



W.P.No.11362 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.11362 of 2015

S.Ezhilarasi

.... Petitioner

vs

1. State of Tamil Nadu,  
by Principal Secretary for School Education,  
Secretariat,  
Chennai - 600 006.

2. The Director of Elementary education,  
Chepauk,  
Chennai - 600 006.

3. District Elementary Educational Officer,  
Cuddalore.

4. Assistant Elementary Educational Officer,  
Assistant Elementary Educational Office,  
Kilkavarapattu Post, Panruti Taluk,  
Annagramam,  
Cuddalore District.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Mandamus to direct the respondents to fix the basic pay of the petitioner on par with those who passed Post Graduate Exam and B.Ed. after the petitioner with interest.



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For Petitioner : R.Gururaj  
For Respondents : Mr.U.M.Ravichandran  
Special Government Pleader

### ORDER

This Writ Petition has been filed to direct the respondents to fix the basic pay of the petitioner on par with those who passed Post Graduate Exam and B.Ed. after the petitioner with interest.

2. The brief facts of the case of the petitioner are as follows:

i) The petitioner studied M.A.Tamil., B.Ed., and M.Phil. (Tamil) and was appointed as Assistant Teacher on 30.07.1997. She joined the service at Perambalur Panchayat Union Elementary School at K.Eraiur on 30.07.1997. She was placed under probation and her appointed was regularised by order dated 8.2.2000 from 30.07.1997. While she is in service, she did B.Ed and M.Phil courses.

ii) In the counselling held for request transfers in 2001, the petitioner opted to get transfer to Cuddalore District. By order dated 30.06.2001, she was transferred and posted in the Panchayat Union Elementary School, Pallavarayanatham in Anna Graham Panchayat Union limits and she joined



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there on 13.07.2001. Thereafter, on 20.09.2004, she was transferred to Panchayat Union Elementary School, Palur in Annagramam Panchayat Union Limit, Panruti Taluk and working there from 20.10.2004. Though the petitioner worked in different places, her seniority would be as per the date of original appointment and as per the attendance register maintained accordingly. As far as Higher Secondary Schools are concerned, the State Government has passed G.O.No.1877 Education dated 2.9.1979 wherein it is stated that common attendance register should be maintained for Higher Secondary Schools and High Schools and the seniority list should be based on total service from the date of first appointment. The petitioner has completed 12 years of service. After 10 years, by order dated 16.08.2007, the petitioner was given selection grade scale of pay.

iii) The petitioner and R.Nagavalli were employed in the same school. Both of them joined on the same day i.e., 30.07.1997. The petitioner completed B.Ed. and got incentive increment of Rs.5000/- on 17.06.2000. The petitioner did M.A. and from 01.07.2003, her basic was enhanced to Rs.5750/-. As per the 6<sup>th</sup> Pay Commission, the petitioner scale was refixed at Rs.16,160/- on 30.07.2007 and then revised to Rs.18,200/- on 01.07.2011. The basic pay of Nagavalli was fixed at Rs.17,150/-.



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Throughout, Nagavalli's basic pay was lesser than the petitioner as the petitioner had passed B.Ed., and M.A., earlier. Thereafter, Nagavalli passed M.A., and B.Ed. and w.e.f. 28.07.2011, Nagavalli's basic pay has been revised to Rs.19,230/- i.e., Rs.1,030/- more than the petitioner. Further, Prema, Vasanthi, Andal, Vinod and others working in the same school are drawing higher pay than the petitioner. Though the petitioner sent several representations to the respondents for stepping up of pay on par with her juniors from 10.11.2044 and the same was served, the respondents have not responded for the same. Hence, the present writ petition.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that though the petitioner had worked in different places, her seniority will not be lost. The transfer will not take away the seniority and it is always based on the date of appointment. As far as Higher Secondary Schools are concerned, the State Government has passed G.O.No.1877 Education Department dated 02.09.1979 wherein it is stated that common attendance register should be maintained for Higher Secondary Schools and High Schools and the list should be based on total service from the first appointment.



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ii) Learned counsel for the petitioner would submit that the petitioner's junior Nagavalli who had passed M.A. and B.Ed. has been given basic pay as Rs.19,230/- with effect from 28.07.2011, whereas the petitioner's basic pay was Rs.18,200/- w.e.f. 01.07.2011. Nagavalli had passed M.A., and B.Ed., almost 11 years after the petitioner had passed the same and whose basic pay was lesser than that of the petitioner, is now enjoying higher basic pay of Rs.1,030/- more than the petitioner. This anomaly has to be rectified. Further, some of the juniors like Prema, Vasantha, Andal, Vinod and others working in the petitioner's school itself are drawing higher pay than the petitioner. Learned counsel would further submit that though several representations were made to the respondents, the respondents have not considered the same so far.

5. Per contra, learned Special Government Pleader would submit that both of the petitioner and her junior Nagavalli were appointed on the same day. The petitioner had passed M.A., and B.Ed., much prior to the date of her junior Nagavalli who passed M.A. and B.Ed. degree. However, the petitioner received incentive increments for acquiring higher qualifications B.Ed., in the year 2000 and for M.A., in 2003 itself, whereas her junior Nagavalli acquired higher qualifications viz., B.Ed., and M.A. in the year



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2011 and her pay was fixed after the 6th pay commission, which led to fixation of higher pay to Nagavalli.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. It is relevant to point out that the principle that senior cannot be fixed lower pay than the scale of pay of a junior will apply to the persons who are appointed on the same day in the same post and in the same scale of pay. In the present case, the petitioner and Nagavalli were appointed on the same date to a particular post in a particular scale of pay. Therefore, subsequently, one of them cannot be paid higher pay pursuant to both of them acquiring the same higher qualification, that too, the petitioner being senior, has acquired higher qualification prior to her junior. The reason for the anomaly is grant of incentive increments to the petitioner in the year 2003 and for her junior in the year 2011 for acquiring higher qualifications. The petitioner's junior Nagavalli who had passed M.A. and B.Ed. has been given basic pay as Rs.19,230/- with effect from 28.07.2011, whereas the petitioner's basic pay was Rs.18,200/- w.e.f. 01.07.2011. Further, the petitioner was appointed on 30.07.1997 and after 10 years of service, by order dated 16.08.2007, she was also given selection grade scale of pay.



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8. The grant of higher pay to Nagavalli on the ground that she was given incentive increments subsequent to the petitioner i.e., nearly after a decade is not agreeable for the sole reason that it amounts to punishment on the petitioner for acquiring higher qualification earlier and earned incentive increments earlier. The person who had acquired higher qualification subsequently cannot be placed at higher pay, particularly, when she joined on the same day along with the petitioner.

9. For all the reasons stated above, this Court is of the view that the said anomaly has to be rectified. Therefore, the respondents are directed to fix the basic pay of the petitioner on par with her juniors who had passed Post Graduation and B.Ed., Exam after the petitioner. The said exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed. No costs.

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Index:Yes/No  
Speaking/Non-speaking order  
vsi



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To  
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1. The Principal Secretary for School Education,  
State of Tamilnadu, Secretariat,  
Chennai - 600 006.
2. The Director of Elementary education,  
Chepauk, Chennai - 600 006.
3. District Elementary Educational Officer,  
Cuddalore.
4. Assistant Elementary Educational Officer,  
Assistant Elementary Educational Office,  
Kilkavarapattu Post, Panruti Taluk,  
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J.NISHA BANU,J.

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