



W.P.No.18109 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.18109 of 2017
and
W.M.P.No.19652 of 2017

P.Santhi

.. Petitioner

VS

1.The Government of Tamilnadu
Rep. by the Secretary to Government
P & AR Department, Fort St. George,
Chennai-9

2.The Secretary to Government
School Education Department,
Fort St. George, Chennai-9.

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.27161 of 2017
dated 22.08.2023]*

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 respondents respectively issued in Na.Ka.



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No.16907/ E1/2016 dated 11.8.2016 and in O.M.No.680/A3/2016 dated 8.3.2016 and quash the same and issue a consequential direction to the respondents to step up the petitioners 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.25P and AR Department dated 23.3.2015 and grant arrears of pay and other consequential benefits.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mr.U.Baranidharan
Additional Government Pleader

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to the order of third and fourth respondents dated 11.08.2016 and 08.03.2016 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 his junior and fix the same at Rs.22280/- as on 12.10.2009 and grant arrears of pay and other consequential benefits.

2. In the affidavit filed in support of the writ petition, it had been stated by the petitioner that he joined as Secondary Grade Teacher on 08.07.1988 at Panchayat Union Elementary School, Singiliyan Combai, Namagiripattai Panchayat Union, Namakkal. The petitioner was transferred to Mohanur Panchayat Union, Namakkal



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District on 30.01.1990. The petitioner further was promoted as Primary School Headmaster and posted at Panchayat Union Primary School at Rasipalayam on 14.09.2004. The pay of the post in the Primary School Headmaster was fixed at Rs.6200/- 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., and M.Ed. The petitioner was eligible to get Selection Grade scale of pay in the post of Primary School Headmaster on 08.07.2008. The petitioner was also granted Selection Grade pay in the post of Secondary Grade Teacher on 11.07.1998. Thereafter, the petitioner was promoted as B.Ed Middle School Headmaster on 20.12.2007. This promotion was before the grant of further grade as Secondary Grade Teacher which the petitioner would have been entitled to. 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.



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4. The petitioner claims that had he continued as Primary School Headmaster without being promoted, he would have obtained Special Grade on 08.07.2008 in the pay band of Rs.15600 – 38100 + 5400 GP. But the petitioner was promoted prior to that fixation of that particular pay itself and, therefore, the pay was fixed at Rs. 9300 – 34900 + 4500 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



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Selection Grade pay in the earlier post, namely Primary School Headmaster.

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

8. It is contended that in the seniority list which was determined on 01.01.2007, the petitioner was in Sl.No.27 and the junior / S.Nagalakshmi was in Sl.No.35. This seniority is maintained. But since S.Nagalakshmi 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.



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9. A counter affidavit has been filed on behalf of the respondents. The facts relating to the initial employment of the 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 S.Nagalakshmi, 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 6 of the counter affidavit is extracted below:-

"6. Regarding the averments in para 7 to 12 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 & AR Department dated 23.03.2015 and subsequent orders are applicable only in respect of employees working the same unit of Establishment. It is further submitted that as per Tamilnadu 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 union of establishment and therefore the services of the similar teachers born in the same unit of establishment cannot be compared. It is further submitted that as per the instruction issued by the 3rd respondent vide proceedings in RC.No.16907/E1/2016 dated 11.08.2016, the petitioner is not entitled for fixation of pay on par with her junior."



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10. Heard the learned counsels on either side.

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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 / S.Nagalakshmi 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 S.Nagalakshmi, 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 S.Nagalakshmi 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 Additional Government Pleader 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



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senior pay is 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.27161 of 2017 in W.P.No.18109 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.

22.08.2023

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



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C.V.KARTHIKEYAN,J.

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