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W.P.No.29229 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>01.02.2023</i>
<i>Pronounced on</i>	<i>14.02.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.29229 of 2017
and W.M.P.No.31482 of 2017

S. Malligai Sundaram

... Petitioner

Vs.

1.The Director of Elementary Education,
DPI Complex,
Chennai – 600 006.

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

3.The Assistant Elementary Educational Officer,
Ariyalur,
Ariyalur District.

4.A. Meenakshi

... 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 of the respondents in connection with the impugned order passed by the second respondent in Na.Ka.No.1461/A2/2016 dated 16.08.2016 and the



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third respondent in Na.Ka.No.1243/A1/2014 dated 18.08.2016 and Na.Ka.No.451/A1/2015 dated 20.09.2016 and quash the same insofar as the petitioner is concerned and further direct the respondents to reimburse the recovered amount from the petitioner within a reasonable time.

For Petitioner : Mr.R. Venkataramani
Senior Counsel
for Mr.R. Dinesh Kumar

For Respondents : Mr.K.H. Ravi Kumar,
Government Advocate [R1 to R3]
No appearance - R4

ORDER

The petitioner was originally appointed as a Secondary Grade Teacher in the Panchayat Union Elementary School, Thirumanur Union and thereafter, transferred to the Panchayat Union Middle School, Ariyalur Union, Perambalur District. For having acquired two higher qualifications in the pre-revised scale of pay, the petitioner was awarded two incentive increments.

2. The fourth respondent herein, who is a junior to the petitioner and who had joined in the same Panchayat Union Elementary School, was also



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awarded with two increments. Owing to these, there arose a pay anomaly whereby, the petitioner's junior was drawing more scale of pay, than the petitioner. On the petitioner's request, her pay was stepped up on par with the pay of the fourth respondent, as per the proceedings of the third respondent dated 05.11.2015. Through the impugned order dated 16.08.2016, the second respondent herein had stated that such stepping up of pay was wrongly made, thereby causing financial loss to the Government and accordingly, advised the third respondent herein, to recover the excess payments made. Consequently, the third respondent in his proceedings dated 18.08.2016, had derived the excess payment made to the petitioner, at Rs.1,38,444/-. In this background, a consequential order dated 20.09.2016 was passed by the third respondent, revising the petitioner's pay scale. All these three impugned orders of the second and third respondents herein, are put under challenge in the present Writ Petition.

3. In the impugned orders alleging excess payment and revising the petitioner's pay scale, no reason has been assigned for the alleged excess payment or for revision of the petitioner's pay scale. No show cause notice was also issued prior to such orders passed, thereby, depriving the



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petitioner's to put forth her objection. On this ground, it could be said that the orders are violative of the fundamental principles of natural justice and are liable to be struck down.

4. The respondents in their counter-affidavit have stated that in the clarification dated 11.08.2016 issued by the first respondent herein to the Government Order in G.O.Ms.No.25, Personnel and Administrative Reforms Department dated 23.03.2015, the provision for fixation of pay of the senior teacher on par with the junior teacher, can be made only in respect of those appointed in the same Union and continued work in the same Union, since the unit of establishment is the particular Union concerned. In the same clarification, it was further stated that there is no provision for the fixation of pay of teachers who are transferred from one Union to another Union for comparing the pay of the teacher who was appointed in that particular unit and continued therein. Such a reasoning for declaring the petitioner's stepped up pay on par with the junior, cannot be sustained, in view of the various decisions of this Court which has held this objection as unjustifiable.



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5. 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



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Sabestian.

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:



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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 Teachers 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 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



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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 Shanthy got appointment as Secondary Grade Teacher at Kayatharu Union only later in point



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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.”



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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 Sabestian 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 Sabestian, 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



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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.”

6. 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



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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.”

7. 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.

8. 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*



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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*



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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 re-fixation 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 bound to step up the pay of senior on par with his junior.”

9. 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



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distinction can be made among two teachers by stating that one of the teachers was transferred from another Unit, cannot be sustained.

10. In the result, the impugned orders dated 16.08.2016, 18.08.2016 and 20.09.2016 passed by the second and third respondents respectively, are hereby quashed. The second and third respondents shall pass appropriate orders, restoring the pay scale of the petitioner as it stood prior to the issuance of the impugned order dated 20.09.2016 and disburse any amount that may have been recovered under the impugned orders. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

11. Accordingly, the Writ Petition stands allowed. No costs.
Connected miscellaneous petition is closed.

14.02.2023

Speaking/Non-speaking Order
Neutral Citation: Yes/No
Index : Yes/No
Internet: Yes/No

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M.S.RAMESH,J.

Sni

To

- 1.The Director of Elementary Education,
DPI Complex,
Chennai – 600 006.
- 2.The District Elementary Educational Officer,
Ariyalur District,
Ariyalur.
- 3.The Assistant Elementary Educational Officer,
Ariyalur,
Ariyalur District.

Order in
W.P.No.29229 of 2017

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