



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.09.2023

PRONOUNCED ON : 12.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.6445, 6619, 6620 & 6621 of 2023

1.W.P(MD)No.6445 of 2023:-

Suhrith

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

2.The District Elementary Education Officer,
(Formerly District Educational Officer),
Ozhukinasery,
Nagercoil.

3.The Block Educational Officer,
(Formerly Assistant Elementary Educational Officer),
Melpuram Educational Union @ Kuzhithurai,
Kanyakumari District – 629 163. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order in Oo.Mu.No. 990/A3/2022 dated 02.11.2022 passed by the third respondent and quash the same as illegal and consequently direct the respondents 2



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 02.02.2022 within the time stipulated by this Court.

For Petitioner : Mr.PM.Vishnuvarthanan

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

2.W.P(MD)No.6619 of 2023:-

M.Subairkutty ... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

2.The District Elementary Education Officer,
(Formerly District Educational Officer),
Ozhukinasery,
Nagercoil.

3.The Block Educational Officer,
(Formerly Assistant Elementary Educational Officer),
Melpuram Educational Union @ Kuzhithurai,
Kanyakumari District – 629 163. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order in Oo.Mu.No. 261/A2/2022 dated 03.11.2022 passed by the third respondent and quash the same as illegal and consequently direct the respondents 2



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 14.03.2022 within the time stipulated by this Court.

For Petitioner : Mr.PM.Vishnuvarthanan

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

3.W.P(MD)No.6620 of 2023:-

S.Sathi Kumari

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

2.The District Elementary Education Officer,
(Formerly District Educational Officer),
Ozhukinasery,
Nagercoil.

3.The Block Educational Officer,
(Formerly Assistant Elementary Educational Officer),
Melpuram Educational Union @ Kuzhithurai,
Kanyakumari District – 629 163. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order in Oo.Mu.No. 989/A3/2022 dated 02.11.2022 passed by the third respondent and quash the same as illegal and consequently direct the respondents 2



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 02.02.2022 as per the proceedings of the second respondent in Muu.Mu.No.1786/Aa1/2017, dated 25.05.2017.

For Petitioner : Mr.PM.Vishnuvarthanan

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

4.W.P(MD)No.6621 of 2023:-

V.O.Ramani Devi

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

2.The District Elementary Education Officer,
(Formerly District Educational Officer),
Ozhukinasery,
Nagercoil.

3.The Block Educational Officer,
(Formerly Assistant Elementary Educational Officer),
Melpuram Educational Union @ Kuzhithurai,
Kanyakumari District – 629 163. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order in Oo.Mu.No. 118/A2/2022 dated 03.11.2022 passed by the third respondent and



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

quash the same as illegal and consequently direct the respondents 2 and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 02.02.2022 within the time stipulated by this Court.

For Petitioner : Mr.PM.Vishnuvarthanan

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

COMMON ORDER

W.P(MD)No.6445 of 2023 has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 02.11.2022 passed by the third respondent and consequently direct the respondents 2 and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 02.02.2022 within the time stipulated by this Court.

2.W.P(MD)No.6620 of 2023 has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 02.11.2022 passed by the third respondent and quash the same as illegal and consequently direct the respondents 2 and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 02.02.2022 as per the



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

proceedings of the second respondent in Muu.Mu.No.1786/Aa1/2017, dated 25.05.2017.

3.W.P(MD)No.6621 of 2023 has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 03.11.2022 passed by the third respondent and consequently direct the respondents 2 and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 02.02.2022 within the time stipulated by this Court.

4.W.P(MD)No.6619 of 2023 has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 03.11.2022 passed by the third respondent and consequently direct the respondents 2 and 3 to re-fix the petitioner salary as on 01.10.2018 on the basis of the petitioner's representation dated 14.03.2022 within the time stipulated by this Court.

5.Heard Mr.PM.Vishnuvarthanan, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents and perused the materials available on record.



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

WEB COPY

6.The case of the petitioner in W.P(MD)No.6445 of 2023 is as follows:-

The petitioner was appointed as a Secondary Grade Teacher in Government Higher Secondary School, Palukal, Kuzhithurai Union on 03.10.1996 and got a selection grade in the cadre of Secondary Grade Teacher on 03.10.2006. Subsequent to his appointment to Kuzhithurai Union, one K.S.Deepa Jeya Sree was appointed as Secondary Grade Teacher in Thiruvattar Union on 07.10.1996. After that, the petitioner was promoted as Primary School Headmaster at Maharajapuram, Suchindram Union, vide proceedings dated 23.06.2014 with effect from 01.10.2014. The petitioner's junior K.S.Deepa Jaya Sree got a special grade after selection grade in the cadre of Secondary Grade Teacher on 08.10.2016 and thereafter, she was promoted to the post of Primary School Headmaster and posted at Kallanguli Government Primary School under Padmanabhapuram Revenue Division. In the meanwhile, the petitioner was further transferred and presently working at Government Primary School, Kadayal on 18.08.2015 which comes under Padmanabhapuram Revenue Division. However, there is a huge difference in the basic pay

7/32



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

between the petitioner and his junior K.S.Deepa Jaya Sree to such an extent that as on 01.10.2018, there was a difference in scale of pay of Rs.5,400/- between the petitioner and his junior K.S.Deepa Jaya Sree. The petitioner made several representations to the higher officials ie., the second respondent through proper channels to rectify the difference in scale of pay between him and his junior K.S.Deepa Jaya Sree in the same Kuzhithurai Educational District. In the meanwhile, another person, namely T.Rani also made a representation to the authorities to re-fix her salary as on 30.06.2012 in comparison with her junior one S.Shanthi. That was duly considered, and the pay anomaly between T.Rani and S.Shanthi was rectified, doing away with the pay parity between those two persons. However, the petitioner's continuous requests were not considered by the respondents and he is legally entitled to the difference in pay and he further made a detailed representation on 08.12.2020 to the second respondent through the third respondent requesting to re-fix his scale of pay as on 01.10.2018 seeking pay parity in comparing with the scale of his junior K.S.Deepa Jaya Sree and the petitioner made another representation on 02.02.2022 to the third respondent in this regard and on 02.11.2022, the impugned rejection order came to be passed by the third respondent. Challenging the same, this Writ Petition came to be filed.



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

WEB COPY

7.The case of the petitioner in W.P(MD)No.6619 of 2023 is as follows:-

The petitioner was appointed as a Secondary Grade Teacher in Government High School, Puliyoor Salai, Kuzhithurai Union on 04.10.1996 and got a selection grade in the cadre of Secondary Grade Teacher on 03.10.2006. Later he was promoted as Primary School Headmaster at Shenbagaraman Pudur, Nagercoil Union, vide proceedings dated 23.06.2014. Thereafter, he was transferred to Government BFM Primary School Headmaster at Devicode. He is also senior to the said K.S.Deepa Jaya Sree mentioned supra and there is a difference in scale of pay between the petitioner and the said K.S.Deepa Jaya Sree as on 01.10.2018 and hence, the petitioner sought for pay parity with his junior as on 01.10.2018 by his representation, dated 14.03.2022. However, the same came to be rejected vide proceedings of the third respondent on 03.11.2022. Challenging the same, this Writ Petition came to be filed.



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

WEB COPY

8.The case of the petitioner in W.P(MD)No.6620 of 2023 is as follows:-

The petitioner was appointed as a Secondary Grade Teacher in Government Thangavilasam Primary School, Palukal, Kuzhithurai Union on 03.10.1996 and got a selection grade in the cadre of Secondary Grade Teacher on 03.10.2006. Later, she was promoted to the post of Headmaster of Government Primary School at Mahadhanapuram, Suchindram Union vide proceedings dated 23.06.2014. Further, she was transferred to Arumanai Government Primary School as Headmaster. One K.S.Deepa Jaya Sree is much junior to the petitioner and her scale of pay is much higher than the petitioner herein as on 01.10.2018 and seeking pay parity with her junior, she made detailed representations, dated 08.12.2020 and 02.02.2022. Rejecting her request, the third respondent passed the impugned order, dated 02.11.2022. Challenging the same, this Writ Petition came to be filed.



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

9.The case of the petitioner in W.P(MD)No.6621 of 2023 is as follows:-

The petitioner was appointed as a Secondary Grade Teacher in Government Middle School, Seemankalai, Kuzhithurai Union on 03.10.1996 and got a selection grade in the cadre of Secondary Grade Teacher on 03.10.2006. Later she was promoted as Primary School Headmaster at Kanyakumari, Suchindram Union, vide proceedings dated 23.06.2014. Thereafter, she was transferred to Maruthancode Government BV Primary School as Headmaster. She is also senior to the said K.S.Deepa Jaya Sree mentioned supra and there is a difference in scale of pay between the petitioner and the said K.S.Deepa Jaya Sree as on 01.10.2018 and hence, the petitioner sought for pay parity with his junior as on 01.10.2018 by her representation, dated 02.02.2022. However, the same came to be rejected vide proceedings of the third respondent on 03.11.2022. Challenging the same, this Writ Petition came to be filed.

10.The second respondent had filed counter-affidavits in all the Writ Petitions.



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

WEB COPY

11.The learned Government Advocate appearing for the respondents submitted that though the said K.S.Deepa Jaya Sree is junior to the writ petitioners by date of appointment in service for the purpose of re-fixing the salary of a Government servant on par with juniors at the first instance, it has to be clarified whether the persons claiming to be seniors to one junior are actually senior by all means. In all these Writ Petitions, the petitioners were originally appointed as Secondary Grade Teachers, who were granted with selection grade in the post of Secondary Grade Teachers, the writ petitioners were transferred to Nagercoil Revenue District and later all the writ petitioners were transferred back to Padmanabhapuram Revenue District. As far as the District of Kanyakumari is concerned, each Revenue District shall be a unit. Once a person is transferred from one Revenue Division to another Revenue Division, on such transfer, the said person would lose his division seniority. As a result of which, the transferee would be placed at the bottom of seniority in the new unit/Division where they were transferred and posted. Accordingly, on transfer to the School in Nagercoil Revenue District, the writ petitioners herein lost their seniority and were subsequently transferred to the Schools under Padmanabhapuram Revenue Division and such a transfer back to Padmanabhapuram Revenue Division will



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

not restore their original seniority and their last seniority will be always last. As a result of which, they cannot claim any pay parity with their junior K.S.Deepa Jaya Sree. That apart, the junior K.S.Deepa Jaya Sree was promoted on 18.06.2018 after getting her special grade on 08.10.2016 in the Secondary Grade Teacher post, but the petitioners were promoted without getting a special grade in the post of Secondary Grade Teachers as Primary School Headmaster.

12.Further, the learned Government Advocate relied upon the order passed by this Court in **W.P(MD)No.14308 of 2021, dated 07.11.2022 [K.Saratha Vs. The Commissioner of School Education and others]** and the relevant portion to this case is extracted as follows:-

"7. There is no dispute that the writ petitioner joined service earlier in point of time. However, the writ petitioner who joined in Kadavur Union got transferred on request basis to Thanthoni Union on 25.06.1993. Mrs.V.Rajakumari had originally joined in Paramathi Union and she also got transferred to Thanthoni Union on request basis. However, Mrs.Rajakumari had joined Thanthoni Union on 10.06.1992 itself. Thus, when the writ petitioner joined



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

Thanthoni Union, Mrs.V.Rajakumari was already serving in the said Union. Mrs.Rajakumari had joined service on 25.06.1991 and her probation was declared to have been completed on 24.06.1993. In fact, in this regard, a mistake was committed and it was later rectified. It is well settled that when an employee obtains request transfer to another union, he or she is placed at the bottom of the seniority. To repeat, the petitioner joined Thanthoni Union only on 25.06.1993. Probation of Mrs.V.Rajakumari was declared with effect from 24.03.1996 itself. Therefore, the petitioner was placed below Rajakumari in the seniority list. The case of the petitioner is anchored on the claim that Rajakumrai is junior to her. Once it is seen that it is not so, her case is undermined.

8. The learned Additional Government Pleader has produced copy of the seniority list of the Secondary Grade Teachers working in Thanthoni Union as on 01.01.2003. Mrs.V.Rajakumari is figuring at Serial No.82. The writ petitioner/Mrs.K.Saratha is figuring at Serial No. 85. There is yet another fortuitous circumstance. When the petitioner obtained B.Ed degree in 1996 and MA degree in 2001, during the relevant time, incentive increment given was rather nominal. On the other hand, when Rajakumari acquired B.Ed degree on 28.12.2011, incentive increment was substantial as it was made reference to the revised pay scale. Mrs.V.Rajakumari was lucky and was able to get higher incentive increment.



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

She was already working in Thanthoni Union, when the writ petitioner joined service. When incentive increment was given to Rajakumari, it was higher. For these two reasons, the pay of Mrs.Rajakumari was placed at a higher level. The writ petitioner cannot have any legal grievance. The impugned order has been correctly passed. It does not call for any interference."

13.The learned Government Advocate further relied upon the order passed by this Court in **W.P.No.41622 of 2016, dated 07.11.2022 [M.P.Pandian Vs. The Personnel & Administrative Reforms (FR.IV) and others]** and the relevant portion of which is extracted as follows:-

"5. As per the Tamil Nadu Educational Subordinate Service Rules and the Government Orders issued thereunder, the list of seniority of teachers are being prepared Block level for the purpose of all service benefits such as promotion, transfer on counselling etc., Hence, the question of Senior and Junior will arise only in respect of teachers working within the Union concerned, which is the Unit of Establishment. Hence, the contention of the petitioner is untenable.

6. The provision contained in G.O.(Ms).No.25, Personnel and Administrative Reforms Department



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

dated 23.03.2015 is applicable only to the teachers working in the same Unit of Establishment in respect of list of seniority has been adopted. Admittedly, the comparer Smt.Kokilambal is working in Pollachi Union, which lies in another Unit of Establishment. Thus, the claim of the writ petitioner for stepping up of pay was rightly rejected.

7. This Court is of the considered opinion that the stepping up of pay is to be granted strictly in accordance with the rules in force and as per the rules, the seniority is maintained at Unit level and the junior as claimed by the petitioner is working in another unit. Therefore, the stepping up of pay was rightly rejected and thus, there is no infirmity as such."

Relying upon those orders passed by this Court, the learned Government Advocate pressed for dismissal of the Writ Petitions.

14.However, the learned counsel appearing for the petitioner drew my attention to the order passed by this Court in **W.P(MD)No.742 of 2018, dated 07.02.2018 [K.Vijayarani Vs. the District Elementary Educational Officer and another]**, in which favourable order has been passed to the petitioner therein and the relevant portion of which is extracted as follows:-



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

"3. The petitioner was appointed as Secondary Teacher on 08.08.1997 in Pudukottai Panchayat Primary School. On her request, she got transferred to Kayathar Union on 04.07.1998. The petitioner is presently working as a Headmaster in Kayathar Union. The grievance of the petitioner is that one Shanthi, who was appointed as Secondary Grade Teacher in Kayathar Union on 11.01.1999 is drawing more pay. Citing this pay anomaly the petitioner submitted a representation to the District Elementary Educational Officer on 05.07.2017. The petitioner has also enclosed the comparative chart. It is obvious therefrom that the said Shanthi was appointed in Kayathar Union later in point of time.

4. The learned Counsel appearing for the petitioner 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



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

first respondent in the impugned order is unsustainable 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."

15.The Hon'ble Division Bench of this Court in ***W.P(MD)Nos.24807 & 24808 of 2018, dated 21.09.2020 [B.Selvam and another Vs. The District Educational Officer and others]***, in a similar case, has passed favourable order to the petitioner thereat and the relevant portion of which is extracted as follows:-

"14.In order to set right the anomaly by stepping up the pay of the writ petitioners on par with the third respondent, the petitioners though had made a request to the official respondents, the said request



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

have either been rejected or turned down by the order, dated 26.09.2018, which reads thus :

“01.திருப்பப்படுகிறது. 02.இடைநிலை ஆசிரியர்கள் பணிமூப்பு பட்டியல் அந்தந்த ஒன்றியத்தில் பராமரிக்கப்பட்டு வருவதால் (ஒரு ஒன்றியம், ஒரு அலகு) பணியில் முத்தோர் இடைநிலை ஆசிரியர் பதவியில் தேர்வுநிலை பெற்று தலைமை ஆசிரியராக பதவி உயர்வு பெற்றுள்ளமையாலும், இளையோர் இந்நிலை பதவியில் தேர்வுநிலை, சிறப்பு நிலை பெற்று தலைமை ஆசிரியர் பதவி உயர்வு பெற்றமையால், முத்தோர், இளையோர் ஊதியம் சமன் செய்ய விதிகளில் இடமில்லை என் தெரிவிக்கப்படுகிறது. 03.ஒரு ஒன்றியம் ஒரு அலகு என்ற அரசாணை 01.06.1981க்கு முன்பே நடைமுறையில் உள்ளதால் இதுவரை இது சார்ந்த திருத்திய ஆணை எதுவும் வெளியிடப்படாததால் வெவ்வேறு ஒன்றியங்களில் பணிபுரிந்தோர் இளையோர், முத்தோர் ஊதியம் சமன் செய்ய இயலாது என் தெரிவிக்கப்படுகிறது.

ஒப்பம்:.

வட்டார கல்வி அலுவலர்-1,

துறையூர் 621 010”

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



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

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 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.

.....

28. Therefore, it has become clear that, the petitioners, though seniors to third respondent, are admittedly getting a lower pay of Rs. 65,500/-, whereas the third respondent far junior than the petitioners is getting higher pay i.e., Rs.71,600/-.



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

Therefore, this pay anomaly has to be rectified in tune with Para-V of G.O.Ms.No.25 and also based on various judgments passed by this Court time and again.

29.In that view of the matter, this Court feels that, the impugned orders, for the reason stated therein, cannot be sustained in the eye of law. Therefore, they are liable to be interfered with and be quashed. Accordingly, these Writ Petitions are disposed of with the following directions.

- The Impugned orders in both the writ petitions are quashed and the matter is remitted back to the respondents with a direction that, the pay anomaly faced by the petitioners herein, are to be rectified, by which, the pay of the petitioners shall be stepped up on par with the third respondent's pay and consequently, the petitioners shall also be entitled to get the revised pay from the date, the junior i.e., third respondent getting higher pay and accordingly, arrears shall be calculated and be paid to the petitioners.*

- The aforesaid exercise shall be undertaken by the official respondents within a period of six (6) weeks from the date of receipt of a copy of this order."*



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

16. In yet another case, the Hon'ble Division Bench of this Court in **W.A(MD)No.27 of 2020 dated 15.04.2021 [The District Educational Officer and another Vs. V.S.Shree Devi]** has passed favourable order to the petitioners therein and the relevant portion of which is extracted as follows:-

"4. We find that the reason cited in the order impugned in the writ petition is on the ground that the respondent-writ petitioner and the other teacher were working in two different Panchayat Union Schools. Similar issue came up for hearing before this Court on earlier occasions and one such decision in W.P(MD).No. 742 of 2018 dated 07.02.2018, was followed by the learned Single Bench. Identical issue was considered by the Division Bench of this Court in W.A(MD).No.1220 of 2019, which was filed by the Education Department challenging the order passed in W.P(MD).No.4231 of 2019 and the Department appeal was dismissed holding that the distinction sought to be drawn by the Department on the ground that the two teachers are working in two different Panchayat Union Schools, is not sustainable. Therefore, we find that there is no error in the order passed in the writ petition.

5. The learned Special Government Pleader appearing for the appellant-Department would vehemently contend that though the reason given in the



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

order impugned in the writ petition may not be fully sustainable, yet the question of stepping up of the pay would not arise, as all pay anomaly issue consequent upon revision of pay and allowances pursuant to the recommendations of the pay commissions are governed by the Tamil Nadu Revised Pay Rules 2017, issued by the Government in G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017.

6. The learned Special Government Pleader has drawn our attention to the relevant portions of the Government Order and submitted that if the issue is considered in terms of the guidelines laid down in the Rules, the question of stepping-up of the pay would not arise. We cannot accept this submission made by the department at this juncture for more than one reason. Firstly, the order impugned in the writ petition does not refer to G.O.Ms.No.303, for declining stepping up of pay. Secondly in the writ petition, no such argument was advanced by the department and though in other cases counter affidavits have been filed, this contention was never raised. Even though the impugned order was passed after passing of G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017, there is no reference of G.O., in the impugned order. 7. Therefore, based on G.O.Ms.No.303, we cannot interfere in the order passed in the writ petition. As in our opinion, if according to the appellants-Department the stepping up cannot be done in terms of the Tamil Nadu Revised Pay



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

Rules 2017, it gives a separate cause of action and therefore, the request of the respondents-teachers should be processed in accordance with the Rules and not for the reasons cited in the impugned order passed in the writ petition, which has been rightly quashed. 8. Accordingly, while confirming the order passed in the writ petition quashing the impugned order therein, we give liberty to the appellants-Department to consider the case of the respondent-teacher based on the Tamil Nadu Revised Pay Rules 2017, in accordance with law and if so advised, by taking into account the relevant Government Orders. Accordingly, order in the Writ Petition is confirmed."

17.The Hon'ble Division Bench of this Court in **W.A(MD)No.151 of 2022, dated 21.02.2022 [The District Educational Officer and another Vs. Manimegalai]** has passed favourable order to the petitioner therein and the relevant portion of which is extracted as follows:-

"2. Learned Special Government Pleader for the appellants has vehemently submitted that, learned Single Judge fell in error while allowing the petition, since the petitioner was not entitled to stepping up of pay. It is submitted that the claim by the petitioner is against the policy of the State. It is submitted that, therefore this appeal be entertained.



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

3. On the other hand, learned advocate for the respondent / original writ petitioner has submitted that, not only no error is committed while recording the impugned order, number of petitions were filed on this line and identical orders were passed and many of those orders were even challenged by the State and those appeals are also dismissed. Attention of this Court is invited to few of such orders, as under:

(i) Order dated 18.03.2021 recorded on W.A.No.178 of 2021;

(ii) Order dated 15.04.2021 recorded on W.A(MD)No. 27 of 2020;

(iii) Order dated 15.04.2021 recorded on W.A(MD)No. 740 of 2019;

(iv) Order dated 15.04.2021 recorded on W.A(MD)No. 215 of 2020;

(v) Order dated 15.04.2021 recorded on W.A(MD)No. 30 of 2020;

(vi) Order dated 15.04.2021 recorded on W.A(MD)Nos. 1223 and 1258 of 2020;

(vii) Order dated 15.04.2021 recorded on W.A(MD)Nos.911 and 955 of 2020;

(viii) Order dated 15.04.2021 recorded on W.A(MD)No. 182 of 2021;



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

(ix) Order dated 15.04.2021 recorded on
W.A(MD)No. 828 of 2021.

4. *Learned Special Government Pleader for the appellants is not in a position to dispute that, the subject matter of those appeals and the present appeal, in substance is the same. In view of this, no different view needs to be taken in this appeal.*

5. *For the above reasons, this appeal is dismissed."*

18. However, in these cases, it is made clear by the respondents that the writ petitioners have lost their seniority in view of the transfer from Padmanabhapuram Revenue Division to Nagercoil Revenue Division and that their re-transfer to Padmanabhapuram Revenue Division will not restore their original seniority and on that basis, the respondents have negated the petitioner's claim to step up their pay on par with juniors and to bring pay parity between the petitioners, who are seniors to the said junior K.S.Deepa Jaya Sree.

19. However, a perusal of G.O(Ms.)No.25, Personnel and Administrative Reforms (FR.IV) Department, dated 23.03.2015 would clearly reveal that instances have been brought to the notice of the



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

Government that the pay anomaly due to the 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 the Tamil Nadu Revised Scales of Pay Rules, 2009 and the question of rectifying the anomaly in such cases was carefully examined by the Government. Only for doing away with the pay anomaly between the senior and junior in such cases G.O(Ms.)No.25, Personnel and Administrative Reforms (FR.IV) Department, dated 23.03.2015 came to be issued.

20.The relevant portion of the said G.O(Ms.)No.25, Personnel and Administrative Reforms (FR.IV) Department, dated 23.03.2015, is as follows:-

"i.Both the junior and senior officers should belong to the same cadre of the post in which they have been promoted or appointed should have been 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.



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

iii. The pay anomaly should be arising directly as a result of fixation of pay in the promotional post after 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 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."

Nowhere in the said G.O, it is stated that the senior would lose his seniority if transferred to another union and thereafter, being re-transferred to the union where they worked at the first instance.

21.The case in hand is squarely covered by the said G.O wherein all the petitioners were promoted to the post of Headmasters without being awarded special grades in the post of Secondary Grade Teachers. However, the junior K.S.Deepa Jaya Sree was given both selection grade and special grade in the post of Secondary Grade



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

Teacher and thereafter, she was promoted to the post of Headmaster. The difference in salary between the petitioners and the junior K.S.Deepa Jaya Sree has occurred only as a result of the movement of the senior to a promoted post before moving to the special grade in the lower post and the junior K.S.Deepa Jaya Sree getting more salary is only due to her promotion after moving to special grade in the revised scale of pay in the post of Secondary Grade Teacher as a result of the introduction of the Tamil Nadu Revised Scales of pay Rules, 2019. Since all the petitioners and the junior K.S.Deepa Jaya Sree were appointed as an identical cadre of post ie., Secondary Grade Teacher at the time of appointment and where thereafter promoted to the same cadre of post ie., Headmaster of Government Primary Schools, the seniors are entitled to pay parity with their junior.

22.In view of the same, this Court hereby quash the impugned orders passed by the third respondent, dated 02.11.2022, 03.11.2022, 02.11.2022 and 03.11.2022 respectively and consequently, direct the respondents 2 and 3 to refix the petitioners' salary as on 01.10.2018 on the basis of the petitioners' representation, dated 02.02.2022, 14.03.2022, 02.02.2022 and 02.02.2022 respectively.

29/32



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

WEB COPY

23. Accordingly, the Writ Petitions are allowed. There shall be no order as to costs.

12.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
ps



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

WEB COPY

To

- 1.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.
- 2.The District Elementary Education Officer,
(Formerly District Educational Officer),
Ozhukinasery,
Nagercoil.
- 3.The Block Educational Officer,
(Formerly Assistant Elementary Educational Officer),
Melpuram Educational Union @ Kuzhithurai,
Kanyakumari District – 629 163.



WEB COPY



W.P.(MD).Nos.6445, 6619, 6620 & 6621 of 2023

L.VICTORIA GOWRI, J.

ps

**W.P.(MD)Nos.6445, 6619,
6620 & 6621 of 2023**

12.10.2023