
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M.S.RAMESH,J.

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