



WEB COPY



W.A.No.528 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.528 of 2023
and C.M.P.No.5069 of 2023

1.The Director of Elementary Education,
DPI Compound, College Road,
Chennai – 600 006.

2.The District Elementary Education Officer,
Tiruvannamalai.

3.The Assistant Elementary Education Officer,
West Arni, Arni – 632 301,
Tiruvannamalai District.

.. Appellants

Vs.

1.S.Meena,
Headmistress,
Panchayat Union Middle School,
Kolathur, West Arni Union,
Tiruvannamalai District.

2.P.Umameswari, Headmistress,
Panchayat Union Middle School,
Pudupalayam, West Arni Union,
Tiruvannamalai District.



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3.P.Malliga,
B.T. Headmistress,
Panchayat Union Muslim Middle School,
Kannamangalam, West Arni Union,
Tiruvannamalai District.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.01.2022 passed in W.P.No.36693 of 2016 on the file of this Court.

For Appellants : Mr.A.V.Arun
Additional Advocate General
assisted by Mrs.Mythreye Chandru
Special Government Pleader

For Respondents : Mr.P.Murali

JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

This writ appeal has been filed by the appellants / State challenging the order passed by the learned Judge in W.P.No.36693 of 2016 on 12.01.2022.



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2.Originally, the aforesaid writ petition has been filed by the incumbents / respondents herein, praying to set aside the orders impugned therein and to permit them to resubmit their representations dated 15.10.2014 to the authorities for reconsidering their claim of pay anomaly on merits and in accordance with law. In respect of the first respondent-Meena, she was initially appointed as Secondary Grade Teacher on 10.09.1987 in West Arni Panchayat Union and her services were regularised with effect from that date and she was awarded selection grade on 10.09.1997. Her junior one D.Ramesh Babu was initially appointed as Secondary Grade Teacher on 14.09.1987 in Thimiri Panchayat Union and later on, transferred to West Arni Panchayat Union from 01.07.1989. The case of the first respondent herein before the writ court was that as on 29.10.2012, her junior was drawing more pay than her and thus, a pay anomaly has arisen, due to the promotion of her junior as Headmaster in October 2012 and grant of incentive increments sanctioned for passing M.A. and B.Ed. Degrees.



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3.In respect of the second respondent-Umamaheswari, she was initially appointed as Secondary Grade Teacher in West Arni Panchayat Union on 05.10.1988 and her services were regularised on 04.10.1990 and she was awarded selection grade on 05.10.1998. Her junior one S.Saraswathy was initially appointed as Secondary Grade Teacher on 05.12.1988 in Thandarampattu Union and later on, transferred to West Arni Panchayat Union from 28.08.1990. The case of the second respondent herein before the writ court was that as on 01.10.2014, her junior was drawing more pay than her and thus, a pay anomaly has arisen, due to the promotion of her junior as Headmistress and grant of incentive increments sanctioned for passing M.A. and B.Ed. Degrees.

4.In respect of the third respondent-Malliga, she was initially appointed as Secondary Grade Teacher in West Arni Panchayat Union on 01.10.1988 and her services were regularised on 03.10.1990 and she was awarded selection grade on 04.10.1998. Her junior S.Saraswathi was initially appointed as Secondary Grade Teacher on 05.12.1988 in Thandarampattu Union and later on, transferred to West Arni Panchayat



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Union from 28.08.1990. The case of the third respondent herein was that as on 01.10.2014, her junior was drawing more pay than her and thus, a pay anomaly has arisen, due to the promotion of her junior as Headmistress and grant of incentive increments sanctioned for passing M.A. and B.Ed. Degrees.

5. According to the respondents herein, their pay anomalies have to be set right by stepping up their pay on par with their respective juniors as per G.O.Ms.No.162 Finance (PC) Department dated 13.04.1998 and G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009, as on the respective dates. Their representations submitted to the second appellant have been returned stating that juniors to the incumbents herein referred to in the representations, were initially appointed in some other Panchayat Union and later on, transferred to West Arni Panchayat Union; that every union is treated as a separate unit and separate seniority lists are maintained; and accordingly, pay anomalies among teachers initially appointed in the same Union alone can be rectified and not otherwise. The third appellant also returned the proposals to the respondents herein communicating the views of the second appellant, by proceedings dated 01.07.2015.



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6.It was argued on behalf of the respondents herein before the writ

Court that the appellants 2 and 3 ought to have seen that though the juniors to the respondents were appointed initially in some other Panchayat Union, they have been transferred subsequently to the Union, where these respondents belong and their present seniority with reference to joining duty in that Union being maintained in West Arni Union is only for promotion and other purposes. It was further argued that the criteria for setting right the anomaly of junior drawing more pay than senior is that both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre and that, the scale of pay of lower and higher post in which they are entitled to draw pay, should be identical and nothing else. With these contentions, the learned counsel for the respondents herein prayed for setting aside the orders impugned in the writ petition and to grant the relief of stepping up of their pay on par with their juniors.

7.After hearing both sides, the learned Judge relied upon the decision of this Court in *K.Vijayarani vs. The District Elementary Educational*



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Officer and another in W.P.(MD)No.742 of 2018 dated 07.02.2018, and held that the appellants / State have rejected the claim of the respondents herein, stating that since the juniors to the respondents herein were initially appointed in some other Panchayat Union and later on, transferred to West Arni Panchayat Union, has caused the anomaly, which is not a justifiable reason. Holding so, the learned Judge allowed the writ petition, by order dated 12.01.2022, which is impugned in this writ appeal.

8. Thereafter, Contempt Petition No.686 of 2022 was filed by the incumbents for the alleged non-compliance of the aforesaid order. On the other hand, the appellants / State filed Rev.Aplc.No.248 of 2022 for reviewing the order dated 12.01.2022 passed by the learned Judge, on the ground that only based on the factual aspects as regards the dates of appointment of the respondents and their juniors, date of promotion, date of transfer and the date when anomaly arose, the case should be decided, but instead the learned Judge has proceeded to rely upon the earlier orders passed by this Court, without considering the factual aspects. Further, Rule 22(b) of the Fundamental Rules, Special Rules for the Tamil Nadu



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Elementary Educational Subordinate Service, orders of this Court and various Government orders, particularly G.O.Ms.No.234 Finance (Pay Cell)

Department dated 01.06.2009 containing the Tamil Nadu Revised Scales of Pay Rules, 2009, have been quoted on the side of the Government before the learned Judge.

9.In the review application, as against the submission of the learned Additional Advocate General placing reliance on G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 that revised pay anomaly between the respondents and their juniors is not possible and that aspect was not brought to the knowledge of the court, when the writ petition was taken up for consideration, the learned Judge passed an order on 16.12.2022, observing that the said ground was available, when the final order came to be passed and that, the same cannot be raised by way of review, since it would amount to constructive *res judicata* and on the other hand, the option available to the Government is to challenge the order passed by the writ Court before the competent Court. Holding so, the learned Judge dismissed the Review Application.



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10. In view of the above observation made in the Review Application, the present appeal has been filed as against the order dated 12.01.2022 passed in WP.No.36693 of 2016.

11. The learned Additional Advocate General appearing on behalf of the appellants / State has furnished a Compendium Chart between the first respondent-Meena and her junior-Ramesh Babu and submitted that the State framed Rules as Tamil Nadu Revised Scale of Pay Rules, 2009 enabling to revise pay anomaly and accordingly, Rule 7 is the date of annual increments in the revised pay structure and Rule 8 is the option, which gives liberty to each Government employee to exercise their option to remain in the existing scale of pay until the date on which he earns his next or any subsequent increments in the existing scale of pay or until he vacates his post or ceases to draw pay in that pay scale, provided that if a Government employee does not exercise his option within the period specified below, he shall be deemed to have opted the revised scales of pay with effect from 01.01.2006. He submitted that the second appellant considered the respondents' request in accordance with Rule 8. He further submitted that in the order passed by



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this Court in W.P.(MD)No.742 of 2018 dated 07.02.2018 which has been relied upon by the learned Judge while passing the impugned order allowing the claim of the incumbents, this aspect was not raised and hence, the impugned order is liable to be set aside. It is his further submission that the aspect of exercising option to revise the pay and increments from particular dates by the respondents herein, has not been brought before the writ Court and when it has been brought to the proceedings in the Review Application, the same was not considered by the learned Judge and the Review Application has been dismissed holding that it would amount to constructive *res judicata*.

12.In this writ appeal, the incumbents / respondents made their submissions by filing a counter affidavit, wherein, it is *inter alia* stated that the learned Judge has rightly followed the order passed in the identical case in WP(MD)No.742 of 2018 dated 07.02.2018 and allowed the writ petition filed by them. It is also submitted that similar appeal viz., WA.No.178 of 2021 preferred by the appellants was also dismissed by this court. According to these respondents, it is the lapse on the part of the appellants



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in not bringing the notice of this court to the provisions of the Tamil Nadu

Revised Scales of Pay Rules, 2009, as a result of which, the respondents made to suffer, especially, when the orders passed in the writ petitions have become final and binding on all the parties, as there was no appeal against those orders and hence, it cannot be said that the order passed in the writ petition is not applicable to the facts of the present case. The counter affidavit further proceeds to state that Rule 5(1) of the Tamil Nadu Revised Scales of Pay Rules, 2009, provides the criteria for rectification anomaly of 'Junior getting more pay than Senior' (a)Both the Junior and Senior Government Employees should belong to the same category and should have been promoted to the same post, (b)the pre-revised scale of pay and the revised scale of pay along with grade pay of the lower and higher posts to which they are entitled to draw pay should be identical, (c)the Senior Government employee at the time of appointment should have been drawing equal or more pay the Junior. That apart, under Rule 5(2), the anomaly should have arisen directly as a result of the introduction of the revised scales of pay. The respondents herein having satisfied the said criteria, are entitled to the claim sought for by them. It is also submitted by the



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respondents that they have submitted their option on 02.07.2009 alleged to have remained in the pre-revised scale till they earn next increment in the pre-revised scale and the same does not dis-entitle them from the benefit of 'rectification of anomaly of Junior getting more pay than senior' provided the seniors were drawing pay higher than or equal to the pay of the Juniors in the pre-revised scales of pay from time to time, *vide* Rule 5(3) of the Tamil Nadu Revised Scales of Pay Rules, 2009. Stating that the contention raised on the side of the appellants is unsustainable, these respondents sought to dismiss this writ appeal by confirming the order of the learned Judge.

13.Further, the learned counsel for the respondents has drawn the attention of this court to the additional typed set of papers, in which, the comparison statement of all the respondents with their juniors with regard to the date of appointment, completion of probation period, transfer details, date of incentive increment and date of pay anomaly have been furnished, in addition to other details.



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14. Heard the learned counsel on either side and perused the materials

available on record carefully and meticulously.

15. The facts are not in dispute. The issue raised by the respondents herein before the writ court was relating to pay anomaly. The learned Judge has allowed the writ petition, by merely placing reliance on the similar order dated 07.02.2018 passed in WP(MD)No.742 of 2018, as evident from the order impugned herein, which cannot be countenanced by this court. It is a settled position that the order / judgment has to be read and understood in the particular facts and circumstances, in which, it has been rendered and not as theorems of Euclid that will have universal application irrespective of the circumstances in which they have been made. In this context, it may be relevant to refer to the decision of the Hon'ble Supreme Court in ***Haryana Financial Corporation and others v. Jagdamba Oil Mills and others*** [MANU/SC/0056/2002], wherein, it was observed as follows:

“19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judge to embark into lengthy



discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton 1951 AC 737, Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by the most distinguished judges."

20. In *Home Office v. Dorset Yacht Co.* 1970 (2) All ER 294 Lord Reid said, "Lord Atkin's speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972) 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

22. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

XXX XXX XXX

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which



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could impede it."

16. That apart, it is the categorical submission made on the side of the appellants that the provisions of the Tamil Nadu Revised Scale of Pay Rules, 2009, enabling the revision of pay anomaly, have not been brought to the notice of the writ court, at the time of hearing the writ petition. The review application filed by the appellants raising the same point, came to be dismissed by the learned Judge, without going into the same, by observing that option is available to the appellants to challenge the order of the learned Judge before the competent court.

17. Therefore, considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this court, in the interest of justice, is inclined to set aside the order impugned herein and remand the matter to the learned Judge for fresh consideration.

18. Accordingly, the impugned order is set aside and the matter is remanded back to the learned single Judge who holds the portfolio as per



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the roster. The learned single Judge is requested to take note of Rules 5, 8 and 9 of the Tamil Nadu Revised Scale of Pay Rules, 2009 and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this judgment.

19.The writ appeal is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.]

[M.S.Q., J.]

18.07.2023

Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

nsd

Note: Issue order copy on 26.07.2023.

To

1.The Director of Elementary Education,
DPI Compound, College Road,
Chennai – 600 006.

2.The District Elementary Education Officer,
Tiruvannamalai.

3.The Assistant Elementary Education Officer,
West Arni, Arni – 632 301, Tiruvannamalai District.

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R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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