



CONT P(MD)No.1103 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.02.2023

PRONOUNCED ON : 07.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

CONT P(MD)No.1103 of 2022

R.Amalarani

... Petitioner

vs.

S.Jeyaprakash Rajan,
District Educational Officer,
Sankarankoil-627 756,
Tirunelveli District.

... Contemnor / Respondent

PRAYER: Petition filed under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for willfully disobeying and not complying with the order of this Court, dated 24.02.2020, in W.P.(MD)No.14950 of 2014.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondent : Mr.S.Kameswaran
Government Advocate

ORDER

This Contempt Petition is filed alleging noncompliance of the order passed in the Writ Petition W.P.(MD)No.14950 of 2014, vide order, dated



CONT P(MD)No.1103 of 2022

WEB COPY

24.02.2020.

2. The prayer in W.P.(MD)No. 14950 of 2014 is for writ of Certiorarified Mandamus, to quash the impugned order dated 28.06.2013 passed by the 4th respondent Assistant Elementary Educational Officer, Sankarankovil and to direct the respondents to sanction and disburse salary to the petitioner by re-fixing the scale of pay on par with his juniors with all attendant benefits including the arrears of salary and allowance.

3. The brief facts of the case are that the petitioner joined the service as Secondary Grade Teacher in the Municipality Primary School, Gandhinagar, on 06.12.1990. On completion of 10 years, he was given selection grade on 07.12.2000 and then promoted as Middle School Headmaster on 01.06.2008. Normally, Middle School Headmaster post will be filled up by promotion from the feeder category of Primary School Headmaster or B.T Assistant. Since there was no qualified Primary School Headmaster and B.T. Assistant, the petitioner was promoted as Headmaster of Middle School from the cadre of Secondary Grade Teacher. He was placed in the scale of pay admissible for the post of



CONT P(MD)No.1103 of 2022

WEB COPY

Middle School Headmaster with effect from 01.06.2008. If the normal course of promotion is granted, the petitioner would be given B.T. Assistant or Primary School Headmaster, later on as Middle School Headmaster. Then, the petitioner would be getting higher scale of pay and the comparative scale of pay is given below:

B.T. Assistant - Rs.PB2 9300-34800+GP4500/-

Middle School Headmaster - Rs.PB2-9300-34800+GP4700/-

4. In the post of Secondary Grade Teacher, the petitioner was getting Selection Grade of pay in the cadre of Secondary Grade Teacher. Since the petitioner was placed only in the normal scale admissible for the post of Middle School Headmaster, he was drawing salary in a lesser scale. The petitioner is comparing one Mrs.C. Annathai, who was appointed as Secondary Grade Teacher on 06.12.1990, promoted as B.T. Assistant (Tamil) on 16.06.2008 and further promoted as Middle School Headmistress on 01.04.2012. She was placed in a higher scale of Rs. PB2 9300-34800+GP4700, thereby, she is drawing the salary of Rs.23,570/- per month, whereas the petitioner was drawing only Rs.21,550/- as Middle School Headmaster.



CONT P(MD)No.1103 of 2022

WEB COPY

5. After considering the petitioner's case in the writ petition, this Court quashed the impugned order and directed to refix the scale of pay of the petitioner on par with his juniors and to disburse the salary with arrears. Aggrieved over the same, the respondents preferred an appeal and order passed the Learned Single Judge was confirmed. However, liberty was granted to the appellants to consider the case of the Teacher in accordance to Tamil Nadu Revised Pay Rules, 2017, by taking into account the relevant Government orders and the relevant portion is culled out hereunder:

“4. Similar issue came up for hearing before this Court on earlier occasions and one such decision in W.P(MD).No.742 of 2018 dated 07.02.2018, was followed by the learned Single Bench. Identical issue was considered by the Division Bench of this Court in W.A(MD).No.1220 of 2019, which was filed by the Education Department challenging the order passed in W.P(MD).No.4231 of 2019 and the Department appeal was dismissed holding that the distinction sought to be drawn by the Department on the ground that the two teachers are working in two different Panchayat Union Schools, is not sustainable. Therefore, we find that there is no error in the order passed in the writ petition.

5. The learned Special Government Pleader appearing for the appellants-Department would vehemently contend that though the reason given in the order impugned in the writ petition may not be fully sustainable, yet the



CONT P(MD)No.1103 of 2022

WEB COPY

question of stepping up of the pay would not arise, as all pay anomaly issue consequent upon revision of pay and allowances pursuant to the recommendations of the pay commissions are governed by the Tamil Nadu Revised Pay Rules 2017, issued by the Government in G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017.

6. The learned Special Government Pleader has drawn our attention to the relevant portions of the Government Order and submitted that if the issue is considered in terms of the guidelines laid down in the Rules, the question of stepping-up of the pay would not arise. We cannot accept this submission made by the department at this juncture for more than one reason. Firstly, the order impugned in the writ petition does not refer to G.O.Ms.No.303, for declining stepping up of pay. Secondly in the writ petition, no such argument was advanced by the department and though in other cases counter affidavits have been filed, this contention was never raised. Thirdly, G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017, is much after the order impugned in the writ petition.

7. Therefore, based on G.O.Ms.No.303, we cannot interfere in the order passed in the writ petition. As in our opinion, if according to the appellants-Department the stepping up cannot be done in terms of the Tamil Nadu Revised Pay Rules 2017, it gives a separate cause of action and therefore, the request of the respondents-teachers should be processed in accordance with the Rules and not for the reasons cited in the impugned order passed in the writ petition, which has been rightly quashed.



CONT P(MD)No.1103 of 2022

WEB COPY

8. Accordingly, while confirming the order passed in the writ petition quashing the impugned order therein, we give liberty to the appellants Department to consider the case of the respondent-teacher based on the Tamil Nadu Revised Pay Rules 2017, in accordance with law and if so advised, by taking into account the relevant Government Orders. Accordingly, order in the Writ Petition is confirmed.

9. The Writ Appeal stands dismissed with the aforementioned observation and consequently, the connected miscellaneous petition is closed.”

6. After the Hon’ble Division Bench, the respondents had considered the case of the petitioner and had passed an order dated 09.04.2022. The petitioner alleges that the said order dated 09.04.2022 is amounting to contempt, since the said order is against the Learned Single Judge order and the Hon’ble Division Bench order, since the Hon’ble Division Bench had confirmed order of the Learned Single Judge. Therefore, the petitioner is alleging that there is contempt committed by the respondent, since the respondent has not obeyed the orders of this Court.



CONT P(MD)No.1103 of 2022

WEB COPY

7. The respondent has filed affidavit in the contempt petition stating that based on the liberty granted by the Hon'ble Division Bench, the petitioner's case was considered. Hence there is no contempt as alleged.

8. It is seen that the Tamil Nadu Revised Rules, 2017 was issued in G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017. In the said Rules, 2017 under Rule 13, a direction has been issued to rectify the pay anomaly in the case of seniors and juniors but if the conditions are fulfilled and the relevant portion is extracted hereunder:

“13. Removal of Anomalies:

(1) Where in the fixation of pay in the revised pay structure upon appointment or promotion to a higher post, pay of a Government employee gets fixed higher than that of a Government employee senior to him, who has been promoted earlier to the same higher post in the same cadre, the pay of such senior government employee in the revised pay structure shall be stepped up to the same Cell in the revised pay structure as that of his junior in that higher post and such stepping up shall be done with effect from the date of promotion of the junior government employee subject to the fulfilment of the following conditions, namely

(a). Both the Junior and the Senior Government employee should belong to



CONT P(MD)No.1103 of 2022

WEB COPY

the same cadre and the posts in which they have been promoted are identical in the same cadre.

(b). The existing pay structure and the revised pay structure of the lower and higher posts in which they are entitled to draw pay are identical.

(c). The senior Government employees at the time of promotion should have drawn equal or more pay than the junior.

(d). The anomaly should have arisen directly as a result of the application of the provisions of Fundamental Rules or any other rule or order regulating pay fixation on such promotion in the revised pay structure.

Provided that where the pay of the junior employee is greater than that of the senior on account of any advance increments granted to him, the provisions of this sub rule shall not be invoked to step up the pay of the senior employee.

2. The order relating to re-fixation of the pay of the senior employee in accordance with sub rule (10) shall be issued under the provisions of Fundamental Rules and the senior employee shall be entitled to the next increment on completion of the required qualifying service one year with effect from the date of re-fixation of pay.”



CONT P(MD)No.1103 of 2022

WEB COPY

9. In the present case, even though the petitioner and the said C.Annathai were serving as Secondary Grade Teacher, while considering for promotion, the said C.Annathai was promoted as B.T. Assistant and fixed the B.T. Assistant scale of pay. Whereas the petitioner was not promoted as B.T. Assistant and the B.T. Assistant scale of pay was not granted to the petitioner. Hence from this promotion onwards the petitioner has lost the right to compare the scale of pay with that of the said C.Annathai as per the aforesaid Rules, 2017, since both the petitioner and the said C.Annathai are not in the same cadre.

10. Proviso to Rule 13 in the Rules, 2017 states that if the junior employee pay is greater than the senior employee on account of any advance increments, the sub-rule shall not be invoked to step up the pay. In the present case the C.Annathai (junior) has earned two advance increments for the M.A. and two increment for B.Ed. and the salary is fixed as Rs.19,650/- and Rs.22,110/- respectively. Whereas the petitioner has not acquired any such higher qualification and consequently has not received any such advance increment. Hence based on proviso the petitioner is not entitled to set up the pay.



CONT P(MD)No.1103 of 2022

WEB COPY

11. Therefore it is seen that the respondent had considered the case of the petitioner as per the liberty granted by the Hon'ble Division Bench in the light of Tamil Nadu Revised Pay Rules, 2017. Hence, there is no contempt as alleged and hence the contempt petition is dismissed.

Index : Yes / No
Internet : Yes

07.11.2023

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To

District Educational Officer,
Sankarankoil-627 756,
Tirunelveli District.



WEB COPY



CONT P(MD)No.1103 of 2022

S.SRIMATHY, J

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Order made in
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