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W.P.No.14978 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.14978 of 2021

Jenma Bencika Mary

... Petitioner

Vs.

1. The District Educational Officer,
Mannargudi Educational District,
Mannargudi,
Thiruvavarur District.

2. The Block Educational Officer,
Mannargudi Educational Union,
Mannargudi,
Thiruvavarur District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order in proceedings in Oo.Mu.No.1036/A2/020, dated 07.12.2020 and Oo.Mu.No.570/A4/2021, dated 31.03.2021 passed by the 2nd and 1st Respondents and quash the same as bad-in-law and consequently, direct the Respondents to re-fix the petitioner's salary as on 26.07.2018, on the basis of the petitioner's representation, dated 19.01.2021.



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For Petitioner : Mr.P.M.Vishnuvarthanan
For Respondents : Mr.P.Gurnathan,
Additional Government Pleader

ORDER

The petitioner has filed this Writ Petition, challenging the impugned proceedings in Oo.Mu.No.1036/A2/020, dated 07.12.2020 and Oo.Mu.No.570/A4/2021, dated 31.03.2021 passed by the 2nd and 1st Respondents respectively and consequently, direct the Respondents to re-fix the petitioner's salary as on 26.07.2018, on the basis of the petitioner's representation, dated 19.01.2021.

2. The petitioner has been appointed as a Secondary Grade Teacher in Panchayat Union Primary School, Ullikottai (South), Mannargudi Union on 14.10.1996 and had been regularised from the date of the appointment. The petitioner has reached Selection Grade on 14.10.2006 with the scale of Pay at 5300-150-8300. One Rex Anand was appointed as a Secondary Grade teacher in Panchayat Union Middle School, Kottur in Thirumarugal Educational Union, Nagapattinam District on 28.07.1997. The said Rex Anand was transferred to the Mannargudi Union on 07.07.1999. In the



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seniority panel, dated 01.01.2011, the petitioner was found in 8th position and the said Rex Anand was placed 46th position. While the petitioner was promoted to a Elementary School Head Master on 17.09.2011 in Mannargudi Union, Rex Anand was promoted to Elementary School Headmaster on 26.07.2018 in the same Mannargudi Union. However, the pay was not fixed equally. It is the grievance of the petitioner that while the pay of the petitioner was fixed at Rs.69,500/-, the said Rex Anand was receiving the pay of Rs.73,700/- as on 01.07.2020. Since the junior has got more pay than the senior, the petitioner gave a representation to rectify the pay anomaly. But the 2nd respondent rejected the representation and passed the impugned orders. Thereafter, the petitioner reported the same before the 1st Respondent and that also got rejected. Aggrieved over the same, the petitioner has filed this Writ petition.

3. According to the Respondents, Rex Anand was appointed in some other union in Nagapattinam District and thereafter transferred to Mannargudi Union. Hence, in the impugned orders, dated 07.12.2020 and 31.03.2021, it is stated that the pay anomaly between the junior and the



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senior will be rectified only if those persons have got appointed in the same union and the teachers who had gone on transfer from some other Union cannot be compared in respect of the pay differences.

4. Heard Mr.P.M.Vishnuvarthanan, learned counsel for the petitioner and Mr.P.Gurnathan, learned Additional Government Pleader appearing for the Respondents.

5. Mr.P.M.Vishnuvarthanan, learned counsel for the petitioner submitted that at the time when the petitioner and his junior got promoted to the Elementary School Headmaster, both were working in the same Union and in the line of seniority, the petitioner stood 8th position and Rex Anand was placed in 46th position. The learned counsel placed reliance on various earlier orders of this Court passed in this regard and claimed that the impugned orders are liable to be set aside.



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6. Mr.P.Gurnathan, learned Additional Government Pleader appearing for the Respondents submitted that the stepping up to the pay anomaly is governed in accordance with the guidelines issued in G.O.(Ms).No.25, Personnel and Administrative Reforms Department, dated 23.03.2015 in which the relevant portion is extracted hereunder:

1. Both the Junior and Senior Officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre.

2. The scales of the pay of the lower and higher posts in which they are entitled to draw pay should be identical.

7. In this case, the above conditions have not been fulfilled and the details are given below:

	<i>Writ Petitioner</i>	<i>Rex Anand</i>
1 Post held on 25.07.2018	Primary School Headmaster	Special Grade teacher secondary Grade
2 Pay Scale on 25.07.2018	Level : 15	Level :12



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8. There is no dispute with regard to the fact that the said Rex Anand got appointed in some other union and transferred to Mannargudi Union on 07.07.1999. After getting transfer at Mannargudi Union, his seniority was much below the petitioner. Even though the petitioner has claimed that the petitioner got promoted on 17.09.2011 as Elementary School Headmaster and at that time, Rex Anand was was only a Special Grade Teacher Secondary Grade, thereafter, he rose up to the level of Elementary School Headmaster on 26.07.2017 and during that time the petitioner was already working as a Elementary School Headmaster. Even if the petitioner and the respondent might be working in a different category, the category in which the petitioner's Junior was working is below the cadre of the petitioner. In fact, in the seniority panel, dated 01.01.2011 also the petitioner is found in 8th position and Rex Anand was found in 46th position. Hence, Rex Anand was junior to the petitioner.

9. Of course, the petitioner could not compare the pay of Rex Anand



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while he was working in some other union as stated by the respondents.

However, at the time when both the senior and the junior were working in same union and in the same level, if senior gets less pay than the junior, automatically stepping up to cure the pay anomaly will arise.

10. In this circumstance, it is relevant to refer to the earlier Judgment of this Court passed while considering the similar set of facts in respect of identical case in W.P.No.18604 of 2000 (*V.Prabavathi Vrs. the Director of Elementary Education, DPI Campus, College Road, Chennai and 3 ors*).

The said Writ Petition was allowed on 06.10.2023 wherein the relevant paragraph is extracted hereunder:

6. Yet another decision in W.P.(MD) No.8046 of 2018 in the case of A.John Peter vs. The District Elementary Educational Officer and another, it is held that anomaly should be redressed when there is a disparity between the pay drawn by the junior and senior and the senior gets lesser pay than the junior. The special para of the said judgment reads as under:

“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 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: ...”

11. The dictum laid down in the above case is squarely applicable to the facts of the case as well. Hence, the anomaly between the junior and senior has to be rectified in the light of the earlier Judicial Pronouncements of this Court.

12. In view of the above, this Writ Petition is allowed. The impugned



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proceedings in Oo.Mu.No.1036/A2/020, dated 07.12.2020 and

Oo.Mu.No.570/A4/2021, dated 31.03.2021 passed by the 2nd and 1st

Respondents are quashed. The Respondents are directed to consider the representation of the petitioner representation, dated 19.01.2021 with regard refixing of the petitioner's salary as on 26.07.2018 and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs.

14.03.2024

Index: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

vum

To:

1. The District Educational Officer,
Mannargudi Educational District,
Mannargudi,
Thiruvarur District.

2. The Block Educational Officer,
Mannargudi Educational Union,
Mannargudi,
Thiruvarur District.



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R.N.MANJULA ,J.

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