



W.A.(MD)No.932 of 2013

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 07.06.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

**AND**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A.(MD)No.932 of 2013**

S.Vijayakumar

... Appellant/Writ Petitioner

Vs.

- 1.The Secretary to Government of Tamil Nadu,  
School Education Department,  
Saint College Fort, Chennai.
- 2.The Director of Elementary Education,  
Chennai – 600 006.
- 3.The District Elementary Educational Officer,  
RMS Road, Madurai – 1.
- 4.The Assistant Elementary Educational Officer,  
Thirupparankundram Block,  
Tirunagar, Madurai – 6.
- 5.The Additional Assistant Elementary Educational Officer,  
Thirupparankundram Block,  
Tirunagar, Madurai – 6.
- 6.Ms.Anbumozhi  
Headmistress,  
Panchayat Union Primary School,



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Tirupparankundram Main – 625 005,  
Madurai.

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7.K.Sathiya Bama,  
Headmistress,  
Panchayat Union Primary School,  
Koodalmalai, Tirupparankundram,  
Madurai – 625 005.

... Respondents/Respondents

**PRAYER:** Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 05.07.2013 made in W.P.(MD)No.9261 of 2013 on the file of this Court.

|                           |                                                |
|---------------------------|------------------------------------------------|
| For Appellant             | : Mr.G.Prabhu Rajadurai                        |
| For Respondents<br>1 to 5 | : Mr.A.Kannan<br>Additional Government Pleader |
| For Respondents 6 & 7     | : No Appearance                                |

### **JUDGMENT**

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal has been directed against the order of the Writ Court dated 05.07.2013 made in W.P.(MD) No.9261 of 2013.

2. The appellant was the petitioner before the Writ Court, who is a Tamil Pandit, working in the respondent Department i.e., the School run by the State of Tamil Nadu.



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3. Consequent upon the Government Order in G.O.Ms.166, School Education Department, dated 07.06.1999, the Additional Assistant Elementary Educational Officer, Tirupparankundram, Madurai, i.e, the 5<sup>th</sup> respondent in the Writ Petition had issued a consequential proceedings on 22.05.2013. Challenging those proceedings, including the impugned Government Order i.e., G.O.Ms.No.166, School Education Department, dated 07.06.1999, (hereinafter referred to as G.O.Ms.No.166) moved the said Writ Petition in W.P.(MD) No.9261 of 2013, seeking to quash the said Government Order and the consequential order.

4. The case projected by the appellant / writ petitioner before the Writ Court was that, he was a Tamil Pandit and as per the pay revision, that has been issued by the State Government through G.O.Ms.No.427 dated 28.08.1998, the Middle School Headmaster pay was fixed at Rs.5,900 – 9,900, in respect of the Graduate Teacher as well as Tamil Pandit, it was fixed at Rs.5,500 – 9,000 and in respect of the Primary School Headmaster it was fixed at Rs.5,300 – 8,300. Like that for the Secondary Grade / Vocational Teacher / Physical Education Teacher, it was fixed at Rs.4,700 – 7,000.



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5. Prior to these fixation, the other three categories i.e., the Primary School Headmaster, Tamil Pandit and Graduate Teacher, all were under the same scale of pay, though come from different stream.

6. The next promotional avenue of these three categories of teachers is the Middle School Headmaster, in other words, these three categories are the feeder categories for the promotion to the post of Middle School Headmaster.

7. Hitherto, i.e., till the revised pay scale has been fixed for these categories, since they were under same scale of pay and same feeder categories, promotions were given based on the seniority in the respective cadre to Middle School Headmaster.

8. However, subsequent to the pay fixation, under which, the graduate teachers and Tamil Pandits, like the petitioner / appellant, since the pay has been fixed at the rate of 5,500 – 9,000, whereas in respect of Primary School Headmasters it was fixed at 5,300 – 8,300 i.e., Rs200/- less than the Tamil Pandit / Graduate Teacher, by virtue of Rule 36(a) of the Tamil Nadu State



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and Subordinate Service Rules, especially, under the second proviso, the Graduate Teachers and Tamil Pandits, by virtue of the higher pay i.e., 5,500 will march over the Primary School Headmasters, as their pay was fixed at 5,300 for the promotion to the post of Middle School Headmaster.

9. The resultant situation was that, though several thousands of Primary School Headmasters were waiting on the roll to get promotion to the post of Middle School Headmasters and the vacancies that arise in the Middle School Headmaster posts in every Panchayat Union School is very minimal and even in those vacancies, the Primary School Headmasters would never be considered for promotion if second proviso to Rule 36(a) of Tamil Nadu State and Subordinate Services Rules is pressed into service, whereas all such promotions would be garnered either by the Tamil Pandits or the Graduate Teachers like the appellant / petitioner.

10. This situation was considered by the Government, of course, on the basis of the report submitted by the Director of School Education and ultimately, the Government has taken a decision by invoking the power under Rule 48 of the said Rules under which the State Government /



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Governor is empowered to give relaxation to any of such Rules i.e., Tamil Nadu State and Subordinate Services Rules and accordingly, the second proviso to Rule 36(a) having been given the relaxation, the old system that was prevailing for several decades has been pressed into service.

11. Under the old system, the Graduate Teacher, Tamil Pandit Primary School Headmaster were put under the same pedestal for the purpose of promotion as one feeder category to the post of Middle School Headmaster.

12. Now, by virtue of the difference of pay, if second proviso to 36(a) is pressed into service, those Primary School Headmasters would not be in a position to get promotion because the Rs.200/- less pay since has been fixed by G.O.Ms.No.424, they have been under the disadvantageous position. This has been realised, that is why, the Government has come forward to take a decision, giving relaxation to second proviso to Rule 36(a) and by thus issued G.O.Ms.No.166 as referred to above.



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13. The said G.O. was issued in 1999 and had been in vogue and put into service for several years. While that being so, expecting such a promotion, the appellant / petitioner under the second proviso to Rule 36(a) sought for such promotion, which has been negated by the proceedings issued by the 5<sup>th</sup> respondent, therefore, that triggered the appellant / petitioner to challenge the G.O.Ms.No.166 itself, stating that, such kind of relaxation ought not to have been granted by the Governor or State Government invoking the power under Rule 48 to second proviso to Rule 36(a).

14. The said challenge made against G.O.Ms.166 by the appellant / petitioner was considered by a learned Judge of the Writ Court in the said W.P.(MD) No.9261 of 2013 and ultimately, the learned Singe Judge passed an exhaustive order on 05.07.2013, which is impugned herein.

15. Assailing the impugned judgment, Mr.G.Prabhu Rajadurai, the learned counsel appearing for the appellant would submit that, the relaxation, if at all to be made by invoking the power under Rule 48, such a relaxation should not be to the disadvantageous of any sector of employees,



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who had hitherto been in a position to enjoy the fruits of the erstwhile position.

16. By relying upon this position, the learned counsel would contend that, insofar as the Tamil Pandits and Graduate Teachers like the appellant / petitioner are concerned, atleast from 1988, they had been enjoying the higher pay scale i.e., 5,500 – 9,000 comparing to the Primary School Headmasters, whose scale of pay was fixed at Rs.5,300 – 8,300 only. Therefore, by virtue of the second proviso to Rule 36(a), they had to be considered for the purpose of promotion, since the persons who get higher pay will get a priority to get promotion if three or four categories are put in the same scale of feeder category.

17. This kind of benefit accrued on the persons like the appellant / petitioner as a Tamil Pandit, if at all to be taken away by giving relaxation to second proviso to Rule 36(a) that should not have been made disadvantageous to the persons who are enjoying the same, even by invoking rule 48 of the said Rules.



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18. We have also heard Mr.A.Kannan, learned Additional Government Pleader, appearing for the respondents 1 to 5, who would submit that, merely because of Rs.200/- difference of pay between the Graduate Teachers / Tamil Pandit and Primary School Headmasters, more than 25,000 Primary School Headmasters, who are on the roll cannot be deprived the promotional avenue to the post of Middle School Headmaster.

19. In most of these cases, these kind of Primary School Headmasters would not get any promotion or earn any promotion for the whole career as Primary School Headmaster and in this position itself they would reach the superannuation. That kind of injustice cannot be done to a large number of teaching personalities like the Primary School Headmasters, that is why, the 25 : 1 ratio had been adopted by taking into account the availability of Primary School Headmasters and Graduate Teachers, which is 25,000 : 1,000 and that figure is mentioned in G.O.Ms.No.166. Therefore, the 25 : 1 was sought to be adopted.

20. Therefore, the learned Additional Government Pleader supports the view taken by the learned Judge as reflected in the impugned order in

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support of the impugned G.O. before the Writ Court i.e., G.O.Ms.No.166.

Hence, he wants the order passed by the learned Judge, which is impugned herein, to be confirmed by rejecting the plea raised by the appellant in this intra-Court appeal.

21. We have given our anxious consideration to the rival submissions made by the learned respective counsel appearing for the parties. We have also gone through the import of G.O.Ms.No.166 as well the order impugned passed by the learned Judge of the Writ Court.

22. The learned Judge in the following paragraphs considered the issues in threadbare:

“21. Rule 36(a) of the Tamil Nadu State and Subordinate Service Rules reads as follows:-

Promotion---No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category;

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the Service, has been



promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category;

Provided further that if scales of pay in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category, are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered.

22. Perusal of G.O.Ms.No.166, School Education Department, dated 07.06.1999 shows that earlier, for promotion to the post of Middle School Headmasters/Headmistresses (B.Ed Grade), Headmasters/Headmistress in Middle Schools (Secondary Grade) or Graduate Teachers/Tamil Pandits/Elementary School Headmasters/Headmistresses, all the above teachers in the pay scale of Rs.1400-2600/- were considered. They were in the same pay scale. Subsequent to the Government order No.427, dated 28.08.1998, the scales of pay have been revised as follows:-

- 1) Middle School Headmaster 5900-9900
- 2) Graduate Teacher/Tamil Pandit 5500-9000
- 3) Primary School Headmaster 5300-8300



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4) Secondary Grade/Vocational Teacher/Physical Education Teacher 4500-700

As per the above G.O., the marginal difference in the scale of pay between (2)Graduate Teacher/Tamil Pandit and (3)Primary School Headmaster was Rs.200/-.

23. As per the procedure followed in Elementary Education Department, Graduate Teachers/Tamil Pandits/Primary School Headmaster, who possess the required qualification for the post of Middle School Headmaster (B.Ed) were considered for promotion to the abovesaid post, on the basis of seniority among them, as all the posts carried the same scale until a revision was made in the pay scale, as stated supra.

24. Considering the difficulties in granting promotion to the post of Middle School Headmaster/Headmistress from the various feeder category posts, namely, Graduate Teacher/Tamil Pandit/Primary School Headmaster hitherto, followed and the likelihood of deprivation of the chances of promotion for one section of the feeder category, namely, Elementary School Headmasters/Headmistresses possessing the required qualification, for being considered to the post of Middle School Headmasters/Headmistresses (B.Ed Grade), and taking note of the large number of Elementary School Headmasters, as against Graduate Teachers, in the ratio of 25:1 [25000 : 1000 figure



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mentioned in G.O.Ms.No.166, School Education Department, dated 07.06.1999, as on the date of issuance of the said G.O] and also taking note of the fact that, only few vacancies of the Headmaster posts (B.Ed Grade) would arise in a Panchayat Union every year, and also the problems that would arise, if any deviation is made from the long practice and procedure, followed in the matter of promotion to the post of Middle School Headmaster/Headmistress (B.Ed Grade) and also taking note of the fact that the difference in the pay, between Graduate Teacher/Tamil Pandit and that of Primary School Headmaster was only a meagre amount of Rs.200/-, the Government, in exercise of the powers under rule 48 of the Tamil Nadu State and Subordinate Service Rules, have relaxed the second proviso to rule 36(a), in favour of Elementary School Headmasters/Headmistresses. Proviso to the abovesaid rule states that if scales of pay in the feeder categories are different, persons holding posts carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category, are available, then persons holding post carrying the next higher scale of pay in the descending order in other feeder categories shall be considered.

25. Reading of rule 48 of the Tamil Nadu State and Subordinate Service Rules shows that notwithstanding



anything contained in the Tamil Nadu State and Subordinate Service Rules or in the Special Rules, the Governor shall have the power to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have served, as aforesaid or any candidates or class of candidates for appointment to a service in such a manner as may appear to him to be just and equitable;

Provided that if any such rule is applicable to the case of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them, then that provided by that rule.

26. Reading of rule 48 of the Tamil Nadu State and Subordinate Service Rules makes it clear that the Governor of Tamil Nadu has got the power to exempt the applicability of any provision of the Tamil Nadu State and Subordinate Service Rules or the Special Rules, as the case may be, to any class of persons serving in the civil capacity under the Government of Tamil Nadu for appointment to a service, in such manner as may appear to him, as just and equitable. The reasons for issuing G.O.Ms.No.166, School Education Department, dated 07.06.1999 are extracted hereunder:-

...

27. Reading of clauses 5 and 6 of G.O.Ms.No.166,



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School Education Department, dated 07.06.1999, makes it clear that the decision of the Governor is just and equitable, taking note of the procedure followed for several years, in the matter of promotion to the post of Middle School Headmaster. In G.O.Ms.No.427, School Education Department, dated 28.08.1998, only a marginal difference of Rs.200/- in the pay scales of Graduate Teachers/Tamil Pandits and Primary School Headmasters, has been ordered.

28. G.O.Ms.No.166, School Education Department, dated 07.06.1999, has been given effect from 01.01.1996 onwards. Thus it is evident from the G.O., the procedure is in vogue for nearly 17 years and that preparation of a combined seniority of Tamil Pandits/Headmasters/Headmistresses of Middle Schools (Secondary Grade)/Headmasters/Headmistress of Primary Schools/Graduate Teacher in Elementary Education Department, in the State of Tamil Nadu, for nearly 17 years, for promotion to the post of Middle School Headmasters/Headmistresses (B.Ed Grade). Seniority is prepared on the basis of general seniority of Elementary School Headmasters/Tamil Teachers/B.Ed qualified Teachers, without considering the difference in the scale of pay between the different categories and the date of joining in the feeder category post is the date taken into consideration for the purpose of preparing the combined seniority and that the said



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procedure cannot be unsettled. Exemption from applicability of rule 36(a) of the Tamil Nadu State and Subordinate Service Rules, has been made in favour of a class of persons, Viz., Elementary School Headmasters, on the basis of the principle 'just and equitable' as per rule. The word 'just' figures in many enactments, so also, the word 'equitable'. In the context of the words 'just and equitable' used in rule 48 of the Tamil Nadu State and Subordinate Service Rules, enabling the Governor to relax the applicability of any of the general rules or special rules to any person or class of persons, working in any civil capacity, this Court deems it fit to consider what 'just' and 'equitable' means."

23. After having analysed all these aspects as quoted herein above, the learned Judge has come to a conclusion, of course, rightly that, there is no manifest illegality in the impugned order i.e., G.O.Ms.No.166 as well as the order of the Additional Assistant Elementary Educational Officer, rejecting the request of the appellant / petitioner for revision of seniority and accordingly, the said Writ Petition was dismissed.

24. The reasonings given by the learned Judge is perfectly in tune with the rule position.

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25. No doubt, the second proviso to Rule 36(a) makes it clear that if scales of pay in the feeder categories are different, the persons carrying a higher scale of pay in the feeder category shall be considered first. If the said rule, if it is applied in the present case in hand, i.e., giving promotion to the post of Middle School Headmaster for Tamil Pandit by virtue of Rs.200/- higher pay that they are enjoying over the Primary School Headmaster, then the resultant situation would be disastrous insofar as 25,000 and odd Primary School Headmasters, as their further promotional avenues would be completely shattered because of lesser pay of Rs.200/- alone.

26. Therefore, this situation having been visualized by the State Government, they had come forward to pass G.O.Ms.No.166, of course, by exercising the power of the Governor for giving relaxation to any part of the rules under Rule 48 of the said Rules.

27. Under such relaxation power, the import of second proviso to Rule 36(a) has been relaxed only for the purpose of giving relaxation to this category of people to the post of Middle School Headmaster.

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28. Insofar as the powers vested with the Governor / State Government under Rule 48 is concerned, there is no difficulty and that has not been questioned by the appellant / petitioner, even before the Writ Court.

29. Once the power is vested under the Rule, that can be exercised by the State Government in the name of Governor. In exercising such relaxation power, if it is arbitrarily exercised, which shocks the conscience of the Court, then only, the question will arise as to whether the State Government or Governor has invoked their power of relaxation in a right direction.

30. Here, in the case in hand, the situation has been completely explained, whereunder 25,000 and odd people would be denied the promotion, whereas, very handful of people in the name of either Tamil Pandit or Graduate Teacher would be marching over these 25,000 people for getting the promotion to the post of Middle Schoold Headmaster.



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31. Such a situation at any cause be avoided, otherwise, there will be a heavy unrest in the minds of the 25,000 and odd Primary School Headmasters as their morale would get defeated as for the whole career before superannuation, they would not see the light of the day for getting the promotion to the next avenue i.e., Middle School Headmaster. This situation has been completely visualized and the State Government has come forward to make such relaxation by invoking the powers under Rule 48 of course rightly, and therefore, absolutely there has been no scope for any infirmity in issuing the G.O.Ms.No.166, which is impugned before the Writ Court.

32. However, the G.O. was issued on 07.06.1999, thereafter, it has been in vogue and has been pressed into service for several years, however, this Writ Petition has been filed in 2013 i.e., after 14 years, even for a limited reason of laches also, this kind of prayer cannot be sought for by the petitioner and therefore, on that ground also, the learned Judge considered the plea raised by the petitioner / appellant before the Writ Court and rejected the same. The said approach adopted by the learned Judge in deciding the issue raised before him through the impugned judgment, in the



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considered opinion of the Court is perfectly right and also in consonance with the Rule position, therefore, the said order impugned does not warrant any interference from us.

33. In the result, the Writ Appeal fails and the same is dismissed.

However, there shall be no order as to costs.

**(R.S.K., J.) & (K.K.R.K, J.)**  
**07.06.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
SJ

To

- 1.The Secretary to Government of Tamil Nadu,  
School Education Department,  
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- 2.The Director of Elementary Education,  
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5.The Additional Assistant Elementary Educational Officer,  
Thirupparankundram Block,  
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**R.SURESH KUMAR, J.**

**AND**

**K.K.RAMAKRISHNAN, J.**

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