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W.P.(MD)NO.26291 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.26291 of 2022

A.John Peter

... Petitioner

Vs.

1. The District Educational Officer,
Elementary Education,
Sivagangai District.

2. The Block Educational Officer,
Kalaiyarkovil,
Sivagangai District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in his proceedings in Na.Ka.No.9571/A4/2018 dated 20.01.2022 and quash the same and direct the respondents to step up the petitioner's scale of pay with effect from 17.08.2015 the date on which his junior was given higher scale of pay with all consequential benefits thereof.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.N.Satheeshkumar,
Additional Government Pleader.

* * *



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ORDER

Heard the learned counsel on either side.

2. The petitioner is presently working as Middle School Head Master. He seeks stepping up of his pay on par with his juniors. The petitioner had earlier filed W.P.(MD)No.8046 of 2018. Vide order dated 24.04.2018, the writ petition was allowed in the following terms:-

“ 8.Admittedly, the petitioner was senior based on the rank given by TRB and based on ranking, appointments were made to the petitioner and the third party who was selected and appointed in the year 1995 as Secondary Grade Teacher. However, subsequently, based on the seniority, the petitioner was promoted as Elementary School Head Master on 16.06.2003 and further promoted as B.T.Assistant on 21.07.2012. Whereas, the third party, Ms.R.Vijayalakshmi was promoted only on 17.08.2015 as B.T.Assistant, after the period of three years from the date of promotion given to the petitioner.

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 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



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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 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 a march over the petitioner. The order



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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.

11.In the result, the impugned order is quashed and a direction is given to the second respondent to consider the request of the petitioner to step up the scale of pay with effect from 17.08.2015 and in that exercise for stepping up the pay disparity,



the difference of pay shall be calculated and shall be disbursed to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

12.In the result, the writ petition is allowed.

No costs.”

3. Aggrieved by the same, the department filed W.A.(MD) No.955 of 2020. The writ appeal was taken up along with another W.A. (MD)No.911 of 2020. Both the writ appeals were dismissed on 15.04.2021. Paragraph Nos.4 to 8 of the order passed by the Hon'ble Division Bench reads as follows:-

“ 4. We find that the reasons cited in the orders impugned in the writ petitions are on the ground that the respondents-writ petitioners and the other teachers were working in two different Panchayat Union Schools. 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



in W.A(MD).No.1220 of 2019, which was filed by the Education Department challenging the order 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 reasons given in the orders impugned in the writ petitions may not be fully sustainable, yet the 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.



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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 orders impugned in the writ petitions does not refer to G.O.Ms.No.303, for declining stepping up of pay. Secondly in the writ petitions, no such argument was advanced by the department and though in other cases counter affidavits have been filed, this contention was never raised. Even though the impugned order was passed after passing of G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017, there is no reference of G.O., in the impugned order.

7. Therefore, based on G.O.Ms.No.303, we cannot interfere in the orders passed in the writ petitions. As in our opinion, if according to the



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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.

8. Accordingly, while confirming the orders passed in the writ petitions quashing the impugned order therein, we give liberty to the appellants-department to consider the case of the respondents-teachers, 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, orders in the Writ Petitions are confirmed.”

4. Pursuant to the liberty given to the petitioner by the Hon'ble Division Bench, the impugned order 20.01.2022 came to be passed.



5.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

6. The learned Additional Government Pleader took time to verify the facts. He wanted to check if really the petitioner as well as Mrs.Vijayalakshmi hail from the same unit and if the petitioner was senior to her. After verifying the records, it is now submitted by the respondents that the petitioner is figuring at serial No.2 in the list of headmaster of the primary schools whereas Vijayalakshmi is figuring at serial No.5. That is why, the petitioner was promoted as B.T.Assistant on 21.07.2012 whereas Vijayalakshmi was promoted on 17.08.2015. In fact the case of the petitioner should have concluded in the previous round itself. I do not understand as to why the department should have driven the petitioner to file one more writ. The order impugned in this writ petition stands quashed. The relief sought for by the petitioner is granted. This writ petition stands allowed. No costs.

26.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes/ No
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12

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G.R.SWAMINATHAN,J.

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