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W.P.No.25451 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.25451 of 2016

T.Rajivi

.. Petitioner

VS

1.The Director of Elementary Education,
DPI Complex, College Road, Chennai – 6.

2.The District Elementary Educational Officer,
Thiruvannamalai, Thiruvannamalai District.

3.The Assistant Elementary Educational Officer,
Thellar, Thiruvannamalai District – 604 406

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.6319/A2/2015 dated 23.2.2016 (signed on 23.2.16 which was served on the petitioner only on in the month of may 2016) and quash the same and direct the respondents to re-fix the petitioner pay on par with her juniors as per FR. 22B ruling (2) of the Fundamental Rules and in the light of the orders passed by the 2nd respondent in his proceedings Na.Ka.No.265/ A2/2014 dated 28.3.2014.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.U.Baranidharan
Additional Government Pleader



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ORDER

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Writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to the impugned order passed by the second respondent, District Elementary Educational Officer at Thiruvannamalai, Thiruvannamalai District in Na.Ka.No. 6319/A2/2015 dated 23.02.2016 and quash the same and direct the respondents to re-fix the pay of the petitioner on par with her juniors as per Fundamental Rule 22-B (2) and in light of the orders of the second respondent in proceeding in Na.Ka.No.265/ A2/2014 dated 28.3.2014 with respect to another individual, K.Rajakumari, who was also appointed along with the petitioner herein as Secondary Grade Teacher.

2. The petitioner was appointed as Secondary Grade Teacher by proceedings of the District Educational Officer dated 03.01.1990 and had joined duty at Panchayat Union Primary School Peranampakkam, Sethupattu Union, Thiruvannamalai. She joined on 08.01.1990. She was then transferred to Panchayat Union Middle School, Kodiyalam, Thellar Union, Thiruvannamalai District by proceedings of the District Educational Officer dated 01.10.1990. She was then promoted as Primary School



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Headmaster by proceedings of the second respondent dated 13.06.2003 and was posted at Panchayat Union Primary School, Srirangarajapuram. She also had the requisite qualification of M.A., B.Ed., for the post of Middle School Headmaster and was promoted as Middle School Headmaster by proceedings dated 21.07.2007 and was posted at Panchayat Union Middle School, Kengampoondi, Thellar. She had been appointed and promoted much earlier to Junior, K.Venu.

3. The comparative table is that the petitioner was initially appointed on 08.01.1990 while the junior, K.Venu was appointed on 10.12.1990. The services of the petitioner was brought into regularization on 08.01.1990 and that of her junior, K.Venu was on 01.01.1992. The probation of the petitioner was declared on 07.01.1992 and that of her junior was on 31.08.1994. The petitioner had been appointed as Primary School Headmaster on 16.06.2003 while junior, K.Venu was so appointed on 22.08.2003. The petitioner was appointed as Middle School Headmaster on 24.07.2007 while her junior, K.Venu was so appointed on 05.11.2007.

4. However, there was discrepancy in the pay which was



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fixed on April, 2015. The petitioner's pay was Rs.49,435/- while the junior / K.Venu drew Rs.54,781/-. The grievance of the petitioner further multiplied consequent to the fact that the second respondent had passed proceedings on 28.03.2014 re-fixing the pay of another junior, K.Rajakumari, who was initially appointed on 05.01.1990 and had brought up her pay to that of K. Venu at Rs. 54,781/-. The petitioner had given a representation and the same was rejected, necessitating filing of the present writ petition.

5. The primary ground on which the representation given by the petitioner was rejected was that the petitioner had been transferred from one union to another union and, therefore, she cannot claim equality in pay or parity in pay even with her junior. It must be stated that the transfer from one union to another union would not fix the pay but rather, can be taken into consideration for the posting which was held.

6. So far as the pay and protection of pay is concerned, Fundamental Rules 22-B and sub-rule (2) alone governs, wherein it had been provided that where senior has got two incentive granted owing to qualifications achieved gets a lower pay then pay must be stepped up to that of the junior, who gets the same incentive



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consequent to the same qualifications attained but the incentive had been higher since the basic pay on that particular pay was higher.

7. Learned Additional Government Pleader also pointed out those incentives which have been granted to the petitioner and to junior, K.Venu. The petitioner had completed B.A., B.Ed., on 25.01.1995 and recognizing the same, she was granted the additional increment of Rs.30/-. She subsequently also got her M.A., qualifications and an additional second incentive was granted on 03.11.1997 for a sum of Rs.100/-. K.Venu, who had joined later to her, however, had obtained his B.Lit., B.Ed., degree only on 19.05.2011 and incentive which is calculated on the basis of the pay scale, granted an incentive of Rs.610/-. He then completed his M.A., in year 2013 and got his second incentive consequent to this for a sum of Rs.680/-. This is the reason for the difference in pay scale between the petitioner and junior / K.Venu.

8. In the Fundamental Rule 22 (B), this issue of protection of pay and stepping up of pay of the senior to that of the junior, if the junior gets advantage owing to qualifications, had been discussed. The said rule is as follows:-



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"(2) In case where both the senior and junior are drawing the same rate of pay in the lower post, the senior who was promoted to the higher post before drawing the next increment in the lower post would be drawing less pay than his junior, who was promoted to the higher post after drawing the next increment in the lower post. In such cases, the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay fixed for the junior officer in that higher post and the stepping up should be done with effect from the date of promotion or appointment of the junior and also subject to the following conditions-

- (i) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre;*
- (ii) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (iii) The anomaly should be directly as a result of the application of Fundamental Rule 22-B. For example, if, even in the lower post the junior officer draws from time to time, a higher rate of pay than the senior by virtue of grant of advance increments, the provisions contained in this order should not be invoked to step up the pay of the senior officer; and*
- (iv) The orders refixing the pay of the senior officers in accordance with the provisions of this order should be issued under Fundamental Rule 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.*

The above ruling shall take effect from the 1st September 1996. Cases of seniors drawing less pay than juniors in respect of promotions occurring on or after the 1st June 1962 shall also be regulated under the above ruling but the actual monetary benefit shall be admissible only with effect from the 1st



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September 1966.
(G.O.Ms.No.1374, Finance, dated 9th
December, 1966)."

9. The Rule is quite simple. The Rule is straight forward. It applies to a case where both the senior and the junior are drawing the same pay in the lower post and then the senior was promoted to the higher post before drawing the increment in the lower post. Then, the junior who was promoted to the higher post after drawing the next increment would naturally be getting a higher pay. In such circumstances, the pay of the senior should be stepped up to that of the junior.

10. Learned counsel for the petitioner placed reliance on the judgment of learned Single Judge of this Court in W.P.(MD) No. 12071 of 2018 [*N.Jeyachandran v The District Educational Officer, Thirumangalam and another dated 18.03.2019*], wherein the same issue had come for consideration. The relevant portion is extracted below:-

*"5.Further, the learned Counsel relied on the order 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



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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 Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthi could have stolen a 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.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 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



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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 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 a march over the petitioner. The order impugned in this writ petition is quashed. The respondents are directed to set right the pay anomaly and stepup 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



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and his pay shall be stepped up on par with his junior."

7. Applying the aforesaid orders to the facts of the present case, this Court is of the opinion that the petitioner, being a similarly placed person, is entitled to seek pay parity on par with his junior. Hence, the impugned orders of the first respondent are liable to be quashed."

11. The aforesaid orders apply to the fact of the case. The petitioner being a similarly placed person, is entitled to seek parity on par with her junior / K.Venu. The impugned order of the first respondent is therefore set aside.

12. In the result, the impugned order is quashed and the second respondent is directed to rectify the pay anomaly in respect of the petitioner and accordingly step-up her pay on par with her junior, who was getting higher pay, irrespective of the place of joining office at the first instance after selection to the post of Teacher and thereafter make payment of the difference of pay to the petitioner. Such exercises shall be done within a period of twelve weeks from the date of receipt of a copy of this order.

13. Writ petition stands allowed. No costs.

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C.V.KARTHIKEYAN,J.

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