



W.P(MD)No.2302 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P(MD)No.2302 of 2016
and
W.M.P(MD)No.2022 of 2016

T.Rajasekaran

... Petitioner

Vs.

1.The Secretary to Government,
Finance (Pay Cell) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.



W.P(MD)No.2302 of 2016

3.The Director of School Education,
Office of the Director of School Education,
Chennai - 600 006.

4.The Joint Director of School Education,
(Higher Secondary)
E.V.K.Sampath Building,
DPI Campus, College Road,
Nungambakkam,
Chennai - 600 006.

5.The Chief Educational Officer
Trichy District.

6.The Head Master
Government Higher Secondary School,
Marungapuri,
Trichy District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent herein in Na.Ka.No.073422/L/E4/2015 dated 10.12.2015 and the consequent



W.P(MD)No.2302 of 2016

impugned order of the first respondent herein in Lr.No.44562/Finance (CMPC) Department/2015-2 dated 23.12.2015 quash the same in so far as allowing rectification of pay anomaly of the petitioner from 01.01.2011 and consequently direct the sixth respondent herein to rectify the pay anomaly of the petitioner with effect from 25.06.2006 the date from which junior of the petitioned is drawing higher pay and disburse the same together with interest at the rate of 12% per annum without any further delay.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.V.Nirmal Kumar,

Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

2. The learned counsel for the petitioner submits that he was appointed as Resource Teacher Educator by proceedings of the fourth



W.P(MD)No.2302 of 2016

respondent on 15.07.2022 as per rank No.3/TRB/2002-2003 and joined service on 17.07.2002 in Kottampatty, Madurai District. Thereafter, he was transferred on 04.10.2002 and posted as B.T. Assistant in the Government High School, Balaviduthi, Karur District. The service of the petitioner was regularised on 17.07.2002 and subsequently, his probation was approved on 16.07.2004 by the fifth respondent. Thereafter, the petitioner was promoted as PG Assistant (Economics) to the present station on 31.10.2014 by proceedings of the fourth respondent, dated 31.10.2014. The petitioner was given selection grade on 17.07.2012 in the post of B.T. Assistant. Subsequently, he was put in 13 years of continuous and clean service and maintaining clean records of service even without any adverse remarks.

3. The learned counsel for the petitioner further submits that at the time of joining of service, since the petitioner secured PG degree in M.A (Sociology), he was granted one incentive of Rs.175/- + Rs.175/- = Rs.350/- as per V Pay Commission Recommendation. One C.Senthamizhselvi with rank No.449/TRP/2002-2003 is working as B.T.



W.P(MD)No.2302 of 2016

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Assistant (Maths) under the District Educational Officer, Trichy, who is junior to the petitioner and also joined service on 19.07.2002. Both are drawing equal scale of pay from the date of appointment till 03.01.2004. Subsequently, the petitioner got one incentive increment from 04.01.2004 as per the VI Pay Commission Recommendation for acquiring higher qualification of M.A. (Sociology) and his junior also got one incentive increment from 26.05.2006 for acquiring higher qualification M.Sc., (Maths). Now his junior is getting more pay than the petitioner from 16.05.2006 in the post in which initial appointment of the petitioner and his junior i.e., C.Senthamizhselvi, is one and the same and the post held by them is also one and the same.

4. The learned counsel further submits that while so, the junior of the petitioner, had equal qualification and posting from the date of appointment, all of a sudden, from 26.05.2006 he has been drawing a higher pay of Rs.16,770/- than the petitioner i.e. Rs.16,460/- and during the last year from 19.07.2012, his junior has been drawing her salary at Rs.21,900/- as and when the petitioner is getting salary at Rs.21,490/-.



W.P(MD)No.2302 of 2016

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The petitioner made a representation to the sixth respondent on 13.04.2005 bringing to their notice about the pay anomaly prevailing to the petitioner and his junior from 25.06.2006. As the respondents failed to consider the representation of the petitioner, W.P.(MD)No.10809 of 2015 was filed before this Court. By order, dated 24.06.2015, this Court disposed of the Writ Petition directing the respondents to consider and dispose of the representation submitted by the petitioner. Accordingly, the first respondent passed the impugned order, dated 23.12.2015 consequent to the impugned order, dated 10.12.2015 passed by the third respondent.

5. The learned counsel would further submit that the respondents considered the claim of the petitioner positively as per the clarification issued in Clause-16 of the Government Letter No. 45113/Finance (Pay Section) Department/2009-1, Finance Department, dated 17.08.2009 and proceedings issued by the Director of School Education.



W.P(MD)No.2302 of 2016

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6. The learned Counsel for the petitioner further submits that though the respondents accepted the objections raised by the petitioner with regard to anomaly between the petitioner and their juniors vide impugned proceedings, they do not take any further steps to rectify the mistake. Thereafter, aggrieved by the action of the respondents, the petitioner was constrained to approach this Court.

7. On the other hand, the learned Government Advocate appearing for the respondents submits that due to the pendency of the Writ Petition, the respondents could not proceed further, to take action as per the impugned order, dated 23.12.2015. Though the respondents filed a counter affidavit, on perusal of the averments of the same, it appears that there is no proper answer to the contentions raised by the petitioner in the Writ Petition, except saying that the impugned order is legal.

8. Having considered the submissions of the respective counsels and upon carefully perusing the materials available on record, it is an admitted fact that the respondents accepted the claim of the



W.P(MD)No.2302 of 2016

petitioner with regard to anomaly by impugned order, dated 23.12.2015.

As and when the respondents themselves accepted the claim of the petitioner, as per his representation, the orders of the earlier round of litigation before this Court, they ought to have processed the same and to take steps for rectifying the mistakes occurred in payment of salaries between the petitioner and his juniors and the differential amount has to be paid within a reasonable time to the petitioner. The respondents did not do so by saying that in view of the pendency of the Writ Petition, they did not proceed further. Such contention of the respondents is not acceptable and it is unreasonable also. As and when there is no prohibitory order against them not to proceed further, subsequent to passing of the impugned order, it is expected that the respondents have to take further steps to comply the order, dated 23.12.2015. Due to the reason that the respondents failed to proceed further, consequent to the impugned order only, the petitioner filed this Writ Petition.

9. It is an admitted fact that though the respondents accepted the request of the petitioner to rectify the pay anomaly by impugned



W.P(MD)No.2302 of 2016

order, dated 23.12.2015, till date the benefits of the Writ is not effected in favour of the petitioner and thereby, the respondents caused severe financial loss to the petitioner.

10. Accordingly, in the considered opinion of this Court, the inaction of the respondents to take further steps consequent to the impugned order, dated 23.12.2015 to rectify the pay anomaly of the petitioner is held as illegal, arbitrary, unjust and against the settled proposition of law.

11. For the above stated reasons, this Writ Petition is allowed with the following directions :

1) Directing the respondents to rectify the pay anomaly of the petitioner as per the impugned order, dated 23.12.2015, from the date on which the junior of the petitioner is drawing higher pay than the petitioner and disburse the same to the petitioner with interest at the rate of 9% per annum within a period of six weeks



W.P(MD)No.2302 of 2016

from the date of receipt of a copy of this order;

2) No costs; and

3) Consequently, connected miscellaneous
petition is closed.

20.07.2023

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

RM



W.P(MD)No.2302 of 2016

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WEB COPY

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W.P(MD)No.2302 of 2016

BATTU DEVANAND, J.

RM

W.P(MD)No.2302 of 2016
(1/4)

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