



W.P.Nos.32014 & 32019 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.32014 & 32019 of 2018
and W.M.P.No.16009 of 2019

M.M. Sakunthala

... Petitioner in both WPs

Vs.

1.The Government of Tamil Nadu,
Rep. by the Secretary to Government,
P & AR Department,
Fort St. George,
Chennai – 600 009.
WP.No.32014/2018

... 1st Respondent in

1.The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Finance Department,
Fort St. George,
Chennai – 600 009.
WP.No.32019/2018

... 1st Respondent in

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 Education Officer,



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Erode District, Erode.

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5.The Assistant Elementary Educational Officer,
Gobichettipalayam Panchayat Union,
Gobichettipalayam, Erode District.
WPs

... Respondents in both

Prayer in WP.No.32014/2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of 3rd & 4th respondents respectively issued in Na.Ka.No.16907/E1/2016 dated 11.08.2016 and in N.M.No.2643/A2/2016 dated 31.08.2016 and quash the same and issue a consequential direction to the respondents to step up the petitioner's pay to the level of her junior and fix the same at Rs.22,270 (Rs.17,770 + Rs.4500GP) as on 29.12.2012 and at Rs.26,790 (Rs.22,090 + Rs.4700GP) as on 19.08.2015, in the post of B.Ed Middle School Headmaster as per G.O.Ms.No.25 P and AR Department dated 23.03.2015 and as per Tamil Nadu Revised Pay Scale Rule 1998 and grant arrears of pay and other consequential benefits.

Prayer in WP.No.32019/2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of 4th respondent issued in O.M.No.2650/A2/2014 dated 14.08.2014 and in O.M.No.3217/A2/2017 dated 14.07.2017 and quash the same and issue a consequential direction to the respondents to protect higher pay of lower post i.e., in the post of Primary School Headmaster as on 30.12.2008 at Rs.24,870/-, in the scale of pay of Rs.15600-39100+5400 and fix the same in the scale of pay of



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Middle School Headmaster Post and grant consequential arrears of the pay to the petitioner.

For Petitioner : Mr.R. Saseetharan
(in both WPs)

For Respondents : Mr.K.H. Ravikumar
(in both WPs) Government Advocate

COMMON ORDER

The petitioner herein seeks for rectification of pay anomaly in comparison to her Junior namely G.K. Kamalaveni. The pay anomaly arose while the petitioner was working as a Middle School Headmistress on 02.06.2008 and her Junior, while serving as a Primary School Headmistress, was granted an incentive increment on 29.12.2012. Likewise, the petitioner's Junior was granted a Selection Grade Scale of pay on 25.11.2013.

2. The petitioner's junior got her pay fixation in the post of Middle School Headmaster after getting Selection Grade Scale of Pay namely Primary School Headmaster, owing to which, there arose a pay anomaly between the petitioner and her junior G.K. Kamalaveni. When the petitioner had applied to the fourth respondent herein seeking for



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rectification of the anomaly, the same was returned by a proceedings dated 31.08.2016 by observing that both the junior and the petitioner were appointed as a Secondary Grade Teacher in another Panchayat Union and thereafter, transferred to Gobichettipalayam Panchayat Union and since there was no pay fixation for the petitioner under G.O.Ms.No.23 dated 12.01.2011, the proposals were returned. Through another proceedings dated 11.08.2016, the fourth respondent had stated that for stepping up the pay of the senior to the level of junior, the petitioner has to be appointed in the same Panchayat Union and continue therein and therefore, cannot claim the pay of the junior, who was working in the transferred Panchayat Union. The petitioner challenges these orders dated 11.08.2016 and 31.08.2016 in WP.No.32014 of 2018.

3. Earlier when the petitioner had sought for protection of higher pay in the lower post, the fourth respondent had rejected her claim through his proceedings dated 14.08.2014. Thereafter, when the petitioner made a representation on 05.07.2017 to reconsider her case and count her service as Selection Grade Secondary Grade Teacher from 30.12.1998, together with service in the post of Primary School



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Headmaster. Her request was rejected by the fourth respondent on 14.07.2017. These orders dated 14.08.2014 and 14.07.2017 are put under challenge in WP.No.32019 of 2018.

4. The learned Government Advocate appearing for the respondents placed reliance on the averments in the counter-affidavit and further stated that as per G.O.Ms.No.1400/Finance (PC) Department dated 21.12.1978, the Unit of appointment must be the same for rectifying the pay anomaly of the senior on par with junior and therefore, there is no infirmity in the impugned orders.

5. The Government in G.O.Ms.No.25, Personnel and Administrative Reforms Department dated 23.03.2015, has ordered for rectification of the pay anomaly which arises owing to the grant of Special Grade and Selection Grade of Pay for the juniors at a later stage than that of the senior. By placing reliance on G.O.Ms.No.25 dated 23.03.2015, this Court in several Writ Petitions had ordered for rectification of the pay anomaly. In one such case in the case of '**B. Selvam & another Vs. The District Educational Officer & others**' passed by the Madurai Bench of



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this Court in '***W.P.(MD).No.24807 & 24808 of 2018 dated 21.09.2020,***

this ratio was upheld in the following manner:-

..... *“25.In order to clear the pay anomaly of this nature by stepping up the pay of the Juniors, G.O.MS No. 25, was issued by the Personnel and Administrative Reforms Department, dated: 23.03.2015, which has made it clear that, if any junior is getting higher pay because of the promotion, subsequently the junior got after getting conferment of Selection and Special Grade, whereas the seniors, who are promoted earlier to juniors, however, without the conferment of Selection Grade and Special Grade, is getting lower pay comparing with the junior, such pay has to be stepped up on par with the junior in the higher post with effect from the date of drawal of higher pay by the junior in the higher post. The said import has been clearly explained at Para-V of the said Government Order, which has already been extracted.*

26.Here in the case in hand, the petitioners, before getting Special Grade, since got promotion due to seniority, are getting lower pay, whereas the third respondent admittedly junior than the petitioners, since got or she was able to get conferment of Special Grade also, before she gets



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promotion, her pay has been stepped up, which is comparatively higher than these petitioners. Therefore, what has been meant at Para-V of the said Government Order, as extracted above, exactly the same situation, where the petitioners are now placed. Therefore, this Court feels that, the import of Government Order, especially, in the context of Para-V of G.O.Ms.No.25, as extracted above, i.e. the benefit envisaged therein, can very well be applied and can be extended to the petitioners.....”

6. The aforesaid extract is self-explanatory. Thus, this issue with regard to the rectification of pay anomaly has already been confirmed and therefore, the petitioner herein would be entitled to succeed on this ground.

7. The other reasoning adopted by the respondents that the pay anomaly cannot be rectified for persons who were appointed from different units, are concerned, even this aspect is being dealt with by this Court in various Writ Petitions including the case in ***'W.P.(MD).No.742 of 2018 dated 07.02.2018*** in the following manner:-

..... “4. The learned Counsel appearing for the petitioner



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drew the attention of this Court to the proceedings dated 25.05.2017, issued by the District Elementary Educational Officer, Tuticorin whereby, a similar pay anomaly in the case of one Mrs.Rani was set right. The petitioner's case is identical. However, the first respondent declined to accept the request of the petitioner.

5. The first respondent has proceeded on the footing that since the petitioner got transferred from Pudukottai to Kayathar Union, it is not possible to set right the pay anomaly. The reason assigned by the first respondent in the impugned order is un-sustainable in law. Even though the writ petitioner came to Kayathar Union by way of transfer and has to be placed at the bottom of the seniority list, the fact remains that the Shanthi got appointment as Secondary Grade Teacher at Kayatharu Union only later in point of time. Therefore, by no stretch of imagination the said Shanthi could have stolen a march over the petitioner. The order impugned in this writ petition is quashed. The respondents are directed to set right the pay anomaly and step-up the pay of the petitioner on par with said Shanthi. Such an order shall be issued by the respondents within a period of eight weeks.....”



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8. The aforesaid extract is self-explanatory. Thus, the stand taken by the respondents by placing reliance on an outdated Government Order in G.O.Ms.No.1400 dated 21.12.1978, which has been watered down by this Court in various other decisions, cannot be sustained.

9. In the light of the above findings, the impugned order passed in WP.No.32014 of 2018 on the file of the third and fourth respondents respectively, dated 11.08.2016 and 31.08.2016, are hereby set aside, with a consequential direction to the second and third respondents to pass appropriate orders, to step up the petitioner's pay to the level of his junior namely G.Kamalaveni, Headmistress, Middle School, in accordance with G.O.Ms.No.25 Personnel and Administrative Reforms Department dated 23.03.2015, within a period of four (4) weeks from the date of receipt of a copy of this order and disburse all the arrears of salaries to her. Accordingly, WP.No.32014 of 2018 stands allowed. In view of the decision in WP.No.32014 of 2018, the prayer sought for in WP.No.32019 of 2018, stands rejected and the same is closed accordingly. No costs. Connected miscellaneous petition is closed.

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Speaking/Non-speaking order

Neutral Citation: Yes/No

Index: Yes/No

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M.S.RAMESH,J.

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To

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