



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.14377 of 2017
and
W.M.P.No.15589 of 2017

D.Anandhi

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. By the Secretary to Government
School Education Department
Fort St. George
Chennai – 600 009.

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

3.The District Elementary Educational Officer,
Krishnagiri District, Krishnagiri.

4.The Assistant Elementary Education Officer,
Hosur Panchayat Union,
Hosur, Krishnagiri District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd and 3rd respondent issued in Na.Ka.No.16907/E1/2016 dated



11.08.2016 and in Na.Ka.No.510/A6/2015 dated 10.03.2016 respectively and to quash the same and issue a consequential direction to the respondents to step up the pay of petitioner to the level of her junior and fix the pay of the petitioner at Rs.4750/- as on 01.01.1996 in the Time Scale of Pay of Rs.4500-125-7000 and consequently fix the petitioner's Selection Grade Scale of Pay at Rs.5450/- as on 25.02.2001 and thereafter fix the petitioner's pay as equal to his junior at Rs.16,120/- as on 01.01.2006 in the Revised Scale of Pay of 2009 and fix consequential equal pay in the Special Grade Scale of Pay to the petitioner and grant notional benefits.

For Petitioner .. Mr.R. Saseetharan

For Respondents .. Mr.S. Ravikumar, SGP

ORDER

This writ petition has been filed in the nature of a Certiorarified Mandamus seeking records of the 2nd and 3rd respondents dated 11.08.2016 and 10.03.2016 respectively and to quash the same and issue a direction to the respondents to step up the pay of the petitioner to the level of junior and fix the pay of the petitioner at Rs.4,750/- as on 01.01.1996 in the pay of Rs.4500-125-7000 and fix the selection grade pay of the petitioner at Rs.5,450/- as on 25.02.2001 and fix it as equal to the junior at Rs.16,120/- as on 01.01.2006 and also grant consequential equal pay in special grade pay.



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2. In the affidavit filed in support of the writ petition, the petitioner stated that she was initially appointed as Secondary Grade Teacher on 07.12.1990 at Panchayat Union Middle School, Nallimandam, Kundadam Panchayat Union, Erode District, on a consolidated pay of Rs.800/-. On 18.06.1991, she was transferred as Secondary Grade Teacher and posted at Panchayat Union Elementary School, A.Chembulichempalayam, Anthiyur Panchayat Union, Erode District. On 24.08.1994, she was transferred to the Soolagiri Panchayat Union, Krishnagiri District. On 14.07.1999, she was transferred to Hosur Panchayat Union, Krishnagiri District and posted at Panchayat Union Elementary School, Idayanallur, Hosur Panchayat Union. She was working as Secondary Grade Teacher in Hosur Panchayat Union at Panchayat Middle School, Arasanatti, at the time of filing of the writ petition.

3. The petitioner claimed that she was granted regular time scale of pay from the date of appointment as per the proceedings dated 05.10.2010. She was also granted increment on the 1st of October every year. It had been stated that she had been brought into regular time scale of pay from



01.09.1992 in accordance with G.O.Ms.No.20 dated 08.01.1993, and by proceedings dated 12.03.1993, by the District Educational Officer, Gobichettipalayam. Her probation was declared on 07.12.1990. In the seniority list published in the year 2015, she was in rank No.11 for Hosur Panchayat Union.

4.However, her grievance was with respect to her junior S.Sasikala who was at rank No.37. She was appointed on 25.02.1991 and her appointment in Hosur Panchayat Union was on 09.11.2000. It was stated that the Government of Tamil Nadu had introduced the 5th time scale of pay with effect from 01.06.1988 and 6th pay revision with effect from 01.01.1996. In the 6th pay, the pay of the petitioner was fixed at Rs.4,625/- in the time scale of Rs.4500-125-7000 as on 01.01.1996. Thereafter, the Government of Tamil Nadu had also introduced 6th pay revision in G.O.Ms.No.162 dated 13.04.1998 with effect from 01.01.1996. However, her grievance is that her junior S.Sasikala, who was also appointed on 25.02.1991 and also had been transferred to Soolagiri Panchayat Union, Krishnagiri District and was also regularized as per G.O.Ms.No.336 dated 30.12.2009 by proceedings dated 05.10.2010 by the Additional Assistant



Elementary Educational Officer, Hosur, had the benefit of her date of annual increment being fixed at 1st of January every year. Therefore, she was granted an annual increment, which fell due on 1st of January and her pay was fixed on 4,750/- even though it should be Rs.4,625/- as on 01.01.1996.

5.The increment of the petitioner was granted only in October 1996 and therefore, her scale got naturally reduced since the junior got increment in January 1996. The petitioner's pay was fixed at Rs.4,750/- only on 01.10.1996, equal to her junior S.Sasikala. Subsequent to increment, the pay of the junior again increased in January of the next year. This continued, even when the petitioner was granted selection grade of pay, which was fixed on 25.01.2001 when the petitioner completed ten years of service. She was granted time scale of pay of Rs.5300-150-8300, but for her junior S.Sasikala, who completed ten years of service on 25.02.2001 and had got increment in January 2001, her pay scale was fixed at Rs.5300-150-8300, but the grade pay was Rs.5450+50 Personal Pay, whereas, the petitioner was granted 5300+75 Personal Pay.



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6.This difference in pay is sought to be stepped up by the petitioner in the writ petition.

7.In the counter affidavit filed by the respondents, the scales of pay was admitted by the respondents. The fact that the junior got increment in 1st of January every year and the petitioner was granted in 1st of October has also been admitted by the respondents. But however, the main ground for the petitioner to draw lower scale of pay and justification of that had been given in paragraph Nos.11 and 12 of the counter. It is stated in paragraph No.11, that as per Service Rules her date of joining on transfer in Hosur Panchayat Union was taken into account and though S.Sasikala was junior to the petitioner, her pay was stepped up.

8.In paragraph No.16 again it had been stated that the the petitioner's service were regularized with effect fom 07.12.1990, whereas, S.Sasikala's service were regularized on 25.02.1991. Thus though the fact that the petitioner is senior to the said Sasikala is affirmed, still the main ground on for the lower pay was justified in paragraph No.22 which is as follows:



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“22. With regard to averments made in Para 16 and 17, it is submitted that the writ petitioner is not eligible to re-fixation of her pay at Rs.4750 by stepping up her pay on par with S.Sasikala with effect from 01.01.1996, and also in subsequent pay commission, as she would not compare S. Sasikala as her junior, since both of them were initially appointed in separate Panchayat Unions (i.e. The writ petitioner in Kundadam and S.Sasikala in Peramanallur Panchayat Union). After working in one or more unions, thereafter, both of them came to Hosur Panchayat Union on Unit to Unit transfer. Stepping up of pay on par with junior is possible if both of them got their initial appointment in the same union, with reference to G.O.Ms.No.1400/Fin.(PC) Dept. dated 21.12.1978. Therefore the orders passed by the Director of Elementary Education, Chennai in Rc.No.16907/E1/2016 dated 11.08.2016 and by the District Elementary Educational Officer, Krishnagiri in Rc.No.510/A6/2015 dated 10.03.2016 in respect of the writ petitioner's representations are correct and in accordance with Government Rules.”

9. It had been contended that the petitioner had worked in two or more other Unions and then then came to Hosur Panchayat Union in Union to Union transfer. It is stated that stepping up of pay would be possible only if



both of them had got initial appointment in the same. Reference was made to G.O.Ms.No.1400/Fin.(PC)Dept. dated 21.12.1978. It had therefore been contended that the impugned order should not be set aside and the writ petition should be dismissed.

10. With respect to the transfer from Union to Union, the matter had been earlier examined by a learned Single Judge in ***W.P.(MD)No.742 of 2018 dated 07.02.2018, K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and another.*** In identical circumstances, the learned Single Judge had examined the facts and had ordered as follows:

“3. The petitioner was appointed as Secondary Teacher on 08.08.1997 in Pudukottai Panchayat Primary School. On her request, she got transferred to Kayathar Union on 04.07.1998. The petitioner is presently working as a Headmaster in Kayathar Union. The grievance of the petitioner is that one Shanthi, who was appointed as Secondary Grade Teacher in Kayathar Union on 11.01.1999 is drawing more pay. Citing this pay anomaly the petitioner submitted a representation to the District Elementary Educational Officer on 05.07.2017. The petitioner has also enclosed the comparative chart. It is obvious therefrom that the said Shanthi was appointed in Kayathar Union later in



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point of time. 4. The learned Counsel appearing for the petitioner drew the attention of this Court to the proceedings dated 25.05.2017, issued by the District Elementary Educational Officer, Tuticorin whereby, a similar pay anomaly in the case of one Mrs.Rani was set right. The petitioner's case is identical. However, the first respondent declined to accept the request of the petitioner.

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 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. *This Writ petition is allowed accordingly. No costs.*”

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11. The learned counsel for the petitioner also placed reliance on a Division Bench judgment of this Court in ***W.A.No.178 of 2021 dated 18.03.2021, the Director of School Education, Chennai and others Vs. S.Premavathi***, wherein, again the same issue was examined by the Division Bench. The relevant portion of the order of the Division Bench is as follows:

“The issue herein has been dealt with by a Division Bench in Madurai on November 14, 2019.

2. The order impugned in the present case is founded on an order of February 19, 2019 passed in W.P.(MD) No.24551 of 2018. As it would be evident from paragraph 9 of the order impugned, the relevant order in W.P.(MD) No.24551 of 2018 relied on a judgment passed in W.P.(MD) No.742 of 2018 dated February 07, 2018.

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



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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.”

12.It is thus seen that the stand taken by the respondents with respect to transfer to the Union is no longer sustainable and therefore, the impugned orders will necessarily have to be set aside. A direction is given, that the pay of the petitioner is stepped up in accordance with the pay of her junior S.Sasikala. Necessary proceedings should be issued within a period



of sixteen weeks from the date of receipt of a copy of this order.

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13. With the above observations, this writ petition stands allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

20.09.2023

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order: Yes/No

To



1. The Secretary,
Government of Tamil Nadu
School Education Department
Fort St. George
Chennai – 600 009.
2. The Director of Elementary Education
College Road, Chennai – 600 006.
3. The District Elementary Educational Officer,
Krishnagiri District, Krishnagiri.
4. The Assistant Elementary Education Officer,
Hosur Panchayat Union,
Hosur, Krishnagiri District.

C.V.KARTHIKEYAN,J.

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