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WP.No.23878/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.23878/2017 & WMP.No.37237/2017

K.Nirmala

... Petitioner

Versus

1.The Government of Tamil Nadu
represented by the 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
Mohanur Panchayat Union, Namakkal District.

... Respondents

****R1 deleted by order in WMP.No.37237/2017
dated 09.08.2023**



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Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd and 4th respondents respectively issued in Na.Ka.No.16907/E1/2016 dated 11.08.2016 and in O.M.No.678/A3/2016 dated 09.03.2016 and quash the same and issue consequential direction to the respondents to step up the petitioner's pay to the level of his junior and fix the same at Rs.22,280/- as on 12.10.2009 as per G.O.Ms.No.25, P&AR Department, dated 23.03.2015 and at Rs.25,060/- as on 19.05.2012 as per Tamil Nadu Revised Pay Scale Rule, 1998 and as per Government Letter No.45113/paycell/2009-1 dated 17.08.2009 and grant arrears of pay and other consequential benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.V.Nanmaran, AGP

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking the records of the 4th respondent dated 09.03.2016 and the consequential order of the 3rd respondent dated 11.08.2016 and to quash both the orders and consequently to direct the respondents to step up the petitioner's pay to the level of her junior and fix the same at Rs.22,280/- as on 12.10.2009 in accordance with



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G.O.Ms.No.25, P&AR Department, dated 23.03.2015 and at Rs.25060/- as on 19.05.2012 as per Tamil Nadu Revised Pay Scale Rule, 1998 and as per Government Letter No.45113/paycell/2009-1 dated 17.08.2009 and grant arrears of pay and other consequential benefits.

- (2) The petitioner herein was originally appointed as a Secondary Grade Teacher on 15.07.1988 at Malayampalayam Palladam Panchayat Union, Tiruppur District. Thereafter, the petitioner was transferred to Mohanur Panchayat Union at Namakkal District on 22.11.1990 as Secondary Grade Teacher. On 04.02.2005, the petitioner was promoted as Primary School Headmistress. The pay in the post of Primary School Headmaster was fixed at Rs.5,900/- in the time scale of pay of Rs.5,300-150-8300 which is the ordinary grade scale of pay of Primary School Headmaster as per the pre-revised scale of pay introduced with effect from 01.01.1996 by the Government of Tamil Nadu. The petitioner had obtained higher qualification as B.A., B.Ed. and M.A. The petitioner claims that she was eligible to get selection grade scale of pay in the post of Primary School Headmaster on



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15.07.2008. The services rendered in selection grade scale of pay at lower post if it is the same to that of ordinary grade scale of pay to the promoted post, then according to G.O.Ms.No.210, dated 03.10.1987 as well as G.O.Ms.No.38, dated 05.01.2001, it had been provided that the service rendered in the selection grade scale of pay in lower post can be counted together for the purpose of awarding selection grade of pay in the promoted post. It had been further stated that the petitioner was promoted as B.T.Assistant on 01.06.2008. The petitioner was further promoted as B.Ed Middle School Headmistress on 02.03.2009 and posted at Panchayat Union Middle School, Oruvanthur Pudur in the same Panchayat Union. It was stated that the Government of Tamil Nadu had introduced G.O.Ms.No.234, Finance [Pay Commission] dated 01.06.2009 and the concept of Grade Pay was introduced. Thereafter, G.O.Ms.No.23 dated 12.01.2011 had been introduced by which, the pay of Primary School Headmaster was increased and fixed at Rs.9,300-34,800 + GP 4,600 with notional effect from 01.01.2006 and monetary benefits from 01.01.2011. The corresponding selection grade pay for the said ordinary grade scale of



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pay is Rs.15,600-39,100 + GP 5,400.

(3) It is the contention of the petitioner that if the petitioner had continued as Primary School Headmistress, then the petitioner would have obtained selection grade scale of pay. But however, even before being granted selection grade scale of pay, the petitioner was promoted as B.T.Assistant and as Middle School Headmistress. It is therefore, contended that the scale of pay was much less than that of the junior Mrs.S.Nagalakshmi who was promoted as Middle School Headmistress after getting her selection grade in Primary School Headmistress post. It was therefore, contended that though Mrs.S.Nagalakshmi was junior to that of the petitioner by service, since the said S.Nagalakshmi was awarded selection grade pay and then was promoted, she had a natural advantage in getting a higher scale of pay. It is also stated that the Government had introduced G.O.Ms.No.25, P&AR Department, dated 23.03.2015, to address the anomaly specifically in cases where juniors came to draw a higher scale of pay consequent to have obtained a selection grade in the junior post. By this particular Government Order, it was stated that



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when a junior gets a higher pay than the senior, then the anomaly will have to be rectified. Placing reliance on the aforementioned Government Order, the present writ petition has been filed.

- (4) In the counter affidavit, it had been stated by the respondents in paragraph No.5 as follows:-

"5.Regarding the averments in para 6 of the affidavit of the petitioner, it is submitted that she got promotion before attained selection grade post in the primary school Headmistress post and got promotion as B.Ed., Middle School Headmistress on 01.06.2008 and got more pay than to his junior. Whereas her junior got selection grade in the Primary School Headmistress on 08.07.2008 and promoted as B.Ed Middle School Headmistress 12.10.2009. At the time of pay revision vide G.O.Ms.No.23 dated 12.01.2011, he has not given any option to re-fix her pay in the promotive post."

- (5) A reading of the same, makes it clear that the petitioner had got promotion before the selection grade post in the Primary School Headmistress post and got promotion as B.Ed Middle School Headmistress on 01.06.2008. Therefore, at that time, her pay was



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more than the junior. However, the junior got selection grade as Primary School Headmistress and thereafter, was promoted as B.Ed Middle School Headmistress. Consequent to that promotion, her junior obtained a higher pay. Though it is mentioned that the petitioner had not given any option to refix the pay in the promoted post, no further details are given in the counter affidavit.

- (6) It had also been stated in the counter that the petitioner was working in one of the Panchayat Unions and having been transferred to another Union, cannot seek parity in pay. It had been stated that such parity can be extended only to those who are functioning within the same area. In this connection, paragraphs No.8 and 9 of the counter affidavit are extracted below:-

"8.Regarding the averments in ground a to j of the affidavit of the petitioner, it is submitted that in the order of the Director of Elementary Education vide Proceeding Rc.No.16907/E1/2016 dated 11.08.2016 the Director of Elementary Education has directed that to step up the pay of senior to the level of junior, one to be appointed in the same Panchayat Union and continuing in the same Panchayat Union, that the



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teacher who got an appointment in one Panchayat Union and get transfer to another Panchayat Union cannot claim the pay of junior working the transferred Panchayat Union. Based on that order the District Elementary Educational Officer, Namakkal rejecting the junior senior pay anomaly proposal vide their proceedings L.Dis.No.678/A3/2016 dated 09.03.2016.

9.Regarding the averments in ground k to v of the affidavit of the petitioner, it is submitted that after absorption of Panchayat union Schools to Government Schools the District Elementary Educational Officer is the appointing, transferring and promoting authority for the concerned Districts. Being the vast area and over strength of teachers in a Union, for dministration purpose every union is treated as unit for purpose of promotion and transfers. Based on that Union to Union transfer cases the date of entry into the new union is taken into account to fixing the seniority for promotion. Even though Mrs.S.Nagalakshmi is senior to her appointment by virtue of change Mrs.Nirmala entered to Mohanur earlier to Mrs.S.Nagalakshmi since she became senior in the Mohanur Union. In the order of the Director of Elementary Education vide



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proceeding RC.No.16907/E1/2016 dated 11.08.2016 the Director of Elementary Education has directed that to step up the pay of senior to the level of junior, one to be appointed in the same Panchayat Union and continuing in the same Panchayat Union, that the teacher who got an appointment in one Panchayat Union and get transfer to another Panchayat Union cannot claim the pay of junior working the transferred Panchayat Union. Based on that order the District Elementary Educational Officer, Namakkal rejecting the junior senior pay anomaly proposal vide their proceedings L.Dis.No.678/A3/2016 dated 09.03.2016."

- (7) It is therefore contended on behalf of the respondents that the petitioner is not entitled for stepping up of the pay. The primary reason is not on the ground of whether G.O.Ms.No.25 is applicable or not since there is no reference to the said Government Order in the counter ; but primarily on the ground that parity of pay can be brought in only when there is transfer within the same Union and cannot be sought if there is transfer outside the said Union.



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(8) The issue raised in the writ petition has been addressed in an earlier writ petition by me in WP.No.12504/2017 [*M.Jafur Ahmed Vs. The Government of Tamil Nadu rep.by its Secretary to Government, P&AR Department, Chennai-9 and 4 Others*]. By an order dated 21.07.2023, while addressing these issues, 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 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



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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



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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 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



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service with effect from the date of re-fixation 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. 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



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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."

- (9) The facts therein are exactly the same and also the issue of G.O.Ms.No.25, P&AR Department, dated 23.03.2015 had been examined by this Court. It had been stated that when there is pay anomaly, the pay of a senior should be fixed in the higher post equally to the post of the junior in the higher post with effect from the date of drawal of higher pay. The reasonings therein directly applies to the facts of the present case.



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(10) Therefore, I hold that the writ petition should be allowed and accordingly, it is **allowed**. The impugned orders of the 4th respondent and the 3rd respondent dated 09.03.2016 and 11.08.2016 respectively are set aside. 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.

(11) The respondents had also filed WMP.No.37237/2017 to delete the 1st respondent. The 1st respondent is not directly connected with the impugned order passed and therefore, the 1st respondent is **deleted as party in this writ petition**. The Writ Miscellaneous Petition stands **allowed**. Registry may carry out necessary amendment before issuing the order copy.

09.08.2023

AP
Internet : Yes



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To

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- 1.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
Mohanur Panchayat Union, Namakkal District.



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C.V.KARTHIKEYAN, J.,

AP

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