
(2009) 08 MAD CK 0374

Madras High Court

Case No: Writ Petition No. 11714 of 2007

D. Manuel

APPELLANT

Vs

The Chief Educational Officer

RESPONDENT

Date of Decision: Aug. 24, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 39
- Tamil Nadu Revised Scales of Pay Rules, 1998 - Rule 5(2)

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: P. Manoj Kumar, for P. Rajendran, for the Appellant; C.K. Vishnupriya, Additional Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Original Application in O.A. No. 719 of 2002 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as the Tribunal) is now writ petition in W.P. No. 11714 of 2007 before this Court.

2. Heard the submissions made by Mr. P.Manoj Kumar, learned Counsel for the petitioner and Mrs. C.K. Vishnupriya, learned Additional Government Pleader for the respondent.

3. The petitioner is working as a Secondary Grade Teacher at the Government Higher Secondary School, Perumkolathur, Thiruvannamalai District. He was initially appointed on 28.11.1984 in Cuddalore District. He was transferred to Thiruvannamalai District on 13.08.1997.

4. The petitioner was allowed one incentive increment (two advance increments) with effect from 10.03.1989 for acquiring B.Ed., qualification. He was allowed one

incentive increment (two advance increments) for acquiring M.Ed., with effect from 01.06.1994.

5. In the meantime, his junior, viz., Mr. L. Devaraj was allowed one incentive increment (two advance increments) with effect from 24.05.1996 for acquiring B.Ed., qualification. His junior was also allowed one more incentive increment (two advance increments) for acquiring M.A. with effect from 03.11.1996

6. When the pay was revised pursuant to the recommendations of the VI Pay Commission with effect from 01.01.1996, the scale of pay of the petitioner was fixed at Rs. 5,450, while the pay of his junior was fixed at Rs. 5200/- as on 01.01.1996.

7. Since the junior obtained B.Ed., and M.Ed. after 01.01.1996, his pay was revised to Rs. 5,600/- from 24.05.1996 and Rs. 6,050/- from 03.11.1996 for acquiring B.Ed., and M.Ed., qualifications respectively. As on 01.07.1999, the petitioner was receiving Rs. 6050/- as his basic pay, while his junior was in receipt of Rs. 6500/-. The petitioner, therefore sought to rectify the anomaly.

8. But the respondent passed the impugned order dated 16.10.2001 based on the guidelines of the Director of School Education in g.K.vz;. 051162/L3/98 dated 03.01.2000, stating that the petitioner could not seek parity with his junior, because, while the petitioner was granted advance increments for acquiring B.Ed., and M.Ed., his junior was granted incentive increments for acquiring B.Ed., and M.A, that is for different qualifications.

9. The learned Counsel contends that admittedly the said Mr. L.Devaraj is junior to the petitioner as he joined only on 24.10.1985, whereas the petitioner joined on 28.11.1984. It is stated in the impugned order that since his junior got incentive increments for acquiring higher qualification viz., M.A., which is different from the higher qualification acquired by the petitioner viz., M.Ed., the petitioner could not seek the rectification of anomaly. Such a reasoning is absurd and it has to be rejected. For acquiring higher qualifications whether it is M.A., or M.Ed., one incentive increment (two advance increments) is given to the Teachers. Hence, the impugned order was passed without application of mind.

10. Further, the learned Counsel for the petitioner has brought to my notice Rule 5(2) of the Tamil Nadu Revised Scales of Pay Rules, 1998 and the same is extracted here-under:

(2) In cases where a senior employee who had drawn incentive increments in the pre-revised scale and drawn more pay than his junior prior to 1st January 1996 draws lesser pay than his junior in the revised scales of pay consequent on the sanction of incentive increments in the revised scales of pay to the junior for acquiring the same higher/special qualification after introduction of revised scales of pay, then the pay of the senior may be stepped up to the level of that of the junior from the date from which the junior draws such higher pay.

11. This Rule provides an answer to the problem. As per this Rule, if a junior receives more pay pursuant to his acquiring higher qualification after the revision of pay on 01.01.1996, the senior should also be brought on par with the junior, particularly when the senior was granted incentive increments for higher qualifications, which he obtained prior to 01.01.1996.

12. Further, the right of the seniors claiming parity with juniors pay is a constitutional right guaranteed under Article 39(d) read with Article 14 of the Constitution. However, if junior is granted incentive increment for acquiring higher qualifications and the senior does not acquire such a higher qualification, the senior cannot claim parity. But, if the senior obtained higher qualification prior to the junior and the junior acquires higher qualification later, the scale of pay of senior should be brought on par with the junior, if the junior's pay became more due to the sanction of incentive increment for acquiring higher qualification. Otherwise, it amounts to punishing the senior for acquiring higher qualification at the earlier point of time and it also defeats the very purpose of granting incentive increments for acquiring higher qualification. The very purpose is to persuade the teachers for obtain higher qualification, so that they render better service to the students. Thus, if acquiring higher qualification earlier is put to disadvantage to a person, the very scheme of providing incentive increment for acquiring higher qualification gets defeated.

13. In the result, the impugned order is quashed and the writ petition is allowed. No costs.