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W.P.No.5146 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 19.04.2023

Orders delivered on 01.06.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.5146 of 2015

J.Getsie Arul Vasanthi

Headmistress

Sarojini Varadhappan Girls Higher Secondary School,

Poonamallee,

Chennai - 600 0056.

..Petitioner

Vs

1. The Correspondent,
Sarojini Varadhappan
Girls Higher Secondary School,
Poonamallee,
Chennai - 600 056.
2. The District Educational Officer,
Office of the Educational Officer,
Thiruvallur,
Thiruvallur District.
3. The Director of School Education,
College Road,
Chennai - 600 006.



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4. The Secretary to Government of Tamil Nadu,
Education Department,
Fort St.George,
Chennai - 600 009.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Na.Ka.No.967/A4/14 dated 13.04.2015 and quash the same and further direct the 2nd respondent to fix the scale of pay of the petitioner being the Headmistress of 1st respondent aided School @ Rs.26,400/- + 5700/- from 3.6.2011 and consequential benefits as per the Government.

(Prayer amended as per order dated 11.12.2017 by SMSJ in WMP.No.9370/2016 in W.P.No.5146/2015).

For Petitioner	: Mr.P.Ganesan
For Respondents	: Mr.M.Rajendran Additional Government Pleader

ORDER

This writ petition has been filed challenging the order dated 13.04.2015 passed by the 2nd respondent, rejecting the claim of the petitioner seeking to refix the scale of pay as per Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 2009.



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

i) The petitioner has completed SSLC Public Examination in the year 1977 and B.Sc. Botany in the year 1981 in Madras University. Further, she completed Master Degree in M.Sc.(Botany) in Madras University in the month of September, 1983 and completed B.Ed., in the month of January, 1986. She completed M.Ed course in First Class in Annamalai University in the month of December, 1988. She completed M.A. (Sociology) Course in the year 1994 from Annamalai University. Further, she completed M.Phil course in the year 2007 from Annamalai University. On 3.6.1991, she was appointed on probation for a period of two years as Post Graduate Assistant in Botany in the 1st respondent school in the retirement place of one teacher Mrs.J.Vimala who retired on 1.6.1991 in the scale of pay of Rs.1820-60-230-75-3200. The said appointment was duly approved by the Chief Educational Officer, Kancheepuram.

ii) Subsequently, the petitioner was appointed as the Headmistress of the 1st respondent school in the scale of pay of Rs.15600-39100+5700. On 01.04.2011, after the yearly increment, her scale of pay was fixed at



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Rs.24,470+5700 and on 1.4.2012, her scale of pay was fixed at Rs.26420 + 5700. Till date, the petitioner has been receiving the salary at Rs.27,390+ 5700 per month. If the petitioner had not opted for the appointment of Headmistress as on 1.6.2010, she would have got the scale of pay @ Rs.26400 + 5700 and after the yearly increment, she would have been paid Rs.27370 + 5700 as on 01.06.2013 and 28370 + 5700 till date. Only because she was appointed as Headmistress, her scale of pay is far below the Selection/ Special Grade Teacher in the same School. Her scale of pay should be more than the Selection Grade/Special Grade teachers.

iii) As per Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1988, a Government servant would have drawn more pay in the revised pay scale in the substantive post, and she continued in it than the officiating post in which she is actually working, her pay in the officiating post shall be refixed in the scale of pay of the officiating post at a stage next above the pay in the substantive post.

iv) On 4.3.2014, the petitioner requested the 1st respondent to set right the pay anomaly and fix her pay as follows:



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Rs.26470 + 5700 June 1.6.2011

Rs.27240 + 5700 April 2012

Rs.28230 + 5700 April 2013

Rs.29250 + 5700 April 2014

The said request was forwarded to the 2nd respondent. The 2nd respondent vide proceedings dated 20.06.2014 forwarded the same to the 3rd respondent and the 3rd respondent by proceedings dated Nil.09.2014 informed that the petitioner's eligibility pay can be fixed by the 2nd respondent and the 3rd respondent, being the Appellate Authority, cannot be approached directly for the relief. The 2nd respondent has power to set right the pay anomaly with or without approval of the 3rd respondent. The petitioner sent notice through her counsel dated 15.12.2014 to set right her pay anomaly and the said notice was duly received by the respondents, but there was no reply.

v) In 2014, a Special Grade Teacher, who is having M.Phil Degree, working under the petitioner in the 1st respondent school, is drawing more salary from the year 2014 and the Special Grade Teacher who is not having M.Phil degree is drawing lesser than the petitioner. The Special Grade Teachers were given increment of 3% + 3% under G.O.Ms.No.237 Finance



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(Pay Cell) Department dated 22.07.2013. The 4th respondent directed an additional increment benefit (over and above the existing one increment benefit equivalent to 3% + 3% of basic pay) (Pay + grade pay) should be granted to the employees on award of selection grade/special grade in the revised scale of pay implemented with effect from 1.1.2006. The P.G. Assistant, who is working in the same school from the year 02.12.1992 is drawing pay of Rs.27610+5700, whereas the senior teacher and Headmistress of the 1st respondent are drawing only monthly salary of Rs.27390/- + 5700 which is below the level of a Post Graduate teacher. Therefore, the petitioner ought to be given the basic pay of Rs.26280 + 5700 on June 2011 and yearly increment of 3% thereon.

vi) The petitioner's scale of pay is fixed as Rs.26280 + 5700 on June 2011, thereafter, with annual increment till date, her scale of pay will be 29250+5700. The difference of salary paid to the petitioner which she is entitled comes to Rs.1,49,176/-. The 2nd respondent is bound to pay the above amount. Hence, this writ petition.

3. a) Learned counsel for the petitioner would submit that the



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petitioner was appointed as Post Graduate Teacher in the 1st respondent school on 03.06.1991 and granted selection grade in the post of Post Graduate Assistant on 03.06.2001. Thereafter, she was promoted as Headmistress in the 1st respondent school on 01.06.2010 in the scale of Rs.15600-39100+5700. Based on G.O.Ms.No.234 School Education (G2) Department dated 10.09.2009, the revised scale of pay of Post Graduate Teacher and Headmaster of Higher Secondary School is 9300-34800+4600 and 15600-39100+5700 respectively. Subsequently, the Government revised scale of pay of Post Graduate Teacher, 9300-34800+4600 to 9300-34800+4800 as per G.O.Ms.No.23 Finance (PC) Department dated 12.01.2011. In view of the above revision that the Post Graduate Teachers officiating in the selection grade are entitled for the scale of pay of Rs.15600-39100+5700. Based on the above G.O.Ms.No.23, the petitioner's scale of pay for selection grade post graduate teacher is Rs.15600-39100+5700 in the revised scale of pay as on 01.01.2006 even prior to the promotion as Headmistress.

b) Learned counsel would further submit that the petitioner had



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continued as Post Graduate Teacher and is entitled for the grant of special grade in the post of Post Graduate Teacher as on 03.06.2011. The employees of the State Government is entitled for exercising option to fix their pay on promotion to continue in the selection grade post until their movement to special grade and thereafter, pay is fixed in the promotional post.

c) Learned counsel would further submit that as per FR 22(B), if a junior is getting higher scale of pay, then senior's pay, he/she shall be stepped up to the pay of his junior from the date of such payment. The anomaly of senior drawing less pay than junior could be rectified only if both junior and senior officers belong to the same cadre and the post in which they have been promoted, or appointed, shall be identical in the same cadre. Ruling 11 (1) Government servants holding Selection Grade or Special Grade of a lower post, when promoted or appointed to higher post, which carries a lesser scale of pay than that of the Selection Grade or Special Grade scale of pay of the lower post, shall be allowed option either - (i) to continue to draw pay in the Selection Grade or Special Grade of the lower post, together with the 'Personal Pay' if any, drawn, as personal to



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them and one increment benefit in the fixation of pay in the selection grade or Special Grade scale of pay of the lower post shall be granted on the date of promotion or on the date of accrual of next increment in the Selection grade of the lower post, as the case may be, at their option. OR (ii) to have their pay fixed in the scale of pay of the promotion post under Rule 22-B of Fundamental Rules on the date of promotion, taking into account, the presumptive pay drawn in the ordinary grade or Selection Grade of the lower post, as the case may be or to have their pay fixed on the date of promotion or appointment to the higher post, in the manner as provided in Rule 22(1)(a)(i) or Rule 22(1)(b)(i) and for refixation of pay under F.R.22-B on the date of accrual of next increment in the time scale of pay of the lower post. (2) Option shall be exercised within a period of one month from the date of promotion or appointment Option once exercised shall be final. If no option is exercised within the said period of one month, pay shall be fixed in the scale of pay applicable to the Selection Grade or Special Grade of the lower post by allowing one increment to be drawn by them together with the 'Personal Pay', if any, on the date of promotion, as personal to them.



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Therefore, continuing in the selection grade post until their movement to special grade and thereafter, pay fixed in the promoted post is permitted as per the above statutory rule. As per Tamilnadu Revised Scales of Pay Rules, 2009, the petitioner is entitled to continue in the selection grade post of Post Graduate Teacher and her pay fixed in the special grade post of Post Graduate Teacher and thereafter, fixed in the promoted post of Headmistress. As per Government letter No.41530/Pay Cell/2009-1 Finance(PC) Department dated 28.07.2009, the petitioner is entitled to continue in the selection grade post of Post Graduate Teacher and her pay fixed in the Special Grade post of Post Graduate Teacher and thereafter, fixed in the promoted post of Headmistress.

d) Learned counsel would further submit that on the recommendation of the Pay Grievance Redressal Cell, the Government issued G.O.Ms.No.237 Finance (PC) Department dated 22.07.2013, granting an additional increment benefits (over and above the existing one increment benefit) equivalent 3% +3% of basic pay (Pay +Grade pay) shall be granted to the employees on the award of selection grade/special grade in the



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revised scale of pay implemented w.e.f. 01.01.2006. Further, as per G.O.240 Finance (PC) Department dated 22.07.2013, the Government had decided to implement the above recommendation of Pay Grievance Redressal Cell. Accordingly, the Government directed that in exercise of the powers conferred under Rule 12 of the Tamil Nadu Revised Scales of Pay Rules, 2009, accord permission to the employees as a final opportunity for exercising re-option to come over to the revised scale of pay between 1.1.2006 to 31.5.2009 as a one time measure in cases where option could not be exercised within the time limit to the advantage of the individual employees. However, such re-option should not be in any case lead to fixation of lower pay than what has been fixed earlier. Further, the above Government Order shall be in force for a period of six months from the date of issue and any requests for exercising re-option from employees after the above period, shall not be entertained.

e) Learned counsel would further submit that the petitioner is eligible for arrears of difference in salary as on June 2011 to March 2012 pay $262900+57000+190021=509921$ and then, the petitioner is to get as on



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April 2012 to March 2013 pay $327000+68400+285678=681078$. As on April 2013 to March 2014, $338880+68400+366552=773832$, April 2014 to March 2015, $321860+62700+404136=788696$, Total: 2753327. Whereas the petitioner has drawn as on June 2011 to March 2012 pay $244700+57000+179214=480914$, as on April 2012 to March 2013 pay $305160+68400+269901=643461$. As on April 2013 to March 2014 pay $317040+68400+346898=732336$, April 2014 to March 2015 Pay $201840+62700+383100=747640$, Total = 2604351, difference in total is 149176, i.e., arrears of difference in salary.

f) Learned counsel would further submit that Fundamental Rules 22B came up for consideration before the Hon'ble Division Bench of this Court in the case of R.Ramaraj vs. The Registrar General, High Court of Judicature at Madras in W.P.No.16355 of 2013 and another reported in 2014 SCC Online Mad 8740 and by placing reliance on the Fundamental Rules, the Division Bench had set right the anomaly between the pay scale of a senior and a junior. Learned counsel would further rely on the judgment of the Hon'ble Supreme Court in the decision reported in 2009(3) SCC 94



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(Gurcharan Singh Grewal and another v. Punjab State Electricity Board and others) has considered the similar issue and held that it is a settled principle of law that senior cannot be paid a lesser salary than his junior and if junior is given more pay, the department is bound to step up the pay of senior on par with his junior. Hence, he would pray to allow the writ petition as prayed for.

4. i) Per contra, learned Additional Government Pleader appearing for the respondents would submit that as per G.O.Ms.No.234 dated 01.06.2009 which came into effect from 01.01.2006, only those Government servants who have obtained selection grade/special grade by commuting the service rendered in the tenure of posts having identical scale on or before 01.01.2006 alone are entitled for pay fixation in Selection Grade/ Special grade of posts.

ii) Learned Additional Government Pleader would further submit that even the benefit of Selection Grade/ Special Grade scales by commuting the service rendered in feeder category having identical scale of pay upto 31.05.2009 extended in Govt.Lr.No.7296/5/2012-1 dated 14.05.2012, the



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petitioner is not entitled to, as she had not completed 10 years of service by commuting the feeder category service on or before 31.05.2009.

iii) Learned Additional Government Pleader would further submit that in Tamil Nadu Revised Scale of Pay, 2009, the Government had initiated the concept "Grade pay" and therefore, the scale of pay in the fixed time scale was no more in vogue in view of G.O.Ms.No. 234 dated 01.06.2009 which was effected from 01.01.2006. Hence, the anomalies in pay drawn in the Time Scale of pay and the services rendered in Scale of Pay on Pay band system pertains to Tamil Nadu Revised Scale of Pay Rules, 2009 has been settled and could not be considered for fixation of pay as per old Rule 4(3) of Tamil Nadu Revised Scale of Pay Rules, 1998. Hence, the petitioner is not entitled for any relief for fixation of pay as claimed by her. The petitioner submitted her representation dated 04.03.2014 to set right the pay anomalies and fix the pay. The 2nd respondent sought for clarification on the feasibility of considering the petitioner's request from Chief Educational Officer, Tiruvallur. The Chief Educational Officer, Tiruvallur, in his letter dated 26.09.2014 had directed the 2nd respondent, the District



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Educational Officer to dispose the representation of the petitioner at his official capacity. The 2nd respondent disposed the representation clearly explaining as to why the request of the petitioner could not be complied with on merits or in accordance with law vide letter dated 13.04.2015.

iv) Learned Additional Government Pleader would submit that as per Tamil Nadu Revised Scale of Pay 2009, pay anomalies which arose due to junior getting more pay than the senior could be rectified only if the senior and junior are in the same Grade Pay/Pay Band and the Junior and Senior should be in the same grade of posts. In the instant case, the individuals referred by the petitioner are serving as Post Graduate Teacher, wherein the petitioner is Higher Secondary School Headmistress which is promotive cadres from Post Graduate Assistant. Subsequently, the Government issued G.O.Ms.No.25 Personnel and Administrative Reforms (FR IV) Department dated 23.03.2015 by which stipulated conditions for rectification of pay anomaly. Only if her junior had been promoted as Headmaster/Headmistress and when her junior was drawing more pay than her, then the said G.O. will be applicable to the petitioner. Therefore, he would pray to dismiss the



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writ petition.

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

6. The grievance of the petitioner is that a P.G. Assistant, who is working under her in the same School is drawing more pay than that of the petitioner and hence, the pay of the petitioner is to be stepped up to that of her subordinate.

7. As per G.O.Ms.No.234 dated 01.06.2009, which came into effect from 01.01.2006, only those Government servants who have obtained selection grade/special grade by commuting the service rendered in the tenure of posts having identical scale on or before 01.01.2006 alone are entitled for pay fixation in Selection Grade/ Special Grade of posts. Subsequently, in view of several representations received from Service Associations/ individuals, the Government vide letter dated 14.05.2012 extended the relief of Selection Grade/ Special Grade scales by commuting the service rendered in feeder category having identical scale of pay upto 31.05.2009. In the instant case, since the petitioner has completed 10 years



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of service by commuting the service of Selection Grade in the cadre of Post Graduate Assistant and service rendered as Higher Secondary Head Mistress having identical scale of pay only on 01.06.2011, that is beyond the cut off date, she is not entitled for any relief as per Govt.Lr.No.7296/5/2012-1 dated 14.05.2012. If she had completed 10 years of service by commuting the feeder category service on or before 31.05.2009, she would have been entitled to the benefit but she did not satisfy the criteria.

8. Further, insofar as the contention of the petitioner that as per Rules 4(3) of Tamil Nadu Revised Scales of Pay Rules, 1998, a Government servant would have drawn more pay in the revision pay scale in the substantive post and he/she continued in it than in the officiating post in which he/she is actually working, his /her pay in the officiating post shall be refixed in the scale of pay of the officiating post at a stage next above the pay in the substantive post, is concerned, the said Rule 4(3) was in vogue as per Tamil Nadu Revised Scale of pay Rules, 1988. Subsequently, Government issued Tamil Nadu Revised Scale of Rules 2009 vide G.O.Ms.No.234 Fin(PC) Department dated 01.06.2009 and Pay Rule 1998



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had been superseded. It is pertinent to state that prior to the introduction of Tamil Nadu Revised Scale of Pay 2009, Time scale of pay with fixed quantum of increment was in vogue. Therefore, any anomalies arise due to moving to higher scale pay promotion are rectified by fixing the pay in the Higher Scale on par with the assumed pay, had the individual continued in the feeder category. Now, in Tamilnadu Revised Scale of Pay 2009, the Government had initiated the concept 'Grade Pay' and therefore, scale of pay in the fixed Time Scale was no more in vogue in view G.O.Ms.No.234 dated 01.06.2009 which was effected from 01.06.2006. Hence, the anomalies in pay drawn in the Time scale of pay and the services rendered in Scale of Pay on pay band system pertinent to Tamil Nadu Revised Scale of Pay 2009 has been settled and could not be considered for fixation of pay as per old Rule 4(3) of Tamil Nadu Revised Scale of Pay Rules, 1998. x

9. Further, the Government issued G.O.Ms.No.237 Fin (PC) Department dated 22.07.2013 sanctioning one additional increment to those who moved to selection Grade/Special Grade of posts with effect from 01.01.2006 notionally with monetary benefit from 01.04.2013 onwards. The



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individuals referred by the petitioner were awarded Selection Grade/Special Grade of pay consequent to the award of Special Grade scale of pay in the cadre of Post Graduate Assistant pursuant to G.O.Ms.No.237 dated 22.07.2013. However, the petitioner was promoted as Headmistress before completion of 10 years in the Selection Grade Scale of pay in the post of Post Graduate Assistant. Hence, the petitioner will not be permitted to compare with those individuals as they are not similarly placed. Therefore, the contention of the petitioner to rectify the pay anomalies and fix the pay on par with her juniors after exercising option to the post of Headmistress before moving to Special grade scale of pay in the feeder category (P.G. Assistant) cannot be entertained either on merits or in accordance with law.

10. Further, the Government issued G.O.Ms.No.25 Personnel and Administrative Reforms (FR IV) Department dated 23.03.2015, which stipulates condition for rectification of pay anomaly as follows:

"5. The Government direct that in cases where government servants who have been appointed/promoted to higher posts without moving to Selection Grade/Special Grade in the lower post, in the revised scales of



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pay, the pay of such seniors should be fixed in the higher post equal to the pay of the junior in the higher post with effect from the date of drawal of higher pay by,

The Junior in the higher post subject to fulfilment of the following conditions:

i) 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.

ii) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

iii) The pay anomaly should be arising directly as a result of fixation of pay in the promotional post after fixation of pay in the Selection grade/Special Grade of the lower post. For example, if even in the lower post the junior officer draws from time to time, a higher rate of pay than the senior by virtue of grant of advance increment, the provisions contained in this order should not be invoked to step up the pay of the senior officer; and

iv) The orders refixing the pay of the senior officers in accordance with the provisions of this order



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should be issued under Fundamental Rule 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of the pay.

6. The order shall take effect from 01.01.2006."

11. The said Government Order No.25 dated 23.03.2015 will also not be applicable to the petitioner. Only if her junior had been promoted as Headmaster/ Headmistress and both are in the same post and if the junior still gets more pay than her, then the petitioner can claim same scale on par with her junior. But in the instant case, the petitioner was appointed as PG Assistant in the respondent school on 03.06.1991. Subsequently she was also granted selection grade in the post of PG Assistant on 03.06.2001. Thereafter, she was promoted as Headmistress in the 1st respondent school w.e.f. 01.06.2010. As pointed out by the Learned Additional Government Pleader, the petitioner and her subordinate belong to different cadres. An employee can raise the issue of stepping up of pay on par with his junior only when both of them belong to same cadre and are drawing pay in identical pay scales. The junior of the petitioner is only Post Grade Assistant, whereas the petitioner being appointed to the higher post of



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Headmistress, cannot raise such a plea. Further, G.O.Ms.No.234 or G.O.25 will in no way be of any benefit to the petitioner as she does not fulfill the condition in the said G.Os. Thus, the claim of the petitioner cannot be considered.

12. For the reasons stated above, this Court finds no merit in the writ petition and the same is liable to be dismissed. Accordingly, the Writ Petition stands dismissed. No costs.

01.06.2023

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

To

1. The District Educational Officer,
Office of the Educational Officer,
Thiruvallur,
Thiruvallur District.
2. The Director of School Education,
College Road,
Chennai - 600 006.



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3. The Secretary to Government of Tamil Nadu,
Education Department,
Fort St.George,
Chennai - 600 009.

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Pre-delivery order in
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