



W.P.(MD)No.10665 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.10665 of 2016
and
W.M.P.(MD)No.8273 of 2016

V.Gopinathan

... Petitioner

vs.

- 1.The Director of Elementary Education,
College Road, Chennai-6.
- 2.The District Elementary Educational
Officer,
Dindigul, Dindigul District.
- 3.The Additional Assistant Elementary
Educational Officer,
Vedasandur, Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.30584/C1/2015, dated 26.04.2016 and the consequential order passed by the 2nd respondent in his proceedings Na.Ka.No.



W.P.(MD)No.10665 of 2016

WEB COPY

4415/A4/2015, dated 02.05.2016 and the consequential order passed by the 3rd respondent in his proceedings Na.Ka.No.312/A2/2016, dated 18.05.2016 and to quash the same as illegal and in violation of principles of natural justice.

For Petitioners : Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran
For Respondents : Mr.S.Kameswaran
Government Advocate

ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash the impugned order passed by the 1st respondent in his proceedings, dated 26.04.2016 and the consequential order passed by the 2nd respondent in his proceedings, dated 02.05.2016 and the consequential order passed by the 3rd respondent in his proceedings, dated 18.05.2016.



W.P.(MD)No.10665 of 2016

WEB COPY

2. The brief facts of the case are that the petitioner had completed B.A., Degree course and B.Ed., in the year 1993. The petitioner was appointed as Secondary Grade Teacher on 07.10.1996 and was granted incentive increment for B.Ed. Thereafter, the petitioner completed M.A. (History) in the year 1996. Initially, the petitioner was appointed in Gujiliyamparai. Thereafter, transferred to Vendasandur unit on 07.07.1997. Similarly, one T.Kowsalya who was appointed as Secondary Grade Teacher on 27.07.1995 was transferred to Vendasandur Block on 07.08.1996. The petitioner was promoted to the post of B.T.Assistant on 16.06.2008 wherein he was drawing pay of Rs.13370+4400 under the time scale of pay of Rs.9300-34800+4400 with effect from 01.10.2008. In the meanwhile, the said Kowsalya has completed B.Ed., course in the year 2008 and he was promoted to the post of B.T.Assistant on 12.10.2009 and was drawing the pay of Rs.15000+4400 under the same time scale of pay of Rs.9300-34800+4400.



W.P.(MD)No.10665 of 2016

WEB COPY

3.The contention of the petitioner is that the said Kowsalya though promoted to the post of B.T.Assistant only on 12.10.2009 was drawing higher scale of pay on account of the fact that she was granted incentive for completing B.A., degree course in the year 2008 and time scale of pay was fixed under the 6th pay commission recommendation. Since the petitioner's junior is getting more pay, the petitioner has filed this writ petition.

4.The 2nd respondent has filed a counter affidavit stating that based on G.O.Ms.No.234, Finance Department, dated 01.06.2009, the petitioner and the said Kowsalya were fixed as per the fitment table. As per the rules and guidelines prescribed in G.O.Ms.No.234, Finance Department, dated 01.06.2009, the pay anomaly can be considered, if both the candidates belong to same category, all the subsequent incentive increments and promotion should be on the same date. It is stated in G.O.Ms.No.234, Finance Department, dated 01.06.2009 and the same is



WEB COPY

extracted hereunder:

“5. Rectification of anomaly of Junior getting more pay than Senior (1) In cases where as senior Government employee appointed to a higher post before the 1st day of January 2006 draws less pay in the revised pay structure than his junior who is appointed to the higher post on or after the 1st day of January 2006, the pay in the pay band of the Senior Government employee should be stepped upto an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of appointment of the Junior Government employee subject to the fulfillment of the following conditions, namely:

a) Both the Junior and Senior Government employees should belong to the same category and should have been promoted to the same post.

b) The pre-revised scale of pay and the revised scale of pay along with grade pay of the lower and higher posts to which they are entitled to draw pay should be identical.

c) The senior Government employee at the time of appointment should, have been drawing equal or more pay than the junior.

(2) The anomaly should have arisen directly as a result of the introduction of the revised scales of pay.

(3) Where a junior who opts to come over to the revised scale from the date of subsequent to 1st January 2006 and happens to get more pay than that of his senior by way of fitment benefit, then



W.P.(MD)No.10665 of 2016

WEB COPY

the pay of the senior shall be stepped up to the level of the pay of the junior with effect from the date from which the junior draws such higher pay, provided that the senior was drawing pay higher than or equal to the pay of the junior in the pre-revised scales of pay from time to time"

Likewise, under G.O.Ms.No.710, the pay anomaly issued was considered and necessary guidelines were issued and the same is extracted hereunder:

"The operative position of G.O.No.710 is as hereunder:

"4. Government have examined the issue in details. They consider that if the anomaly of junior drawing more pay than senior due to drawal of advance increment for acquiring higher qualification alone (and not for passing of Account Test, etc.) by the senior in the Second Tamil Nadu Pay Commission Scale, 1970 and the junior in the Revised Scale 1978 still continues to exist even after fixation of their pay in the Tamil Nadu Fifth Pay Commission Scales of pay. They accordingly direct that the anomaly of junior drawing more pay than the senior due to drawal of advance increment for acquiring higher qualification alone (and not passing Account Test, Language Test, etc) by the senior in the Tamil Nadu Second Pay Commission Scale of Pay i.e. prior to 1.4.78 and the Junior getting advance increment for acquiring the same qualification in the Tamil Nadu Third Pay Commission Scale of Pay i.e. 1.4.78 it continues to exist even after fixation of pay alter 1.6.88 in the Tamil Nadu Fifth pay Commission Scales of Pay, such anomaly be rectified by stepping up the pay of the Senior on par with the pay of the Junior from the date from which the Junior happens to



W.P.(MD)No.10665 of 2016

WEB COPY

get more pay in the Tamil Nadu Pay Commission Scales of Pay (viz. Tamil Nadu Revised Scales of Pay Rules, 1989)".

In the present case, the said Kowsalya has completed B.Ed., and was receiving higher incentive increment than the petitioner. Therefore, the scale of pay was affected on such increase. This fact is known to the petitioner as well, since in the affidavit itself the petitioner has accepted since the said Kowsalya has completed B.A., in the year 2008. The difference between the petitioner and the said Kowsalya would be approximately Rs.1750. The said amount is the incentive increment granted to the said Kowsalya.

5. Therefore, this Court is of the considered opinion that the petitioner cannot compare himself with a person who cannot be compared with.



W.P.(MD)No.10665 of 2016

WEB COPY

6. The issue of pay anomaly was elaborately considered by this Court in W.P.(MD)Nos.9424 of 2016 and batch, vide order, dated 07.11.2022, wherein this Court has directed the Government to constitute one man commission or appoint any person in Joint Director level to resolve all these issues. Therefore, this Court is inclined to set aside the impugned order and remit back the case to the Government to reconsider the entire issue and pass appropriate orders. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above said observation, the writ petition is disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

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

02.03.2023

Tmg



WEB COPY



W.P.(MD)No.10665 of 2016

To

- 1.The Director of Elementary Education,
College Road, Chennai-6.
- 2.The District Elementary Educational
Officer,
Dindigul, Dindigul District.
- 3.The Additional Assistant Elementary
Educational Officer,
Vedasandur, Dindigul District.



WEB COPY



W.P.(MD)No.10665 of 2016

S.SRIMATHY, J

Tmg

W.P.(MD)No.10665 of 2016

02.03.2023