



W.P.No.18604 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N. MANJULA

W.P.No.18604 of 2020

and

W.M.P.No.23074 of 2020

V.Prabavathi

... Petitioner

Vs.

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

2.The Chief Educational Officer,
Tirupattur District,
Tirupattur.

3.The District Educational Officer,
Tirupattur Education District,
Tirupattur.

4.The Block Educational Officer,
Jolarpet Union,
Tirupattur District.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.No.1622/Aa4/2020 dated 01.09.2020 and to quash the same and



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consequently direct the respondents to pass orders for granting stepping up of pay for the petitioner on par with her junior D.Balamurugan in the post of B.T.Assistant with all consequential and other attendant benefits including the arrears of salary within a time frame to be fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan
For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the third respondent in Na.Ka.No.1622/Aa4/2020 dated 01.09.2020 and for a consequential direction to the respondents to step up the pay of the petitioner on par with her junior D.Balamurugan in the post of B.T.Assistant with all consequential and other attendant benefits including the arrears of salary.

2. The petitioner was initially appointed as a Secondary Grade Teacher in Panchayat Union Middle School, Chengam Block on 26.10.2004. Later she was transferred to Jolarpet Union on 21.09.2006 and she was posted as a Secondary Grade Teacher in Panchayat Union Middle School. Subsequently, based on her seniority and eligibility, she was promoted as B.T. Assistant on



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19.06.2014. While so, one D.Balamurugan was appointed as Junior Grade Secondary Teacher on 18.01.2005 in Jolarpet Union. He was promoted to the post of B.T. Assistant based on his eligibility and seniority on 08.08.2016. The petitioner was promoted as B.T. Assistant on 19.06.2014 and her junior was promoted to the same post on 08.08.2016, however, the junior gets more pay than the senior (who is the petitioner). Since the junior is drawing higher salary than the petitioner, she gave a representation to the respondents seeking for stepping up of her pay. But the third respondent has rejected the representation of the petitioner by stating that the petitioner was initially appointed in Chengam Union and thereafter transferred to Jolarpet Union and his junior Balamurugan was appointed in Jolarpet Union. Therefore, it is an unit transfer and hence, the claim of the petitioner that the junior getting more pay than the senior is not applicable. Aggrieved by the said order, the petitioner has filed this writ petition.

3. Heard the learned counsel for petitioner and the learned Special Government Pleader appearing on behalf of the respondents.



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4. Even though the petitioner belonged to a different Union, on transfer she went to the same Jolarpet Union. Her junior, who was already in the Jolarpet Union, has been promoted only in the year 2016, while the petitioner was already working as B.T. Assistant from the year 2014, i.e., her date of promotion. As on the date of promotion the petitioner and Balamurugan were working in the same Union.

5. For similarly placed persons, this Court had passed an order on 19.02.2019 in **W.P.(MD) No.24551 of 2018** in the case of ***Natarajan vs. The District Educational Officer and another*** by considering the prayer of the petitioner favourably. Even in the said case, the respondent department has denied the stepping up of pay by stating that the petitioner had come from a different union. The said argument was not accepted by the Court and it is held as under:

“4. Both the learned Counsel would submit that the issue raised in this writ petition is covered by a number of decisions already settled in this regard. In those cases, the similar reason given by the respective authorities for rejecting the pay parity had been found to be unlawful and unjustifiable and accordingly, the reliefs were given to the individual employees.



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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 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. Yet another decision in W.P.(MD) No.8046 of 2018 in the case of ***A.John Peter vs. The District Elementary Educational Officer and another***, it is held that anomaly should be redressed when there is a disparity between the pay drawn by the junior and senior and the senior gets lesser pay than the junior. The special para of the said judgment reads as under:



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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 occasion to consider the similar issue and ultimately, the learned Single Judge has given findings, which reads thus: ...”

7. The above legal position involved in this case is well settled and the benefit of setting right the anomaly has been granted constantly. In such circumstances, the third respondent ought not to have been rejected the claim of the petitioner.



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8. In view of the above stated reasons, the Writ Petition is allowed and the impugned order passed by the third respondent in Na.Ka.No.1622/Aa4/2020 dated 01.09.2020 is quashed and the third respondent/District Educational Officer is directed to rectify the pay anomaly by stepping up the petitioner's pay on par with her junior D.Balamurugan in the post of B.T. Assistant and consequently extend all other attendant benefits and an order to that effect shall be passed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
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R.N.MANJULA, J

rsi

To

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- 2.The Chief Educational Officer,
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- 3.The District Educational Officer,
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