



W.P.No.626 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.626 of 2020 and
W.M.P.No.732 of 2020

R.V.Ramavathi

... Petitioner

Vs.

1.The Joint Director of School Education (NSS),
DPI Campus, College Road,
Chennai - 9.

2.The Chief Educational Officer,
Krishnagiri, Krishnagiri District.

3.The District Educational Officer,
Hosur, Krishnagiri District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 1st respondent proceedings in Oo.Mu.No.063554/L/E53/2018 dated 16.09.2019 and a consequential order passed by the 3rd respondent in his proceeding No.Oo.Mu.No.1408/2018(A2) dated 04.10.2019 and quash the same and direct the respondents to step up the scale of pay of the petitioner on par with that of her junior Mr.K.Nagarajan as per the Rule 5(2) of the



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Revised Scale of Pay Rules, 1996 and consequently revise the pension and confer all the monetary benefits to the petitioner.

For Petitioner : Mr.P.Ganesan
For Respondents : Mr.G.Nanmaran, Spl.Govt. Pleader

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 1st respondent proceedings in Oo.Mu.No.063554/L/E53/2018 dated 16.09.2019 and a consequential order passed by the 3rd respondent in his proceeding No.Oo.Mu.No.1408/2018(A2) dated 04.10.2019 and quash the same and direct the respondents to step up the scale of pay of the petitioner on par with that of her junior K.Nagarajan as per the Rule 5(2) of the Revised Scale of Pay Rules, 1996 and consequently revise the pension and confer all the monetary benefits to the petitioner.

2. Heard Mr.P.Ganesan, learned counsel for the petitioner and Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondents.



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3. The petitioner was selected and appointed as Secondary Grade Assistant and posted at Government High School, V.Mathiyapalli, Krishnagiri District on 31.07.1984. She was promoted as B.T. Assistant on 16.02.1995 and later became Head Master of the High School. One K.Nagarajan who is the junior of the petitioner was also working as Head Master in the High School was drawing lesser scale of pay. The petitioner joined as B.T.Assistant on 16.02.1995 and the said K.Nagarajan joined on 02.01.1997. The petitioner got promotion to the post of Head Master on 31.08.2010 and K.Nagarajan got the promotion as Head Master on 29.06.2012.

4. Until the 5th Pay Commission, there is no anomaly between the pay drawn by the petitioner and K.Nagarajan. In fact, both the petitioner and K.Nagarajan have also got one increment for higher qualification (M.Ed qualification), while they were working as B.T. Assistant. Subsequent to the 5th Pay Commission, it appears that the junior of the petitioner is drawing more pay than the petitioner. The representation in this regard given by the petitioner through CEO to the first respondent



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has not been considered favourably and the same was rejected by the first respondent. Subsequently, the third respondent also rejected the claim of the petitioner. Aggrieved over the same, the petitioner has filed this Writ Petition seeking the above prayer.

5. The learned counsel for the petitioner submitted that both the petitioner and K.Nagarajan had joined service in the cadre of Secondary Grade Assistant. In fact, the petitioner is senior to K.Nagarajan and she joined the services on 31.07.1984 and K.Nagarajan joined on 01.02.1985. Naturally the probation was declared to the petitioner much earlier than K.Nagarajan. Even though there was no pay anomaly until they were promoted to the post of B.T. Assistant, the anomaly started from 02.01.1997 and on which date K.Nagarajan got promotion as B.T. Assistant. The petitioner got promoted as B.T. Assistant on 16.02.1995. Since both the petitioner and K.Nagarajan were working in same union and joined as Secondary Grade Assistants, the petitioner who is senior to K.Nagarajan, ought not to have given with lesser pay than K.Nagarajan.

6. The learned Special Government Pleader appearing for the



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respondents submitted that the third incentive increment sanctioned for M.Ed Degree qualification for K.Nagarajan has made the difference. The fact of excess increment allowed to K.Nagarajan was found during audit and consequentially the arrears claimed by K.Nagarajan also recovered. It is further submitted that the petitioner cannot compare herself to the junior by stating that there is some pay anomaly. It is further submitted that if the senior and junior belonged to the same category and they have been promoted to the same post, only then, they can claim pay anomaly.

7. As per G.O.Ms.No.25, Personnel and Administrative Reforms Department, dated 23.03.2015, the Government has issued specific orders to step up the pay anomaly between the senior and junior that might arise out of pay fixation due to pay revision especially at the stage of the promotion. The records would only show that the petitioner and K.Nagarajan had joined in the similar post in the same union though they might have worked in different schools. Though it is claimed by the Government that both the petitioner and K.Nagarajan were promoted to different post, their hierarchy becomes different. The fact remains that at



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some point of time both were promoted as B.T. Assistant when the anomaly actually started. Hence it cannot be claimed that the petitioner and K.Nagarajan belonged to two different categories or two different union or they belonged to different hierarchy for availing the benefit of stepping up anomaly. In this regard, it is relevant to refer the judgment of the learned Division Bench of this Court in W.A.No.1382 of 2021 dated 19.08.2021. In the said judgment, it is held as under:

"3.The Writ Court, upon hearing both the parties, allowed the writ petition. The relevant portion of the order passed by the learned Single Judge reads as follows:

"9.It is evident that the TN Revised Scale of Pay Rules was introduced in order to redress issues relating to disparity in pay as between seniors and juniors on account of the application of revised scales of pay at different points of time. Moreover, G.O.Ms.No.320 dated 02.04.1990, which was issued to redress pay anomalies, has directed that the refixation of the pay of seniors shall be done by the appointing authorities so as to ensure parity between seniors and juniors who acquire higher



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qualifications subsequently. The learned counsel for the Respondents referred to the proceedings of the First Respondent dated 11.08.2016 to justify the refusal to apply the TN Revised Scale of Pay Rules to persons appointed in different unions or units. This contention is untenable because the accrued and vested rights of the Petitioner under the TN Revised Scale of Pay Rules cannot be divested by the aforesaid proceedings dated 11.08.2016, which were issued much later. As held by the Hon'ble Supreme Court in BIBI SAYEEDA Vs. STATE OF BIHAR, (1996) 9 SCC 516, at paragraph 17, vested rights are settled and complete rights and cannot be divested through subsequent proceedings or actions. In this regard, the decisions cited by the learned counsel for the Petitioner are also applicable. Accordingly, the Impugned Order dated 25.11.2004 of the First Respondent is liable to be quashed. As a consequence, the Petitioner is entitled to a step up in the scale of pay on a par with that of his junior G.Subramaniam along with all consequential benefits.””



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8. Even though the learned Special Government Pleader submitted that the order passed by this Court in W.P.No.7598 of 2010 dated 09.03.2022 is applicable, on perusal, it appears that the said order relates to getting incentive increment obtained by the junior and the senior during two different stages. So the said facts of the case does not applicable to the present case.

9. In the result, this Writ Petition is allowed and the order passed by the 1st respondent in Oo.Mu.No.063554/L/E53/2018 dated 16.09.2019 and a consequential order passed by the 3rd respondent in his proceeding No.Oo.Mu.No.1408/2018(A2) dated 04.10.2019 are set aside and the respondents are directed to step up the scale of pay of the petitioner on par with that of her junior Mr.K.Nagarajan as per the Rule 5(2) of the Revised Scale of Pay Rules, 1996 and consequently revise the pension and confer all the monetary benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.



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Index : Yes

Internet : Yes/No
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To

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R.N.MANJULA, J.

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