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W.P.No.27802 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.27802 of 2016

R.Geetha

.. Petitioner

VS

1.The District Elementary Educational Officer,
Cuddalore.

2.The Assistant Elementary Educational Officer,
Cuddalore.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings A.T.Mu.No.4204/A2/2015 dated 25.09.2015, quash the same and consequentially direct the 1st respondent to step up the scale of pay of the petitioner on par with her junior with all other consequential benefits.

For Petitioner : Mr.T.Sellapandian

For Respondents : Mr.V.Nanmaran
Additional Government Pleader

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to an order passed by the first



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respondent, the District Elementary Education Officer at Cuddalore in proceedings in A.T.MuNo:4204/A2/2015 dated 25.09.2015 and quash the same and consequentially direct the first respondent to step-up the scale of pay of the petitioner on par with her junior.

2. In the affidavit filed in support of the writ petition, the petitioner R.Geetha stated that she had joined the Tamil Nadu Government Service as Secondary Grade Teacher on 06.10.1988 in the forenoon and was posted at Panchayat Union Middle School at Mudaliar Kuppam at Marakkannan Panchayat Union.

3. The junior about whom she had mentioned in the prayer column is S.Manjula, who also joined as Secondary Grade Teacher on the very same date / 06.10.1988 but in the afternoon and was posted at Kandamangalam Panchayat Union.

4. The probation for both the petitioner and the said S.Manjula were declared on 05.10.1990. The petitioner was then transferred to Cuddalore Panchayat Union on 20.06.1990 and the said S.Manjula was also transferred to Cuddalore Panchayat Union but on 20.07.1995.



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5. The petitioner is senior in service to S.Manjula. The only distinguishing factor was that the petitioner completed her B.Ed on 31.03.1993. On that date, consequent to that completion of B.Ed., she was granted one increment as incentive. She then completed her M.Ed., on 01.06.1994 and was granted the second incentive consequent to that particular qualification. Since the petitioner had been granted those two incentives, her scale of pay, which she received, was higher than that of S.Manjula though in all other terms, they were both on the same equal terms.

6. For good measure, S.Manjula also started to study and she completed her B.Ed., on 06.01.2000. She was granted an increment as incentive on that particular date. The difference is that the petitioner was paid incentive on the basis of her basic as on 31.03.1993. This basic pay had increased to S.Manjula had she qualified her B.Ed and, therefore, the incentive which S.Manjula received was higher than the petitioner. This brought about an increase in the pay structure for S.Manjula.

7. S.Manjula also completed her M.A on 26.05.2004. On that particular date, she was granted a second incentive, which again increased her salary. Complaining that her junior S.Manjula



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was therefore in an advantageous position owing to higher salary being received, the present petition has been filed seeking to step-up the pay of the petitioner to equalize with S.Manjula / her junior.

8. A counter had been filed on behalf of the respondents and it would be appropriate to extract paragraph nos. 8 and 9 of the said counter:-

"8. It is respectfully submitted that the petitioner now challenged the order passed by the 1st respondent in proceedings dated 25.09.2015 in Na.Ka.No.4204/A2/2015. The Government Order in G.O.Ms.No.57 Finance (Pay Cell) dated 28.01.1991 clearly states that "Government also direct that in case, on refixation of pay under rule 4(3) of the Tamilnadu Revised Scale of Pay Rules, 1989 junior happens to draw more pay than senior, then the pay of the senior shall also be stepped up on par with that of the junior in that case, the next increment for the senior shall be granted pay after completion of the requisite one year period of service from the date of refixation of pay. Such refixation of pay o the seniors on par with their juniors shall be done by the appointing authorities concerned".

9. It is respectfully submitted that G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 is also clearly states that "Both the junior and the senior Government employees should belong to the same category and should have been promoted to the same post and also in G.O.Ms.no.38 School Education Department dated 05.03.2001 states that if the date of selection grade of lower post and the normal scale of pay of promotion post are same, after considering the lower post



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selection grade pay, fix the promotion post scale of pay. As far as the Panchayat Union teachers concerned, every union is considered as one Unit. At the time of transfer from one union to another union, the teachers cannot be acceptable and cannot claim pay parity on par with junior as per the G.O.Ms.No.234 dated 01.06.2009."

9. There are two aspects in any Government Service. One is the seniority so far as experience is concerned. The second is a seniority consequent to higher scale of pay, which is measured by the scale of pay which is received. Normally, any public servant who is senior by experience should get a higher pay scale and if the junior is given that particular advantage, and is of the same experience and is holding the same post then the pay scale of the senior should be stepped-up to that of the junior.

10. In the instant case, S.Manjula, who is admittedly junior to the petitioner, since she had joined in the afternoon on 06.10.1988, had the benefit of getting higher pay scale since her incentive was calculated in the years 2000 and 2006 when the basic itself was higher. The petitioner's incentives after completion of B.Ed and M.Ed was calculated on the basis of the scale of pay which she was receiving in the year 1994 and 1996.



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11. It is the contention of the respondents that the issue of seniority can be taken into consideration only when two government servants are in employment within the same union. It is therefore contended that if the petitioner and S.Manjula were working within the Kandamangalam Panchayat Union and thereafter if both had been transferred together came to the Cuddalore Union then the seniority between them can be compared. It is stated that the petitioner was originally appointed at Marakannam and then she came to Cuddalore and, therefore, they are not within the same union or same zone and, therefore, they cannot be compared each other. That can be done when on a transfer, from one zone to another the seniority gets affected and the person who is so transferred is placed one step lower than a person who is already in service at that particular place.

12. Here the issue is not with respect that aspect but with respect to the difference in pay. This difference in pay is only because, S.Manjula completed her B.Ed and M.A., nearly a decade later than petitioner herein and by normal revision of scale of pay her incentive or increment for getting those qualifications was based on a higher scale of pay.



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13. Learned counsel for the petitioner drew the attention of this Court to an order of a learned Single Judge in W.P.No.26318 of 2006 in the case of *N.Sankaran v Director of Elementary Education and another*. Even there, the complaint was related to the pay scale to be given to a senior when the junior was drawing a higher scale. Learned Single Judge had placed reliance on the Revised Scale of Pay Rules, 1989. The relevant portion of the said order is extracted below:-

"9. To remove the anomaly, Rule 4(3) of the Revised Scale of Pay Rules, 1989 has been introduced w.e.f.01.06.1988 and it reads as follows:-

(3) If the pay as fixed in the officiating post under this sub-rule is lower than the pay fixed in the substantive post, the former shall be fixed at the stage next above the substantive pay. Where the pay of a Government servant who has moved from an officiating post or from an Ordinary Grade to a Selection Grade is fixed at a stage lower than that would have been admissible in the lower post or the Ordinary Grade (if he is in the Selection Grade post) his pay in the lower post or grade, or if there is no such stage to the next higher stage; Provided that this will apply only to Government servants who have actually moved to the higher or Selection Grade post from the lower or Ordinary Grade post."

10. Further more, Rule 5 of the said Rules, can also be useful to adjudicate the matter and it is extracted hereunder:-

"5(1) In cases where a senior employee



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promoted to a higher post before 1st January 1996 draws less pay in the revised scale than his junior who is promoted to the higher post on or after 1st January 1996, the pay of the senior employee may be stepped up to that of the junior with effect from the date on which the junior draws more pay, provided that:-

(i) the senior and the junior employees should belong to the same category and should have been promoted to the same post;

(ii) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and

(iii) the anomaly should have arisen directly as a result of the introduction of the revised scales of pay,

Note : If in the lower post, the junior employee was drawing more pay in the pre-revised scale than the senior by virtue of any advance increment granted to him or otherwise, the seniors to such junior have no claim over the pay of the junior.

(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.

(3) Where a junior who opts to come over to the revised scale from a date subsequent to 1st January 1996 and happens to get more pay than that of his senior by way of fitment benefit then the pay of the senior shall be



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stepped up to the level of the pay of the junior with effect from the date from which the junior draws such higher pay, provided that the senior was drawing pay higher than or equal to the pay of the junior in the pre-revised scales of pay from time to time.

11. The rules cited above would amply pave the way for the petitioner to get the scale of pay on par with his junior, K.Kannan. If the same has not been done, it would adversely affect the persons, who have reached the Special Grade and had later been promoted as Headmaster of the Middle School. Absolutely, there was no justification in fixing the pay of the petitioner, lower to that of his Junior, K.Kannan. Without considering the same, the impugned order has been passed by the second respondent, which is totally injustice."

14. The relevant rule in this instance case would be Rule 5(2) quoted above. It provides that when a senior employee; and in this case the petitioner is actually a senior employee who had drawn incentive / increments and the petitioner had also drawn incentive / increments in a pre-revised scale; and the petitioner herein had also drawn such incentive on the pre-revised scale in the years 1994 and 1996 and had drawn more pay than the junior, prior to 01.01.1996. In the instant case the salary of the petitioner as on 01.01.1996, was higher than that of S.Manjula consequent to the grant of incentive but drew lesser pay than the junior in the revised scale of pay. Again in the instant case, the petitioner is drawing a lower pay than that of S.Manjula as a result of the junior



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acquiring the same higher / special qualification after introduction of the revised scale of pay which since she completed her B.Ed and M.A much later in the years 2000 and 2004. Then, the above Rule provides that the pay of the senior must be stepped-up to the level of the junior.

15. In the instant case, this is the relief which the petitioner seeks. The rule is clear. The stand of the respondents that the seniority can be calculated only within the same zone does not apply since it is not an issue of the seniority of the post but the difference in pay scale. It is the pay scale which has to be addressed. Here, S.Manjula had obtained her qualifications much later in the years 2000 and 2004 and, therefore, had the benefit of higher incentive. The petitioner acquired those qualifications much earlier in the year 1993 – 1994 and her incentive was calculated on the pay scale which she drew at that particular period and as on 01.01.1996 her pay was higher than that with S.Manjula.

16. The aforementioned Rule directly applies to the facts of this case. The writ petition is therefore allowed. The respondents are directed to issue revised proceedings by stepping up the pay of the petitioner equalizing the pay with S.Manjula. The said exercise



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must be completed within a period of three months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

19.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To:

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Cuddalore.
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C.V.KARTHIKEYAN,J.

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