



W.P.(MD) No.4851 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.4851 of 2020
and WMP (MD) No.4219 of 2020

KN.Mayalagu

... Petitioner

-VS-

1.The State of Tamil Nadu,
By the Chief Secretary
School Education Department
Fort St. George, Chennai -600 009.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai. 6

3 The Joint Director of School Education
EVK Sampath Building, DPI Campus,
College Road, Nungambakka,
Chennai.

4 The District Educational Officer,
Thiruppathur, Sivagangai District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records



W.P.(MD) No.4851 of 2020

relating to the impugned order of the 1st respondent made in Letter No. 5865/Pa.Ka.2(1)/2017-9 dated 28.06.2019 and quash the same and further direct the 1st respondent to issue a Government order for rectification on the strength of the Government letter No.45113/Pay Cell /2009-1 dated 17.08.2009 issued by the Principal Secretary Finance (PC) Department as contemplated under Rule 5(2) of the Tamil Nadu Revised Scales of Pay Rules, 1998, approving the order passed by the 3rd respondent by his proceedings in Mu.Mu.No.102495/L/E5/2013 dated 07.07.2015.

For Petitioner : Ms.M.Mohana Bai
for Mr.D.Venkatesh

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

Challenging the impugned order of the first respondent dated 28.06.2019 and for a direction to the Principal Secretary Finance (PC) Department as contemplated under Rule 5(2) of the Tamil Nadu Revised Scales of Pay Rules, 1998, approving the order passed by the 3rd respondent by his proceedings in Mu.Mu.No.102495/L/E5/2013 dated 07.07.2015.



W.P.(MD) No.4851 of 2020

WEB COPY

2. The case of the petitioner is that he is a retired Teacher. He made application for removal of pay anomaly in between him and his junior, viz., R.Sukumar. However, the same was not considered. Hence, the petitioner filed W.P.(MD) No.18297/2013 and this Court, by order, dated 09.12.2014 issued a direction to the third respondent to pass an order as per letter dated 17.08.2009 issued by the Principal Secretary to Government and also taking note of the proceedings dated 07.06.2009. It is his case that the third respondent also passed an order thereby rectifying the pay anomaly for the petitioner on 07.07.2015 and the said order was forwarded by the Chief Educational Officer on 14.12.2015 for appropriate orders. On 15.04.2016, the Chief Educational Officer sent the service register to the office of the Accountant General for carrying out necessary correction and on 09.11.2016, the Principal Accountant General returned the same stating that the pay anomaly shall be done only after the retirement of the petitioner. Thereafter, the Chief Educational Officer sent a proposal to the third respondent for obtaining Government orders as directed by the Accountant General on 30.12.2016. However, the first respondent, vide impugned order, rejected the same stating that no such rule has been issued for



W.P.(MD) No.4851 of 2020

pay anomaly even without considering the earlier clarification issued by the Principal Accountant General. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner would submit that admittedly, the petitioner joined as Physical Education Director Grade I on 23.11.1981, whereas his junior was appointed on 07.04.1982. Initially, their basic pay was fixed at Rs.600/- and on completion of M.Phil degree by the petitioner, he was granted increment on 20.12.1993 and subsequently the pay was increased as per G.O.Ms.No.162 dated 13.04.1998 and further increased in terms of G.O.Ms.No.427 dated 28.08.1998, to the extent of Rs.28,050/-, whereas his junior's pay, who joined in the year 1982, was increased in terms of G.O.Ms.No.234 dated 01.06.2009 for a sum of Rs.27,530/- and subsequently, he acquired M.Phil in the year 2006, ie., after the petitioner. However, the pay was increased to Rs.29,190/- and in order to rectify the pay anomaly, the representation was properly considered and the third respondent has sent a proposal to the first respondent and since the same was not rectified, prays for appropriate direction.



W.P.(MD) No.4851 of 2020

WEB COPY

4. Per contra, the learned Special Government Pleader would submit that the petitioner has made a request to rectify the pay anomaly on par with his junior R.Sukumar to the third respondent, who in turn considered the petitioner's request and passed orders on 07.07.2015 for stepping up his pay on par with his junior from 31.10.2006. He would further submit that for acquiring higher qualification of M.Phil in the year 1993, he was granted with incentive increment in the year 1993 itself, however, his junior, who completed in the year 2006, was granted with incentive increment on 31.10.2006 and that should not be considered as pay anomaly, which is only an incentive increment. He concluded his argument by stating that the Government rightly considered the case of the petitioner and rejected it and hence, no interference is warranted to the impugned order.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.



W.P.(MD) No.4851 of 2020

WEB COPY

6. The appointment of the petitioner as Physical Education Director Grade I on 23.11.1981 and his acquiring higher qualification of M.Phil and his incentive increment on 20.12.1993 are not in dispute. Similarly, the appointment of the junior on 07.04.1982 and his acquiring of qualification in the year 2006 are also not in dispute.

7. In order to resolve the issue in the present writ petition, it is necessary to extract the following service particulars of the petitioner as well as his junior:

Sl.No.	Service particulars	Petitioner	Sugumar
1	Appointment	23.11.1981	07.04.1982
2	Initial pay (Rs)	600/-	600/-
3	Increment for M.Phil	20.12.1993	30.12.2006
4	Pay as on 01.01.2006 (Rs) as per G.O.Ms.No. 234 dated 01.06.2009	27,230.00	26,720.00
5	Pay as on 31.10.2006 (Rs)	28,050.00	29,190.00



W.P.(MD) No.4851 of 2020

WEB COPY

Thus, from the above, it is clear that the junior of the petitioner joined after four months from the date of joining of the petitioner and his higher qualification of M.Phil is also much after the petitioner, ie., after a period of 13 years and as on 31.10.2006, the pay of the junior is more than the petitioner. It is also not equally disputed that prior to acquiring of the higher qualification by the junior in the year 2006, the petitioner's pay was fixed at Rs.28,050/-. When that be so, the petitioner's pay has to be more than that of his junior as on 31.10.2006. It is the case of the petitioner that after acquiring the higher qualification of M.Phil, his junior's pay was fixed as per the new pay commission, ie., on 31.10.2006, whereas the petitioner's incentive increment was calculated before the pay commission, ie., on 20.12.1993. It is further to be noted that on filing writ petition (supra) and as per the direction issued by this Court, the pay parity should be resolved and stepping up of pay for the senior on par with his junior should be done.

8. Therefore, for all these reasons, the impugned order of the first respondent is set aside and the writ petition is allowed. Accordingly, the first respondent is directed to give rectification order in favour of the



W.P.(MD) No.4851 of 2020

petitioner to step up the pay on par with his junior. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

05.01.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

RR

To

- 1.The Chief Secretary
School Education Department
Fort St. George, Chennai -600 009.
- 2.The Director of School Education,
College Road, Nungambakkam,
Chennai. 6
- 3 The Joint Director of School Education
EVK Sampath Building, DPI Campus,
College Road, Nungambakka,
Chennai.
- 4 The District Educational Officer,
Thiruppathur, Sivagangai District.



WEB COPY



W.P.(MD) No.4851 of 2020

M.DHANDAPANI, J.

RR

W.P.(MD) No.4851 of 2022

05.01.2023