



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.10876 of 2019
and
W.M.P.No.11318 of 2019

K. Devasenai

.. Petitioner

Vs.

1.The District Educational Officer,
Polur,
Thiruvannamalai District.

2.The Block Elementary Educational Officer,
Polur,
Thiruvannamalai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to direct the 2nd respondent to step up the salary of the petitioner equal to the salary of the petitioner's junion Smt. M. Kannika right from 01.06.2011 onwards together with arrears.

For Petitioner

.. Mr. S. Krishnasamy

For Respondents

.. Mr. S. Ravikumar, SGP



WEB COPY

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking a direction against the 2nd respondent, the Block Elementary Educational Officer, Polur, Thiruvannamalai District, to step up the salary of the petitioner and equalize the same to the salary of her Junior, M. Kannika from 01.06.2011 and to pay necessary arrears.

2.The petitioner was working as Headmistress in the Panchayat Union Middle School at Chinnapushpagiri Village, at the time of filing of the writ petition. She also worked as Headmistress of Panchayat Union Elementary School at Mangalapuram Village. At that time, her junior M. Kannika was working as Headmistress in the Panchayat Union Elementary School at Tindivanam in Polur Block. The petitioner is deeply aggrieved by the fact that the said junior was drawing higher pay. The petitioner claimed that they both have the same qualifications B.A., B.Ed., and M.A.

3.The petitioner was originally appointed as Secondary Grade Teacher on 30.04.1986 while M. Kannika was appointed as Secondary Grade



Teacher on 12.09.1988. Their services were also regularized from that particular date. Their probation was also declared. The petitioner was granted Selection Grade on 03.04.1996 in the cadre of Secondary Grade Teacher. Her Junior M. Kannika was granted Selection Grade on 12.09.1998 in the Secondary Grade Teacher post. The petitioner was promoted as Headmistress of Elementary School on 26.06.2006. The petitioner was granted incentive of Rs.5,600/- for acquiring additional qualifications of B.A., B.Ed., on 30.12.1996. She was also further given an incentive of Rs.6,200/- on 01.01.1999 for acquiring M.A., History. Then the junior M. Kannika was granted two increments on 01.06.2011 for Higher Educational qualification, while working in the post of Elementary School Headmistress. On 01.06.2011, the anomaly in the pay arose consequent to the grant of incentives.

4.It must be kept in mind that the petitioner was also equally qualified. She was also granted incentives. But, at the time, when the incentives were granted, her scale of pay was less. On the basis of that scale of pay, she was granted incentives. She was granted an incentive for qualifying B.A., B.Ed., on 30.12.1996 and another for qualifying M.A., on



01.01.1999. Those two incentives were granted on the basis of the scale of pay, which she was drawing at that particular point of time. Her junior subsequently qualified B.A., B.Ed., and M.A. Degrees. At the time when she had qualified these degrees, the scale of pay naturally increased. On the basis of the increased scale of pay, the junior was granted incentives. There was thus an anomaly in the pay.

5.The learned Special Government Pleader pointed out that the junior was sanctioned two increments for educational qualification while working in the position of Elementary School Headmistress on 01.06.2011 and that owing to advance increment for higher education, M. Kannika was drawing higher pay.

6.Rule 22-B Sub-Rule 2 of the Fundamental Rules of Tamil Nadu Government is as follows:-

“.....(2) In case where both the senior and junior are drawing the same rate of pay in the lower post, the senior who was promoted to the higher post before drawing the next increment in the lower post would be drawing less pay than his junior, who was promoted to the higher post after



WEB COPY



drawing the next increment in the lower post. In such cases, the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay fixed for the junior officer in that higher post and the stepping up should be done with effect from the date of promotion or appointment to the junior and also subject to the following condition:-

- (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 anomaly should be directly as a result of the application of Fundamental Rule 22-B.*

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 increments, the provisions contained in this order should not be invoked to step up the pay of the senior officer; and

- (iv) The orders re-fixing the pay of the senior officers in accordance with the provisions of this order 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 re-fixation of pay.*



WEB COPY

7. In this connection, the Government had also passed G.O.Ms.25, P&AR Department dated 23.03.2015, to rectify the pay anomaly due to the junior drawing more pay than the senior after introduction of the Tamil Nadu revised Pay Rules, 2009. The crucial date of the pay anomaly fell between 01.01.2006 and 31.12.2015. Therefore, the said rules namely, Tamil Nadu Revised Scales of Pay Rules, 2009, is applicable to the petitioner herein. The relevant portions of G.O.Ms. 25, P&AR Department dated 23.03.2015 are as follows:-

“..... 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 highest post subject to fulfilment of the following conditions:

- (i) Both the junior and the senior officer should belong to the same category and the post in which they have been promoted or appointed should be identical and in the same cadre.*
- (ii) The scales of pay of 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*



WEB COPY



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 re-fixing the pay of the senior officers in accordance with the provisions of this order 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 re-fixing of pay.

6. This order shall take effect from 01.01.2006.”

8. It is contended by the learned Special Government Pleader, that though the pay of the junior officer is more than that of the senior officer on account of the advance increments, there cannot be a step up pay to the petitioner herein.

9. But, however, both Rule 22-B Sub-Rule 2 of the Fundamental Rules of Tamil Nadu Government and G.O.Ms.25, P&AR Department dated 23.03.2015 will have to be read harmoniously. They both provide for a



situation where the pay of the senior is less than the pay of the junior. The qualifications are the same. The fact that the petitioner is senior to M. Kannika is not disputed. The fact that she had obtained the same qualifications and was also granted incentives but on the basis of lower scale pay, which the petitioner was drawing in the years 1996 – 1998 cannot be denied. On the other hand, M. Kannika had obtained such qualifications much later in the year 2006 and therefore, the incentive which was calculated was on a higher scale of pay.

10.To clear this anomaly the Government Order had been passed. It recognized that the senior who was promoted to the higher post before drawing the next increment in the lower post would be drawing the less pay than the junior, who was promoted to the higher post after drawing the next increment in the lower post.

11.It is to correct that particular anomaly that, it had been provided in the Fundamental Rules that the pay of the senior officer in the higher post must be stepped up to a figure equal to the pay of the junior officer in that higher post. This rule applies directly to the petitioner herein.



WEB COPY

12.The learned Special Government Pleader stated that M. Kannika was getting a higher pay, because of the advance increment which had been granted to her, consequent to her acquiring higher educational qualifications.

13.The same increment was also granted to the petitioner for acquiring the same higher qualifications. The only difference is that the petitioner's increment was based on the pay scale of the years 1994, 1996 and 1998. Whereas, the increment for M. Kannika was on the basis of pay scale of the year 2006. Therefore, she benefited by getting the higher increments.

14.It is to equalize this pay anomaly that recourse is taken to aforementioned Fundamental Rules and the Government Order. They are applicable to the petitioner herein. The Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

15.A direction is given to the respondents to issue fresh proceedings



re-working the pay scale of the petitioner. Such exercise should be completed within a period of sixteen weeks from the date of receipt of a copy of this order.

21.07.2023

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking order: Yes/No
smv

To

1. The District Educational Officer,
Polur,
Thiruvannamalai District.
2. The Block Elementary Educational Officer,
Polur,
Thiruvannamalai District.



WEB COPY



C.V.KARTHIKEYAN,J.

smv

W.P.No.10876 of 2019



WEB COPY



12

21.07.2023