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W.P.No.20681 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.20681 of 2022

Mrs.T.R.Vijayalatha

...Petitioner

Vs.

1.Director,
Elementary Education,
College Road, DPI Compound,
Chennai – 600 006.

2.The District Elementary Education Officer,
Villupuram.

3.The Assistant Elementary Education Officer,
Vikravandi, Villupuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent vide மு.மு.எண்.2054/ஆ4/2014 dated 25.08.2021 and quash the same and directing the second respondent herein to implement order dated 19.01.2015 passed by the 2nd respondent and fix the pay equal to that of the junior Mrs.K.Sumathi as per the 2nd respondent's order bearing மு.மு.எண்.2054/ஆ3/2014 dated 19.01.2015.



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For Petitioner : Mr.M.Arunachalam

For Respondents : Mr.P.Sanjay Gandhi,
Government Advocate.

ORDER

The petitioner herein had originally joined as a B.T. Teacher in a School at Anaikattu Block, Vellore District on 18.08.1988 and later was transferred to the Panchayat Union Middle School, Vikravandi, Vikravandi Block, Villupuram on 29.06.1990. The other Teacher, namely, K.Sumathi had joined as a B.T. Teacher in Arani Block, Tiruvannamalai District on 01.12.1988 and was transferred to Panchayat Union Middle School, Vikravandi Block on 25.09.1994.

2. Apparently, the other Teacher, namely, K.Sumathi is junior to that of the petitioner herein. When the petitioner herein had sought for stepping up of her pay equal to that of her junior K.Sumathi, the District Educational Officer had cancelled the earlier order dated 19.01.2015, wherein the petitioner's pay was stepped up on par with her junior. This order was put in challenge before this Court in W.P. No.9468 of 2016 and by order dated 07.08.2020, the writ petition was disposed of with the following directions:



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“23.In view of the above facts and circumstances of the case and the decision cited supra, this Court is inclined to pass the following order:

- i. The impugned order dated 07.07.2015 is quashed.*
- ii. The petitioner's claim cannot be rejected on the ground that the petitioner and her junior hails from different units in the light of aforesaid G.O.*
- iii. The petitioner shall make appropriate application to the authorities concerned to rectify the defects of approval to possess higher qualification within a period of four (4) weeks from the date of receipt of a copy of this order.*
- iv. On receipt of such application and after ensuring that all the defects stated in the counter have been rectified, the respondents shall consider afresh and pass appropriate orders on merits, in accordance with law within a period of twelve (12) weeks thereafter.”*

3. In line with the liberty granted by this Court to the petitioner to make an Application seeking for rectification of the defects in not obtaining the approval, the petitioner had made an Application on 06.10.2020. Her request has now been rejected by the impugned Proceedings dated 25.08.2021.

4. Learned counsel for the petitioner submitted that the two reasons



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assigned by the respondents in refusing to step up the petitioner's pay on par with her junior cannot be sustained since this was already a subject matter of various writ petitions and favourable orders have been passed, holding that the respondents cannot reject such a claim on the ground that the senior and junior belong to different Panchayat Union and also not obtaining prior approval cannot be an impediment for stepping up the petitioner's pay on par with her junior.

5. Per contra, learned Government Advocate appearing for the respondents, by placing reliance on the counter affidavit, submitted that for the purpose of stepping up the pay on par with her junior, the senior and junior should belong to the same Panchayat Union and since the incentive increment was awarded to the petitioner for the higher qualification for which she had not obtained prior approval, there is no infirmity in the rejection order.

6. I have given careful consideration for the submissions made by the respective counsels.

7. The reasoning adopted by the respondents in the impugned order



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that the senior and the junior should belong to the same panchayat union for the purpose of stepping up the pay of the senior on par with the junior is opposed to various decisions of this Court in identical circumstances.

8. In the order 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 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 Vs. Director of School Education and 2 others*** passed in ***W.P.No.34455 of 2019*** and the proposition was reiterated by following the decision in W.P.(MD) No.24551 of 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 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.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



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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 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 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 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 Prabhu Sabastian 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 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 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.”

9. 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 of 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.”

10. 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 namely the fourth respondent herein, who has come from another establishment, cannot be sustained.

11. This issue of bringing the senior's pay scale on par with the junior is fortified under Fundamental Rule 22B, which came up for consideration before the Hon-ble Division Bench of this Court in the case of R.Ramaraj Vs. The Registrar General, High Court of Judicature at Madras and another- reported in -2014 SCC Online Mad 8740- and by placing reliance on this Fundamental Rule, the Division Bench had set right the anomaly between the pay scales of a senior and a junior, in the following manner:~

..... “5. Fundamental Rule 22B came up for consideration before an Hon-ble Division Bench of this Court in the case of



R.Ramaraj Vs. The Registrar General, High Court of Judicature at Madras and another reported in 2014 SCC Online Mad 8740 and by placing reliance on the Fundamental Rules, the Division Bench had set right the anomaly between the pay scales of a senior and a junior. The relevant portion of the order reads as follows:~

“11. Further, Fundamental Rule 22~B(2) can be relied on for stepping up of the pay of the petitioner on par with his junior, which reads as follows:~

“Rule 22(B)(2) “ In case where both the senior and junior are drawing the same rate of pay in 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 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 1966. 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 September 1966.

Applying the said FR 22~B(2) and 27 if we analyse, eligibility of the petitioner to step up his pay on par with the 2nd respondent is beyond doubt.

12. The Hon-ble Supreme Court in the decision reported in (2009) 3 SCC 94 (Gurcharan Singh Grewal and another v. Punjab State Electricity Board and others) has considered the similar issue and held that it is a settled principle of law that senior cannot be paid a lesser salary than his junior and if junior is given more pay, the department is hound to step up the pay of senior on par with his junior.”



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12. In the light of the aforesaid decision of the Hon'ble Division Bench, as well as the settled proposition of law that there cannot be an anomaly in the pay scale of the junior and senior employee, as well as no distinction can be made among two teachers by stating that one of the teachers was transferred from another Unit, cannot be sustained.

13. In the result, the impugned order dated 25.08.2021, on the file of the second respondent is quashed. Consequently, there shall be a direction to the second respondent herein to forthwith pass orders, by stepping up the petitioner's pay on par with her junior Mrs.K.Sumathi in accordance with the order of the second respondent, bearing %.K.vz;.2054/M3/2014, dated 19.01.2015, within a period of four (4) weeks from the date of receipt of a copy of this order.

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

14.06.2023

Index:Yes
Neutral Citation:Yes
Order : Speaking

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To

1. Director,
Elementary Education,
College Road, DPI Compound,
Chennai – 600 006.
2. The District Elementary Education Officer,
Villupuram.
3. The Assistant Elementary Education Officer,
Vikravandi, Villupuram District.



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M.S.RAMESH,J.

vsm

**ORDER MADE IN
W.P.No.20681 of 2022**

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