



W.P.(MD)No.9424 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
08.12.2021	07.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)Nos. 9424 to 9430, 9437 to 9444, 9464 to 9476,
9543 to 9546 and 10185 to 10187 of 2016**

W.P.(MD)No.9424 of 2016

V.K.Kannan,
Headmaster,
Panchayat Union Elementary School,
Kollanur, Vedaandur Union,
Dindigul District.

... Petitioner

vs.

1. The Director of Elementary Education,
College Road,
Chennai – 6.

2. The District Elementary Educational Officer,
Dindigul, Dindigul District.

3. The Additional Assistant Elementary Educational Officer,
Vedasandur Union,
Dindigul District.

... Respondents



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PRAYER in W.P.(M)No.9424 of 2016 : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, to call for the records relating to impugned proceedings of 1st Respondent herein in Na.Ka.No. 30584/C1/2015 dated 26.04.2016, and consequential impugned order of 2nd Respondent in Na.Ka.No.4415/A4/2015 dated 02.05.2016 and the impugned order of 3rd respondent Na.Ka.No.312/A2/2016 dated .05.2016 signed on 11.5.2016 and quash the same.

In all Writ Petitions

For Petitioners	: Mr.T.Pon Ramkumar
For Respondents	: Mrs.D.Farjana Ghousia Special Government Pleader

COMMON ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned proceedings, dated 26.04.2016 in Na.Ka.No.30584/C1/2015, passed by the first Respondent and consequential impugned order, dated 02.05.2016 in Na.Ka.No.4415/A4/2015, passed by the 2nd Respondent and the impugned order, dated 11.05.2016 in Na.Ka.No.312/A2/2016, passed by the 3rd respondent.



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2. The brief facts as stated in the affidavit is that the petitioner was appointed as Secondary Grade Teacher in the Panchayat Union Elementary School, Manaktur, Natham Union, Dindigul District, dated 31.07.1995. Thereafter, he was transferred to Vedasandur Union, Dindigul District, on 11.07.1996. Since the petitioner has completed 10 years of service on 31.07.2005 he was granted Selection Grade pay. In the year 2013, he was granted incentive increment for M.A., B.Ed. decree. Subsequently, on 02.06.2008, he was promoted as Elementary School Headmaster. The Government has issued Sixth Pay Commission in G.O.Ms.No.234 Finance (Pay Cell) Department, dated 01.06.2009. In the said G.O. the benefits were granted with effect from 01.01.2006 as notionally and monetary benefits from 01.01.2007.

3. The contention of the petitioner is that the petitioner was appointed as Secondary Grade Teacher and then he was transferred to Vedasandur Union. The petitioner has completed 10 years of service on 31.07.2005. He was granted Selection Grade pay and the payment was paid prior to the Tamilnadu Revised Scales of Pay Rules 2009. Thereafter, on 02.06.2008, the petitioner was promoted as Elementary School Headmaster. The petitioner compares himself



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with one Sahaya Mary, who is junior to the petitioner, was appointed on 07.10.1996 in some other Union and subsequently transferred to Vedasandur Union on 07.07.1997. The said Sahaya Mary had completed 10 years of service on 07.10.2006 and she has given option to fix Secondary Grade Pay of Rs. 5,200/--20,200-GP Rs.2,800/-. Since the said Sahaya Mary has completed 10 years of service on 07.10.2006, 6% of amount was awarded for Selection Grade pay as per G.O.Ms.No.237, dated 22.07.2013. Apart from that, since her Grade pay is Rs.2,800/- a sum of Rs.750/-was awarded to her as personal pay. Subsequently, on 21.09.2011, she was promoted as Elementary School Headmaster and her pay has been fixed under Tamilnadu Revised Scales of Pay Rules, 2009, as Rs.9300-34,800-PB2-Rs.4,500. Likewise, after promotion to the post of Elementary School Headmaster the petitioner has been also fixed under Tamilnadu Revised Scales of Pay Rules 2009, as Rs.9,300-34,800-PB2-4,500. Because of awarding 6% amount for Selection Grade and Rs.750/-for personal pay, the said Sahaya Mary had received higher pay than the petitioner.

4. Therefore, the contention of the petitioner is that the petitioner and the said Sahaya Mary, a junior to petitioner were appointed as Secondary Grade



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Teacher and subsequently promoted as Elementary School Headmaster. By virtue of granting 6% for selection grade and Rs.750/-as personal pay his junior is getting more pay. Therefore, the petitioner has submitted a representation to the respondents requesting to re-fix his scale of pay on par with the junior. Based on Rule 5(3) and Rule 7(iii) of the Tamilnadu Revised Scales of Pay Rules, 2009 and the clarifications issued by the Government, the third respondent herein vide his proceedings, dated 05.08.2015 rectified the pay disparity and refixed the pay on par with the junior. In the said proceedings, the third respondent clearly described in tabular column, how the junior is getting more pay than the petitioner. However, the first respondent without application of mind or without referring to the earlier G.O.Ms.No.710, dated 23.09.1994 of Tamilnadu Revised Scales of Pay Rules, 2009, G.O.Ms.No.234 Finance (Pay Cell) Department, dated 01.06.2009 and the clarification letter, dated 17.08.2009 of the Secretary to Government, passed the impugned order in Na.Ka.No.30584/C1/2015 dated 26.04.2016. The impugned order was passed based on the report of the Audit Officer.

5. The respondents have stated in the impugned order that the said Sahaya Mary, who was appointed as Secondary Grade Teacher in some other



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Union subsequently was transferred to Vedasandur Union on 07.07.1997. The said Sahaya Mary is getting more pay than 36 other teachers. The third respondent has wrongly fixed the pay on par with the junior of the said 36 teachers and thereby caused a loss of Rs.29.62 lakhs to the Government and directed to recover the excess amount. Further, it was observed in the said impugned order that the 36 teachers and the Sahaya Mary were appointed as Secondary Grade Teachers in different Union and subsequently transferred to present Vedasandur Union. As per G.O.Ms.No.1383, dated 23.08.1988, under Section 9 of Tamilnadu State Elementary Education Subordinate Service Act, each Panchayat Union is a unit. The third respondent herein has wrongly fixed the pay fixation by comparing two persons who were appointed in different union. Based on the directions of the first respondent, the second respondent has passed the impugned proceedings, directing the third respondent to cancel the said fixation order and directed to recover the excess amount and also to refix the salary. The contention of the petitioner is that the reasoning of the respondent is absolutely erroneous and based on the directions of the respondent Nos.1 & 2, the third respondent without applying mind or without affording opportunities or without referring to the earlier GO., has passed the impugned proceedings, dated



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11.05.2016, thereby cancelling the earlier fixation order and directed the petitioner to repay the excess amount in one installment and also refixed the pay w.e.f. May 2006. Aggrieved by the same, the instant Writ Petition has been filed.

6. The learned Special Government Pleader appearing for the respondents submitted that the Tamilnadu State Elementary Education Subordinate Service Act was enacted by issuing G.O.Ms.No.1383, Education (PUS)Department, dated 23.08.1998. Under Section 9 it is stated that for the purpose of appointment as full member appointment or discharge in different categories each Panchayat Union shall be a unit. Therefore, the appointment, promotion, transfer which are considered by taking each Panchayat Union as a Unit. In the Elementary Education Department, there are about 413 Panchayat Unions. As far as Panchayat Union Schools and Municipal Schools there are 500 separate union and each one is considered an independent union for considering the seniority list. In the above said 413 Panchayat Unions, for each Panchayat Union minimum 200 to maximum 600 teachers would work. Therefore, there is no possibility for getting promotions. The senior and junior among the teachers would be fixed based on the Union. Under these circumstances, the teachers who



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had opted for Union to Union transfer, the salary would be paid as such with the pay protection and the transfer. If the transfer is based on their request, the teacher would give up their seniority and they would be kept as most junior in the seniority list. There are more than 413 units. The Department has to prepare the seniority list for more than 413 separate panchayat unions based on the availability of teachers. If the claim of the petitioner is accepted in order to curb the pay anomaly, then the Government would incur huge financial burden, which would never been imagined. It has been stated in the Rule for Elementary Education that the union shall be considered as a unit. In such circumstances, the claim of pay anomaly cannot be rectified.

7. During the Pay Commission recommendation, the pay anomaly can be rectified. Based on the said rules in G.O.Ms.No.710 dated 23.09.1994, the 4th and 5th Pay recommendation was passed. In the said G.O., it has been clarified that those who had discrepancy in the pay shall be rectified based on the said rule. But, the said Rule can be considered for the 4th and 5th pay revision alone. The said rule is not applicable for the 6th Pay Commission since a separate rule is passed for the 6th Pay Commission. Moreover, in some cases, show cause notices



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were issued and after receiving reply only orders were passed. Hence, there is no discrepancy in the impugned order and the respondents prayed to dismiss the Writ Petition.

8. Heard Mr.T.Pon Ramkumar, learned counsel appearing for the petitioner and Mrs.D.Farjana Ghousia, learned Special Government Pleader appearing for the respondents.

9. The Learned Counsel appearing for the petitioner relied on various Rules and submitted that the ingredients of Rule 5(3) of Tamilnadu Revised Scales of Pay Rules, 2009 is extracted hereunder:

.....

*“(3) Where a junior who opts to come over to the revised scale from a date subsequent to 1st January 2006 and happens to get more pay than that of his senior by way of fitment benefit, then the **pay of the senior shall be stepped up to the level of the pay of the junior with effect from the date from which the junior draws such higher pay, provided that the senior was drawing pay higher than or equal to the pay of the junior in the pre revised scales of pay from time to time**”.*



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Further, under Rule 7(iii) of Tamilnadu Revised Scales of Pay Rules, 2009 it is stated that, *'if a Government employee draws his next increment in the revised pay scale under sub rule (ii) above and thereby becomes eligible and his senior whose next increment falls due at later date, then the pay of such senior shall be re-fixed equal to the pay of the junior from the date on which the junior becomes entitled to higher pay'*. Likewise, Rule 6 of Tamilnadu Revised Scales of Pay Rules, 2009 described that the rate of increment in the revised pay structure shall be 3% of the sum of pay in the pay band and Grade pay applicable which shall be rounded off to the next multiple of 10. Thereafter, the Government has issued a clarification letter, dated 17.08.2009, wherein, it is stated that no specific rule provision is available under the Tamilnadu Revised Scales of Pay Rules, 2009. However, on analogy of the provisions made in the Tamilnadu Revised Scales of Pay Rules 1998, the said anomaly of junior getting more pay than senior in Tamilnadu Revised Scales of Pay Rules 2009, may be set right by the pay fixing authorities as contemplated in the clarifications issued earlier and hence the presumption is confirmed. Thereafter, the Government has issued a G.O.Ms.No.258 Finance (Pay Cell) Department, dated 23.06.2009 stating that fixation of pay in the revised pay structure of employees appointed as fresh



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recruits on or after 01.01.2006 and before 01.06.2009, their pay in the revised pay structure shall be fixed as per Rule 4(1) above. Thereafter, there was a serious agitation by various Teachers Association to grant equal pay on par with the teachers working in the Central Government Schools. The Government has appointed “One Man Commission”, wherein, the Commission has recommended to grant special allowance of Rs.500/-per month to the Secondary Grade Teachers. Based on the recommendation, the Government has issued a G.O.Ms.No.270 Finance (Pay Cell) Department dated 26.08.2010, wherein, it is stated that the Secondary Grade Teachers are eligible to get a special allowance at the rate of Rs.500/- per month. The said revision of scale of pay shall take notional effect from 01.01.2006 and the monetary benefit from 01.08.2010. Even thereafter, there was a serious agitation by the various association claiming equal pay on par with Central Government Teachers. Thereafter, the Government has also passed a G.O.Ms.23 Finance (Pay Cell) Department, dated 12.01.2011 that the special pay allowance granted to the Secondary Grade Teachers was enhanced from Rs.500/- to Rs.750/-, as personal pay. The said revision shall take notional effect from 01.01.2006 and the monetary benefit would be disbursed from 01.01.2011. On perusing these Rules it is seen that the rules states about



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increments and it clarifies that the disparity shall be rectified. However, it is not clarifying whether it refers to annual increments or the incentive increments for higher education, since there are other government orders which refers specifically to incentive increments.

10. The petitioner further relied on G.O.Ms.No.710, dated 23.09.1994 wherein it is stated that the pay of seniors who are drawing lesser pay than their juniors with similar qualification on account of the revision of scales of pay in the Tamilnadu Pay Commission, taking into account the advance increment given for higher qualification, be brought on par with that of their juniors with effect from the date on which their juniors are given such higher pay. Further, the Government has periodically issued a clarification that, if the junior gets more pay than the senior teacher the same may be set right by fixing the equal pay. The Learned Special Government Pleader submitted that the petitioner has projected that there is pay anomaly, but there is no such pay anomaly as projected. In G.O. Ms. No. 859 Finance (Pay Cell) Department dated 11.09.1986 the issue has been clarified. Under clause 2 it is stated that the pay of the senior may be refixed on par with the pay of his junior in the certain situations, wherein it is stated if the



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pay difference arises due to increase in annual increment in the revised scale, if the pay is fixed under Rule4(2)(i) with effect from a date subsequent to 01.10.1984 or refixed under Rule4(2)(ii) under Tamil Nadu Revised Scales of Pay Rules, 1985 at a stage higher than that of the revised pay of the senior, the junior who opt to come under the revised scales of pay from a date subsequent to 01.10.1984 and happens to get more pay than the senior by way of fitment benefit. In the G.O. 859 it has also been stated under clause 3 that there shall be no refixation of the pay of the senior except in the circumstances stated in clause 2. Under clause 4 sub clause (i) it has been specifically stated that the instances of junior drawing more pay than the senior shall not be considered anomalous and one such incident is “junior getting advance increment for possession or acquiring higher qualifications while the senior not getting it because he is not so qualified”. Based on this clause the incentive increment sanctioned prior to 2009 for the petitioner and increased incentive granted after 2009 for the junior cannot be compared. The alleged pay anomaly / discrepancies are based on misconception. This Court had dealt with this same issue in W.P(MD) No.14606 of 2014 and vide order dated 31.01.2022 had declined to grant the relief since based on incentive increment for acquiring higher qualification cannot be



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compared to arrive at pay anomaly. In the present case also same issue is raised. The incentive increment fixed for that particular year cannot be compared with earlier years and subsequent years. The salary and the incentive increment keep increasing based on the increase in the money value and inflation, therefore the claim of the petitioner is erroneous. Since the incentive increment is granted for individual qualification for higher education and paid on different periods. This Court is of the considered opinion that G.O.Ms.No.859 is also clarifying the issue. But there are two G.O. orders in this issue, one disallowing as stated in G.O.Ms.No.859 and the other allowing as stated in G.O.Ms.No.710. Since both the government orders are very old government orders, this Court is of the considered opinion that the issue ought to be remitted back to the Government to resolve the issue.

11. The respondents submitted by referring to G.O.Ms.No.1383, dated 23.08.1988, the Panchayat Union is considered as one Unit. There are number of teachers who are working in the Union which ranges from 200 – 600 and there are 413 such Unions. Even if it is taken 200 teachers are working then there are 82600 teachers are working. The Panchayat Union is considered as one



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Unit for the purpose of pay fixation, promotion, preparation of seniority list and for all purposes. Then pay anomaly for each and every teacher is considered for 82600 teachers, then there will not be end to this issue at all. If each 82600 teachers start comparing with each other and prays for rectification of the said Pay Commission, then it will be opening Pandora Box. Moreover if any teacher is transferred from one union to another union, then they would lose their seniority in the said union and they cannot compare their salary with teachers who are working in another union. Hence the transferred employee cannot compare with the teachers who are originally working in the Union and who would have been subsequently transferred from different unions. The further contention of the respondents is that, if the teachers are agreeing and accepting for preparing seniority for each and every union separately based on the principles of “Union is a Unit”, then the teachers ought to accept the salary also which is fixed based on the same principles of “Union is a Unit”. The respondents vehemently contended that the petitioner cannot pick and choose to claim where ever it is advantageous to the teachers. If “Union is a Unit” is accepted for seniority, transfer and other purpose, then the “Union is a Unit” is also applicable to salary also. This Court is of the considered opinion that if this issue ought to be resolved then the



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Government ought to come out with the policy of declaring “State as Unit” and state wise seniority, salary ought to be fixed.

12. On perusing the government orders and other documents this Court is of the considered opinion that the incentive increment is granted for qualifying higher qualification. The amount is added in the regular salary and thereafter, it increases along with the time scale of pay. The teacher is acquiring higher qualification for one time but the incentive increment is granted as time scale of pay. Moreover, the teachers would acquire the higher qualification on different years and the incentive increment granted for each and every year is different. In such circumstances, if any discrepancy arises because of granting of incentive increment for higher educational qualification, then the same cannot be compared at all. The granting of incentive increment for higher qualification depends upon two factors, one is the teacher who acquired special qualification which is in the individual capacity of the teacher and the second is the granting of incentive increment “amount” would differ from each and every year which would be fixed based on fixation of rate applicable to that particular year. For



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example, the incentive increment for higher qualification in the year 1980 is only Rs.200/-, subsequently in the year 1990 it was increased as Rs.350/- and on the later year, it was increased to Rs.500/-. In such circumstances, this Court is of the considered opinion that since the rate of incentive increment differs for each and every year and as rightly pointed out the incentive increment is granted to an individual, hence qualification granting incentive increment cannot be compared.

13. The next contention put forth by the petitioner is that granting of Rs.750/-as personal pay was introduced in G.O.Ms.No.237 Finance (Pay Cell) Department, dated 22.07.2013. In the said G.O., 6% of amount was awarded for selection grade pay, if a person has completed 10 years of service. For the teachers who have been granted selection grade prior to G.O.Ms.No.237, it has been clarified that the benefits would be fixed notionally, but the monetary benefit it will be granted w.e.f. the subsequent date. While passing the said G.O., the Government has also considered pay discrepancy and has issued Government Letter, dated 17.08.2009. Based in the clarification, the third respondent has passed the proceedings, dated 05.08.2015 and the claim of the petitioner is to grant the said benefits based on the third respondent's proceedings. However, the



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first respondent has passed the impugned order cancelling the order of the 3rd respondent, since the third respondent without application of mind has passed the order, which was rectified through the impugned proceedings of the 1st respondent. This Court is of the considered opinion that granting of personal pay would be based on the G.O and the conditions stated there under. According, to the respondents the said conditions are not fulfilled by the petitioner. As rightly pointed out by the respondents, the petitioner cannot compare the benefits that were granted prior to the 6th Pay Commission. Each Pay Commission would be considered based on the relevant factors prevailing thereunder and conditions that are imposed in the said G.O. The petitioner cannot not invoke the conditions that were issued for the 4th and 5th Pay Commission recommendations. Once in ten years, a pay revision would take place and the Government would issue Tamilnadu Revised Scales of Pay Rules and the same is applicable from the date of issuance of the rule and upto the next pay revision. Therefore, the petitioner cannot seek any relief based on the conditions cited in the earlier pay revision rules. In other words, the rule that has been framed for 4th and 5th Pay Commission is only applicable to the 4th and 5th commission respectively. The rules passed for the 4th and 5th Pay Commission cannot be made applicable to the Sixth Pay



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Commission Rules, since the 6th pay commission has separate rules. Therefore, the claim of the petitioner ought to be rejected.

14. The issue of pay anomaly arises frequently in the Elementary Education Department. Since the issuing is affecting the State at larger this Court is of the opinion that some higher authority, namely Joint Director and above shall be granted power to address the issue. Or the Government shall consider to appointment permanent “One Man Commission” to resolve the issue.

15. The Government shall also consider to change its policy and shall bring the Elementary Education to State Level seniority. Atleast, the Government shall consider to bring District as a Unit. If this restructuring is effected, several issues pertaining to the Elementary Education Department would be solved. Repeatedly, this Court in several Judgment has directed the Government to consider for changing the policy and bring in State as a Unit for the elementary education and till now not even a single step has been taken forward. Therefore, the Government is strictly directed to take steps to bring the Elementary Education Department under “District Seniority” or “State Seniority”.



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16. If incentive increment is granted as a one-time bounty rather than adding it in salary, this issue of pay anomaly largely could be curtailed. The government has issued G.O.Ms.No.120 Human Resource Development (AV-IV) Department dated 01.11.2021 granting incentive increment as one-time bounty, but the said G.O. is applicable only prospectively. If the government grants retrospective effect to this government order then the issue of pay anomaly can be resolved.

17. Based on the observations, this Court deems it fit to remit the cases to the 1st respondent. The 1st respondent shall place the issue before the Secretary to the Government, School Education and the issues raised in the writ petitions shall be resolved. The respondents shall issue any government orders and clarify,

(i). The applicability of G.O. Ms. No. 859 Finance (Pay Cell) Department dated 11.09.1986 or G.O.Ms.No.710, dated 23.09.1994 of Tamilnadu Revised Scales of Pay Rules, 2009.

(ii). The applicability of G.O.Ms.No.120 Human Resource Development (AV-IV) Department dated 01.11.2021 retrospectively.



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- (iii). If pay anomaly arises in the cases of writ petitioners, the respondents shall pass appropriate orders
- (iv). If need be the government shall appoint “One Man Commission” permanently to resolve the issue.
- (v). After resolving the issue, if the petitioners are entitled to any benefits the same shall be conferred.
- (vi). The said exercise shall be completed within the period of six months from the date of receipt of the copy of the order.

18. With these directions, Writ Petitions are disposed of. No Costs.

Connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The Director of Elementary Education,
College Road,
Chennai – 6.
2. The District Elementary Educational Officer,
Dindigul, Dindigul District.
3. The Additional Assistant Elementary Educational Officer,
Vedasandur Union,
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Pre-Delivery
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