



W.P.No.17197 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17197 of 2016

J.Sathyabama

... Petitioner

Vs.

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

2. The District Elementary Education Officer,
Nagapattinam,
Nagapattinam District

... Respondents

Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to orders dated 07.2015 passed by the 1st respondent in proceedings No.Na.Ka.23893/D2/2015 and quash the same as being illegal, arbitrary and for a consequential Mandamus to the 1st respondent to consider the representation dated 01.08.2014 afresh in accordance with law.



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For Petitioner : Mr.P.Ganeshan

For Respondents : Mr.T.Chezhan
Additional Government Pleader

ORDER

The present Writ Petitions have been filed for issuance of a Writ of Certiorarified Mandamus calling for the records relating to orders dated

.07.2015 passed by the 1st respondent in proceedings No.Na.Ka.23893/D2/2015 and quash the same as being illegal, arbitrary and for a consequential Mandamus to the 1st respondent to consider the representation dated 01.08.2014 afresh in accordance with law.

2. The petitioner herein was appointed as Secondary grade teacher with effect from 20.06.1988 and the petitioner was granted selection grade in the post of secondary grade with effect from 20.06.1998 and the petitioner was then promoted as primary school headmaster from 03.06.2002 and elevated to the post of middle school headmaster with effect from 27.11.2006 and working as middle school headmaster, Panchayat Union, Middle school kappur, Kuthalam block, Nagapattinam district. Earlier, the petitioner filed a writ petition seeking a direction to consider her representation for granting pay on par with one R.Jeeva, who



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was working in another establishment unit, i.e., Panchayat Union Middle school, kidangal, Sembanarkoil block, however the same was rejected, hence this petition.

3. The stand taken by the respondents in their counter affidavit is that the request of the petitioner has been examined with reference to the orders in G.O.No.1383 Education Department dated 23.08.1998 and submitted that in respect of elementary education, the seniority has been ordered to be fixed in respect of each block i.e., each panchayat union limit which the unit of establishment for all service benefits including promotion. Therefore, the request of the petitioner has been rejected by the 1st respondent vide proceedings in Rc.23893/E2/2015 dated 13.07.2015.

4. The issue involved in this writ petition as to whether the pay anomaly can be rectified between the junior and senior teachers, insofar as it relates to the junior being transferred from another establishment is concerned, came before this Court on many occasions and in one of the orders passed by this Court in W.P.(MD) No.24551 of 2018 dated 19.02.2019 , the learned Single Judge had held that even after the transfer of the Teacher to a new Division and placing the Teacher at the bottom of



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the seniority list, the fact remains that the junior had entered a new division at a later point of time and therefore cannot be permitted to take a march over the senior Teacher. The decision of the learned Single Judge came to be followed by another Single Judge in the case of S.Premavathi v. Director of School Education and two others passed in W.P.No.34455/2019 and the proposition was reiterated by following the decision in W.P.(MD) No.24551/2018. The relevant portions of the order read thus:

“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



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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.

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.PudhurUnion, ie., on 27.07.1999 and got transferred to the same Thirupathur Union on01.11.2000.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-party, who is junior to the petitioner, are appointed in the same Panchayat Union, then only the pay disparity can be redressed



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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 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 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.



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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.”

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 judgments 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 Jeeva 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 1st respondent in Na.Ka.23893/D2/2015 dated .07.2015, requires interference and accordingly the same is quashed and the petitioner is entitled to seek pay parity on par with her junior Jeeva, who according to the petitioner is getting a higher pay. The 1st 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 Jeeva and extend all the consequential benefits. Necessary orders shall be passed in this regard by the 1st respondent within a period of eight weeks from the date of receipt copy of this order.”



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5. The order of the learned Judge passed in the case of S.Premavathi (supra) came to be upheld by the Hon'ble Division Bench of this Court through an order dated 18.03.2021 passed in W.A.No.178/2021. The relevant portions of the order of the learned Division Bench read as follows:

“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 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.

6. That apart, by referring the above same principles, the single bench of this Court in W.P.No. 15298 of 2017 on 13.07.2021, while dealing



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with the similar issue, has granted the relief to the petitioner therein and the same was upheld by the Hon'ble Division Bench of this Court in W.A.No.1425 of 2022 dated 13.06.2022. That apart, the similar issue on hand was also dealt with by the single bench of this Court in W.P.No.31332 of 2013, the petitioner therein, viz., Mariya Joseph was appointed as Secondary Grade Teacher and obtained various promotions and incentive increments and the said petitioner was senior to one K.Sumathi, who was appointed as B.T.Assistant, however, she was drawing higher pay than the petitioner therein. The Single bench of this Court dismissed the said petition on 07.08.2020 stating that pursuant to VI pay commission recommendation, the said Sumathi had obtained selection grade scale of pay prior to the petitioner therein and held that the petitioner cannot claim stepping up of his salary to that of the said Sumathi. As against the said order, the petitioner therein, viz., Mariya Joseph preferred an intra court appeal in W.A.No.1696 of 2022. The Division Bench of this Court by Judgment dated 18.08.2022 allowed the said appeal by setting aside the impugned order by observing that G.O.25 dated 23.03.2015 would come in play and the petitioner therein is entitled to stepping up of pay as per the policy of the state itself.



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7. The aforesaid extracts are self-explanatory, as such the claim made by the respondents that the petitioner cannot compare herself with the pay of her junior Jeeva who has come from another establishment, cannot be sustained.

8. In the result, the proceedings of the first respondent in A.Thi.Mu.No.1410/2015/A2 dated 29.06.2016 is quashed and consequently the respondents are directed to rectify the pay anomaly of the petitioner by stepping up his pay on par with his junior, which exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

The writ petition stands allowed. However, there will be no order as to costs.

20.03.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order

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2. The District Elementary Education Officer,
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V.BHAVANI SUBBAROYAN, J.,

ssd

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