



W.P.No.12504 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.12504 of 2017
and W.M.P.No.13296 of 2017

M.Jafur Ahmed

.. Petitioner

VS

1.The Government of Tamil Nadu
Rep. By its Secretary to Government,
P & AR Department,
Fort St.George,
Chennai – 600 009.

2.The Secretary to Government
School Education Department,
Fort St.George,
Chennai- 600 009.

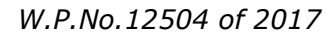
3.The Director of Elementary Education,
College Road,
Chennai – 600 006.

4.The District Elementary Educational Officer,
Namakkal District,
Namakkal.

5.The Assistant Elementary Educational Officer,
Namakkal Panchayat Union,
Namakkal 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 3rd and 4th respondent respectively issued in Na.Ka.No.16907/E1/2016 dated 11.08.2016 and in ATM No.3925/A2/2016 dated 19.08.2016 and quash the same and issue a consequential direction to the respondents to step up the



For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.R.Neethiperumal
Government Advocate

Writ petition has been filed in the nature of a certiorarified mandamus seeking the records relating to the order of third and fourth respondents dated 11.08.2016 and 19.08.2016 respectively and to quash the same and issue a direction to the respondents to step-up the pay of the petitioner to the level of the junior and fix the same at Rs.22280/- as on 01.07.2008 and grant arrears of pay and other consequential benefits.

<https://www.mhc.tn.gov.in/judis>
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Headmaster was fixed at Rs.5900/- in the time scale of Rs.5300 – 150 – 8300, which is ordinary grade scale of pay for Primary School Headmaster as per the pre-revised scale of pay, which was introduced with effect from 01.01.1996 by the Government of Tamil Nadu.

3. The petitioner had obtained higher qualification as B.Litt, M.A., B.Ed and M.Phil. The petitioner was eligible to get Selection Grade scale of pay in the post of Primary School Headmaster on 14.09.1997. The petitioner was also granted Selection Grade pay in the post of Secondary Grade Teacher on 14.09.1997. Thereafter, the petitioner was promoted as B.Ed Middle School Headmaster on 27.11.2006. This promotion was before the grant of further grade as Secondary Grade Teacher which the petitioner would have been entitled to on 14.09.2007. The pay in the post of Middle School Headmaster was fixed at Rs.7300/- in the scale of pay of Rs.5900 – 200 – 9900 in the pre-revised scale of pay introduced with effect from 01.01.1996. Thereafter, under G.O.Ms.No.234, Finance (Pay Commission) dated 01.06.2009, the concept of grade was introduced.

4. The petitioner claims that had he continued as Primary



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School Headmaster without being promoted, he would have obtained Special Grade on 14.09.2007 in the pay band of Rs.15600 – 38100 + 5400 GP. But the petitioner was promoted prior to that fixation of that particular pay on 27.11.2006 itself and, therefore, the pay was fixed at Rs. 9300 – 34900 + 4700 GP, which is the ordinary grade scale in the promotional post.

5. By the promotion, the petitioner claims that there was loss in emoluments. Had the petitioner been promoted after being granted Special Grade, then in the promotional post, he would have got a higher scale in accordance with the Special Grade of pay which would have drawn had he completed ten years of service in the ordinary scale of pay.

6. Though it could be contended that promotion as recognition of services of the petitioner, actually by that promotion, the petitioner had suffered a slight loss of emoluments. The petitioner is deeply aggrieved by a junior, who was also comparatively of the same experience and who had been granted the promotion as Middle School Headmaster after being granted Selection Grade pay in the earlier post, namely Primary School Headmaster.



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7. Since the junior / Manimegalai was promoted after she had been granted Selection Grade Pay while serving as Primary School Headmistress, she was able to a higher pay compared to that the petitioner herein.

8. It is contended that in the seniority list which was determined on 01.01.1998, the petitioner was in Sl.No.37 and the junior / Manimegalai was in Sl.No.58. This seniority is maintained. But since Manimegalai was promoted after being awarded Selection Grade pay as Primary School Headmaster, her initial pay as Middle School Headmaster was higher than the petitioner. This pay anomaly caused grievances to the petitioner. He gave a representation. The recommendation was examined by the fifth respondent, who stated that under G.O.Ms.No.25 P & AR Department dated 23.03.2015, the pay of the petitioner should be stepped up. But, however, the recommendation of the fifth respondent was rejected by the fourth respondent. That rejection is now put to challenge in this writ petition.

9. A counter affidavit has been filed on behalf of the respondents. The facts relating to the initial employment of the



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petitioner and of promotion and of transfer to Namakkal Union have not been denied. It is further stated that the petitioner was working in another union and, therefore, could not be compared with Manimegalai, who was all along working in another unit. The petitioner had been transferred from the initial place of appointment to Namakkal unit. This is the ground taken in the counter affidavit.

Paragraph 11 of the counter affidavit is extracted below:-

"11. Regarding the averments in para 8 of the affidavit of the petitioner, it is submitted that already stated the question of fixation of junior or senior depends upon the unit of establishment and the guidelines issued in the Government Order in G.O.Ms.No.25 P & A R Department dated 23.03.2015 and subsequent orders are applicable only in respect of employees working in the same unit of Establishment. It is further submitted that as per Tamil Nadu Elementary Education Subordinate Service Rules, the Unit of Establishment in respect of teachers working in Panchayat Union Elementary and Middle School is the Panchayat Union concerned. Admittedly the petitioner came from another Unit of Establishment and therefore, the services of the other similar teachers born in the same Unit of Establishment cannot be compared. It is further submitted that as per the instructions issued by the 3rd respondent vide proceedings in Rc.16907/E.1.2016 dated 11.08.2016, the petitioner is not entitled for fixation of pay on par with one Manimegalai, BT Middle School HeadMaster, who hails same from the same Namakkal Unit of Establishment while the petitioner came from another Unit of Establishment of Muhunthamchavadi Panchayat Union and Kabilamalai Panchayat Union."



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10. Heard the learned counsels on either side.

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 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.



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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:

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



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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 Department.



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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



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stepped up with junior in accordance with G.O.No.25. The Government Order, therefore, prevails.

20. For the reasons stated above, this writ petition stands allowed. The respondents are directed 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 and but at any rate pass orders within the period of four months. No costs. Connected miscellaneous petition is closed.

21. The respondents have filed W.M.P.No.22217 of 2017 in W.P.No.12504 of 2017 to delete the first respondent. The first respondent is not directly connected with the impugned order passed and, therefore, the first respondent is deleted as party in this writ petition. Registry may carry out necessary amendment before issuing the order copy.

21.07.2023

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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