



W.P.No.9684 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.9684 of 2017
and
W.M.P.No.10962 of 2017

J.Jeevakala

.. Petitioner

VS

1.The Director of Elementary Education
DPI Campus, College Road,
Chennai- 600 006.

2.The District Elementary Educational Officer,
Coimbatore.

3.The Assistant Elementary Educational Officer,
Vattaram – II, Anaimalai,
Coimbatore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the second respondent in A.Thi.Mu.No.4691/ AA2/ 2013 dated 28.12.2013 and quash the same and consequently direct the respondents to step up the pay of the petitioner on par with S.Vasanthi with effect from 29.05.2009 without reference to the proceedings of the first respondent herein in Na.Ka.No.16907/ E1/ 2016 dated 11.08.2016 by taking into account the fact that the petitioner is only comparing the junior/senior based upon the initial date of entry into service.

For Petitioner : Ms.Dakshayani Reddy
Senior Advocate
for Ms.S.Suneetha

For Respondents : Mr.S.Ravi Kumar
Special Government Pleader



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ORDER

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Writ petition has been filed in the nature of a certiorarified mandamus seeking records issued by the second respondent in A.Thi.Mu.No.4691/ AA2/ 2013 dated 28.12.2013 and quash the same and consequently direct the respondents to step up the pay of the petitioner on par with S.Vasanthi with effect from 29.05.2009 without reference to the proceedings of the first respondent herein in Na.Ka.No.16907/E1/2016 dated 11.08.2016 by taking into account the fact that the petitioner is only comparing the junior/senior based upon the initial date of entry into service.

2. In the affidavit filed in support of the writ petition, it had been stated by the petitioner that she was appointed as Secondary Grade Teacher on 15.07.1988. On 23.12.2004, she got promoted to the post of Elementary School Headmaster and was further promoted to the post of Tamil Pandit with effect from 27.07.2005.

3. In the affidavit, it is further stated that one S.Vasanthi, who was initially appointed as Secondary Grade Teacher on 15.07.1988 in Pollachi North Panchayat Union was getting more pay than the petitioner herein.



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4. Learned counsel for the petitioner submitted that due to VI pay commission, an anomaly in pay was caused. The petitioner sent a representation to the official respondent on 04.08.2010 for stepping up of her pay on par with her junior / S.Vasanthi. Along with the representation, the petitioner had also made a detailed comparative statement. Learned counsel for the petitioner further submitted that the said proposal was returned vide communication dated 02.11.2010 stating that since the petitioner and the said S.Vasanthi were from different unions, the claim made by the petitioner cannot be considered.

5. Learned counsel for the petitioner relied on a judgment of a learned Single Judge of this Court in the case of *T.Mani and others v The District Elementary Educational Officer [W.P.Nos. 3698 to 3700 of 2007 dated 18.06.2012]*. Though it is a settled position of law, this Court also had an occasion to consider a similar set of facts in W.P.No. 12504 of 2017 and had allowed the writ petition.

6. On the other hand, learned Special Government Pleader for the respondents submitted that the petitioner had been transferred from one unit to another unit. The respondents had



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compared the grade pay of both the petitioner and S.Vasanthi while determining the pay matrix. The learned Special Government Pleader further stated that the official respondents had carefully gone through the records and had come to the conclusion that there was no pay anomaly as claimed by the petitioner and sought dismissal of the petition.

7. Heard learned counsels on either side.

8. As correctly pointed out by learned Senior Counsel appearing on behalf of the petitioner, the ratio laid down in *T.Mani* (supra) would directly apply to the facts of this case. In *M.Jafur Ahmed v the Government of Tamil Nadu, Rep. By its Secretary, P & AR Department* in W.P.No.12504 of 2017 dated 21.07.2023, it had been held as follows:-

"11. The facts have been stated above and they are not in dispute. The entire issue surrounds the interpretation of G.O.Ms.No.25 P & AR Department (FRIV Department) dated 23.03.2015. The very object of the Government Order was to rectify the anomaly with respect to the promotion from Ordinary Grade to Selection Grade post and the junior drawing more pay than the senior. The object can be stated as follows:-

"Instances have been brought to the notice of the Government that the pay anomaly due to Junior drawing more pay than the senior in cases where the senior got promotion before



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moving to Selection Grade / Special Grade of the lower post and the junior got promotion after moving to Selection Grade / Special Grade in the revised scales of pay as a result of introduction of Tamil Nadu Revised Scales of Pay Rules, 2009. The question of rectifying the anomaly in such cases was carefully examined by the Government."

12. *It is seen that the Government Order applies to cases where a senior got promotion before moving to either Selection Grade / Special Grade of the lower post and the junior gets promotion after moving to Selection Grade / Special Grade.*

13. *In the instant case, the petitioner was promoted to Middle School Headmaster before granting Selection Grade in the earlier post, namely the Primary School Headmaster. On the other hand, the junior / Manimegalai was promoted as Middle School Headmistress after a getting Selection Grade pay while working as Primary School Headmistress. This anomaly is stated to rectified by passing this G.O.No.25 dated 23.03.2015.*

14. *In the Government Order, to rectify this anomaly it had been directed 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 and there by happen to draw less pay than their junior who are appointed / promoted to the higher posts after moving to the Selection Grade / Special Grade of the lower post, in the revised scales of 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 drawl of higher pay by
The junior in the higher post subject to fulfilment of the following conditions:*



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- 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 scales 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 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 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."*

15. Thus, it is seen that direction had been given that in cases where there is pay anomaly, the pay of seniors should be fixed in the higher post equal to the pay of junior in the higher post with effect from the date of drawal of higher pay.

16. This would effectively mean that the petitioner's pay should be fixed as equal to the pay of Manimegalai, who had a higher pay consequent to being promoted after being granted Selection Grade in the post of Primary School Headmistress. The first and second conditions of G.O. No.25 quoted above would apply to the petitioner herein.

17. Both the senior and the junior belong to the same cadre. They have been promoted and appointment was identical and in the same cadre. They both worked at the same



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Department. They both were earlier Primary School Headmaster / Headmistress and they were promoted as Middle School Headmaster/Headmistress. The scales of pay as Primary School Headmaster and Middle School Headmaster were the same but consequent to the fact that Manimegalai was promoted after being granted Selection Grade has given her a clear advantage of drawing higher pay. To equalize that particular aspect this Government Order has been passed.

18. The contention of the respondents that both are from different union, would not be applicable to this case. This is a case of drawing of pay and equalizing the pay scale to that of the junior. The transfer from one union to another union would affect seniority but it would not be applicable so far as fixation of pay is concerned. Therefore, the aforementioned extract of the counter affidavit would not be directly applicable to the facts of this case.

19. Learned Government Advocate had raised objections stating that the petitioner had been transferred from another unit to the Namakkal Unit. But as stated, this is an issue of fixation of pay and, therefore, though serious objections were raised on behalf of the respondents, it would only be appropriate that the senior pay is stepped up with junior in accordance with G.O.No.25. The Government Order, therefore, prevails."

9. This Court is of the considered view that the anomaly in pay had occurred due to the implementation of the recommendations of the VI Pay Commission and the petitioner is entitled for stepping up of pay. The contention raised by learned Special Government Pleader for the respondents that stepping up of



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pay will not be applicable to those who were transferred from one unit to another unit is rejected since this is a case of drawing of pay and equalizing the pay scale to that of the junior. The transfer from one union to another union would affect seniority but it would not be applicable so far as fixation of pay is concerned.

10. The writ petition stands allowed. A mandamus is issued to the respondents to issue necessary proceedings within a period of four months from the date of receipt of a copy of this order. If the respondents require any clarification, they may issue notice to the petitioner herein and seek necessary clarification but at any rate pass orders within the period of four months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

22.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm



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To

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C.V.KARTHIKEYAN,J.

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