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W.P.No. 22623 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 22623 of 2017

and

W.M.P.No. 23580 of 2018

P.Perumal (Deceased)

Chitra

[Impleaded as per order dated 26.02.2024]

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Vellore, Vellore District.

2.The Assistant Elementary Educational Officer,
Kandhili, Vellore District.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the issue of the impugned order in Na.Ka.No.1325/A5./2017, dated 04.07.2017 passed by the first respondent and quash the same and consequentially to direct the first respondent to upgrade the pay scale of the petitioner on par with his junior namely Devaraj by following the principle of step up along with 12% interest within a stipulated time frame as fixed by this Court.

For Petitioner : Mr. G. Mutharasu

For Respondents : Mr. V. Manoharan,
Additional Government Pleader



W.P.No. 22623 of 2017

ORDER

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

2. The petitioner was appointed as Secondary Grade Teacher on 29.04.1986. He worked as Headmaster at Naravindampatti Middle School. One Mr.S.Devaraj, was appointed as Secondary Grade Teacher on 30.04.1986 and he is working as Headmaster. He is Junior to the petitioner. On 29.05.2010, Mr.S.Devaraji's pay scale was fixed as Rs.26,600/- per month (15,600-39,100+5400) by the respondents. But the pay scale of the petitioner was fixed only Rs.25,080/- (15,600-39,100+5,400). The petitioner made several representations to the respondents to rectify the said pay anomaly and to set up the pay scale to bring it on par with his junior. But the respondents did not take any action. Finally the petitioner made a representation on 02.05.2017 to the respondents. Against the inaction of the respondents, the petitioner filed W.P.No.12681 of 2017 before this Court and the same was disposed of by order dated 10.05.2017 and directed the respondents to consider the said representation and pass appropriate orders on merits and in accordance with law within twelve weeks from the date of receipt of a copy of that order. Based on the said order, the petitioner submitted representation on 01.06.2017



and the first respondent issued proceedings on 04.07.2017 rejecting the claim of the petitioner. Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner submits that in an identical issues, this Court directed the respondents to upgrade the pay of the writ petitioners therein on par with their juniors in W.P.Nos.3698 to 3700 of 2007 and 4352 of 2007. The learned counsel also placed a reliance of the order dated 07.02.2018 in W.P.(MD) No.742 of 2018. The learned counsel further submits that the first respondent ought to have given the upgradation to the petitioner on par with his junior. Without doing so, they passed impugned order illegal and arbitrary which is in violation of Article 14 of Constitution of India and sought to quash the impugned order.

4. A counter has been filed by the respondents. In the counter, it is admitted that the petitioner is working as Headmaster in the Panchayat Union Middle School, Naravindhampatti, Vellore District. It is averred in the counter that the seniority has to be determined in respect of the teachers are concerned with reference to the date of joining the Unit of Establishment i.e., Panchayat Union concerned. The service performance as stated by the petitioner is not the criteria for the fixation of pay on par with junior and hence, the contention of the petitioner is irrelevant.



W.P.No. 22623 of 2017

WEB COPY

5. Learned Additional Government Pleader appearing for the respondents submit that the order in W.P.Nos.3638 to 3700 and 4352 of 2007 are complied due to the avoidance of contempt proceedings and as such, the petitioner cannot take shelter on the ground of the concession granted to some other writ petitioners in those writ petitions and sought to dismiss the writ petition.

6. Having heard the submissions of the respective counsel, this Court did not want to enter into the admitted facts of the case. The only issue to be considered in the present writ petition is whether the pay anomaly accrued in the petitioner's case has to be rectified on par with his junior or not. It is settled law that it is the right of the senior to have their pay fixed on par with their junior by following principles of “Step up”. In the present case, admittedly, the pay scale of the petitioner was fixed below than his junior.

7. On perusal of the order of this Court dated 18.06.2012 in W.P.Nos. 3698 of 2017 and batch, at paragraph Nos.17 to 21, it is observed and held as extracted herein under: -

“17. It is not disputed that the petitioners are senior to Mr.V.Kamalanathan. It is also not disputed that the petitioners acquired B.Ed and M.A. qualification prior to their junior, which



resulted in grant of incentive increment prior to their junior. It is also not disputed that anomaly arise due to implementation of VI pay commission, on account of benefit of incentive increment to the junior in revised pay scale, while granting the incentive increment of the petitioner in the pre revised scale.

18. The facts shows that the anomaly in pay occurred due to implementation of the recommendation of VI pay commission.

19. The case of the petitioners, therefore was squarely covered under the principles of “stepping up”.

20. The impugned order is a non speaking order, as it does not give any reason, as to why the principles of “step up” was not to be followed.

21. Merely because the junior is posted in a different school, though in the same cadre, cannot be a ground to deny the right of the seniors to have their pay fixed as par with junior, by following principles of “Step up”.

8. In W.P.(MD)No.742 of 2018 at paragraph No.5, it is held as extracted herein under: -

“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 un-sustainable 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 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.”

The orders stated supra are squarely applicable to the facts and circumstances of the present case.

9. In view of the above, in our considered opinion, the first respondent rejected the representation of the petitioner in a routine way without considering the earlier orders passed by this Court and as such, the order impugned in this writ petition is liable to be quashed.

10. Accordingly, this Writ Petition is allowed with the following directions: -

1. The order impugned in this writ petition is quashed.
2. The respondents are directed to rectify the pay anomaly and settle the pay of the petitioner on par with his junior.



W.P.No. 22623 of 2017

3. Such an order shall be passed by the respondents within a period of eight weeks from the date of receipt of copy of this order.

11. It is needless to say that as the petitioner died during the pendency of this writ petition and the nominee of the petitioner is impleaded as petitioner in this writ petition. The respondents are directed to settle the monetary benefits, if any, to her only.

12. Consequently, connected miscellaneous petition is closed.

13. There shall be no order as to costs.

26.02.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

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BATTU DEVANAND, J.

AT

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