



W.P.(MD).No.8850 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.06.2023

PRONOUNED ON : 21.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.8850 of 2016

V.Vimalarani

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Elementary Education Department,
Fort St. George, Chennai-9.
- 2.The Director of Elementary Education,
College Road, Chennai-6.
- 3.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
- 4.The Additional Assistant Elementary
Educational Officer,
Sankarankovil Union, Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records relating to proceedings Na.Ka.No.514/A3/2012, dated 20.11.2012, of the 4th respondent herein and to quash the same and consequently, to direct the



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respondents herein to repay the recovered amount of Rs.4,588/- and to direct the respondents to sanction and disburse salary to the petitioner by refixing the scale of pay on par with her juniors with all attendant benefits including the arrears of salary and allowances.

For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.V.Om Prakash
Government Advocate

ORDER

This writ petition is filed for writ of *Certiorarified Mandamus*, to quash the impugned proceedings, dated 20.11.2012 of the 4th respondent and to direct the respondents herein to repay the recovered amount of Rs.4,588/- and to direct the respondents to sanction and disburse salary to the petitioner by refixing the scale of pay on par with her juniors with all attendant benefits including the arrears of salary and allowances.

2. The brief facts as stated in the affidavit is that the petitioner had passed D.T.Ed., and B.Lit., and he was appointed as Secondary Grade Teacher on 08.09.1988. After joining the service, the petitioner obtained permission



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from the respondents to study M.A., and B.Ed. In the year 2005, the petitioner passed M.A., and in the year 2010, the petitioner passed B.Ed. In the meanwhile, he had completed 10 years of service and she was granted selection grade of pay with effect from 08.09.1998. Thereafter, the petitioner was directly promoted as Middle School Headmaster on 23.07.2007. Generally, Middle School Headmasters are appointed only from the feeder category consisting of Primary School Headmasters and B.T. Assistants. As there were no qualified Primary School Headmasters and B.T. Assistants available in the Panchayat Union, the petitioner was promoted as Headmaster directly from the cadre of Secondary Grade Teacher.

3. As far as the salary is concerned, the petitioner was placed in the scale of pay admissible for the post of Middle School Headmasters from 01.06.2008 which is identical to that of B.T. Assistants i.e., Rs. (PB2)9300-34,800 +GP 4,500 (Gross Amount of Rs.21,550/-). The contention of the petitioner is if the petitioner was given promotion in the normal course, i.e. firstly as B.T. Assistant or Primary School Headmaster and then as Middle



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School Headmaster, the petitioner would have been placed in a much higher scale of pay of Rs.PB2 9300-34,800+GP4,700 (Gross Amount of Rs.23,570/-). The anomaly occurred on account of the fact that the petitioner was directly promoted to Middle School Headmaster. If the petitioner is first promoted to B.T. Assistant and Primary School Headmaster, the petitioner would have been getting selection grade of pay in the cadre of Middle School Headmaster. The scale of pay of Middle School Headmaster and B.T. Assistant are identical. But the petitioner in the normal scale of Rs.PB2 9300-34,800 +GP4,500 admissible for the post of Middle School Headmaster, for the reason the petitioner was promoted as Middle School Headmaster directly from the Secondary Grade Cadre. In the result, the petitioner is drawing lesser scale of pay than the juniors. For example, one Mrs.C.Annathai who was appointed as Secondary Grade Teacher on 06.12.1990 and promoted as B.T. Assistant (Tamil) on 16.06.2008 and further, promoted as Middle School Headmaster with effect from 01.04.2012 and she was placed in higher scale of pay and now, she is drawing Rs.23,570/-, whereas the petitioner is drawing only Rs.21,550/-.



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4. The Government had issued a clarification vide letter dated 17.08.2009 stating that no specific rule provision is available under the Tamilnadu Revised Scales of Pay Rules, 2009. However, an analogy be drawn from the provisions made in the Tamilnadu Revised Scales of Pay Rules, 1998 and apply in Tamilnadu Revised Scales of Pay Rules, 2009 and the said anomaly of junior getting more pay than senior may be set right by the pay fixing authorities as contemplated in the clarifications issued earlier. The Government has periodically issued a clarification that if the junior gets more pay than the senior teacher the same has to be set right by fixing equal pay. Hence, the petitioner submitted a representation in July, 2012, requesting to re-fix. Based on the above said clarification, the 4th respondent re-fixed the scale of pay of the petitioner on 03.08.2012. But the 4th respondent immediately after three months issued proceedings, dated 20.11.2012, and cancelled the same without granting any opportunity and directed to recover Rs.4,588/-. Aggrieved over the same, the present writ petition is filed.



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5. The 3rd respondent has filed a counter affidavit stating that the petitioner was promoted to the post of Middle School Headmaster directly as there was no qualified persons in the feeder category. In the meanwhile, the said Annathai was promoted as Tamil Pandit. Subsequently, when the vacancy arose, the said Annathai was granted promotion as Middle School Headmaster. By virtue of two promotions the said Annathai is drawing more salary. At the time of promotion as Tamil Pandit, the said Annathai was drawing lesser pay, i.e., Rs.17,990/- whereas the petitioner was getting Rs.18,030/-. Moreover, the junior was getting more pay, since the junior was sanctioned two incentive increments. The pay anomaly of junior getting more pay than the senior can be rectified if both are at the same scale of pay of the both lower post and higher post. In the present case, the petitioner who is senior was promoted from category 2 of Class III and the junior was promoted from category 2 of Class I as defined in Tamil Nadu Elementary Educational Subordinate Service Rules issued in G.O.No.1383, Education (PUS) Department, dated 23.08.1988. Therefore, the petitioner and the junior are not on the same post, then the rules



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are not permitting to rectify the said anomaly. Hence, the 3rd respondent prayed to dismiss the writ petition.

6. Heard Mr.T.Pon Ramkumar, learned Counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for the respondents and perused the records.

7. The contention of the petitioner is that the junior namely Annathai was getting more pay than the petitioner and hence the petitioner being the senior is entitled to fix pay on par with the junior. It is an admitted fact by the petitioner as well as the respondents that the petitioner was granted promotion directly from the post of Secondary Grade Teacher to the post of Middle School Headmaster. Even though the post of Secondary Grade Teacher was not a feeder category, in the said panchayat union, the feeder category of B.T. Assistant / Primary School Headmaster / Tamil Pandit was not available at the time of consideration, therefore, the respondents have taken a decision to promote the petitioner to the post of Middle School Headmaster, even though the petitioner belongs to the post of Secondary Grade Teacher. The petitioner



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claims if the petitioner had been promoted to the post of B.T. Assistant / Tamil Pandit / Primary School Headmaster, then petitioner's Grade Pay would have been Rs.4500/- and from there if the second promotion to the post of Middle School Headmaster is granted, then the Grade Pay would be Rs.4700/- and it would have been on par with the junior. After perusing the records this Court is of the considered opinion that the petitioner had projected the case as if the pay anomaly arises due to direct promotion to Middle School Headmaster and it is absolutely incorrect, since for each promoted post only the Grade Pay would be increased. The following table would make it clear, how the claim of the petitioner is incorrect:

The Grade Pay in the post of SGT as on 01.01.2006 for both the petitioner and the said Annathai	Rs.4300
Scale of pay as per G.O.Ms.No.234 dated 01.06.2009 for Middle School HM	Rs.4500
Scale of pay as per G.O.Ms.No.234 dated 01.06.2009 for B.T. Assistant	Rs.4400
Scale of pay as per G.O.Ms.No.23 dated 12.01.2011 for Middle School HM	Rs.4700



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Scale of pay as per G.O.Ms.No.234 dated 01.06.2009 for B.T. Assistant/ Tamil Pandit	Rs.4600
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Both the petitioner and the said Annathai was receiving Grade Pay of Rs.4300/- as on 01.01.2006. When the petitioner was promoted as Middle School HM, she was fixed Grade Pay from Rs.4300/- to Rs.4500/- as per G.O.Ms.No.234 and Rs.4700/- as per G.O.Ms.No.23. When the said Annathai was promoted as B.T. Assistant, then she was fixed Grade Pay from Rs.4300/- to 4400/- as per G.O.Ms.No.234 and Rs.4600/- as per G.O.Ms.No.23. When the said Annathai is promoted from B.T. Assistant post to Middle School HM, then the said Annathai would get Rs.4700/- which is as that of the petitioner. Hence there can never be any pay anomaly as projected by the petitioner and the claim of the petitioner is clear misnomer.

8. Further this Court is of the considered opinion if the promotion is not beneficiary to the petitioner, the petitioner ought to have objected from granting such promotion. Having accepted the promotion, now the petitioner



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cannot claim additional pay since the promotion is not beneficiary to him. Therefore, this Court is of the considered opinion the claim of the petitioner cannot be sustained.

9. On perusal of the comparative statement of the petitioner (senior) and the said Annathai (junior), it is seen that the petitioner and the said Aannathai were granted annual incentive increments regularly, thereby the petitioner's pay was more than the said Annathai. Both had completed M.A. and incentive increments was granted for both, then also the petitioner's pay was more than the said Annathai. But the said Annathai was granted incentive increment for B.Ed., thereafter the said Annathai was getting more pay than the petitioner. But the petitioner was not paid incentive increment for B.Ed. and hence the petitioner is getting lesser pay. The following comparative statement would clearly indicate the same:



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S. No	Government Order and other details	Petitioner Vimala Rani (Senior)	Annathai (Junior)
1	Appointed as SGT on and salary	08.09.1988 1200-30-1560-40-2040	06.12.1990 1200-30-1560-40-2040
2.	Promotion to Middle School HM	23.07.2007	19.01.2012
3	As per G.O.Ms.No. 162 dated 13.04.1998	4400	4200
4	As per G.O.Ms.No. 427 dated 28.08.1998	4750	4625
5	As per G.O.Ms.No. 234 dated 01.06.2009	16120	15700
6	As per G.O.Ms.No.23 dated 12.01.2011	18030 PB2 GP 4700 for Middle School HM	17990 PB2 GP 4600 For B.T. Assistant Tamil Pandit
7	Incentive increment for M.A. Higher qualification	Rs.20290/-	Rs.19650/-
8	Along with Annual Increments as on 01.07.2010	20900	20240 Dated 01.04.2010
9	Along with Annual Increments as on 01.07.2011	21530	20850 Dated 01.04.2011
10	Incentive increment for B.Ed. Higher qualification	No incentive increment for B.Ed. Same salary Rs.21530	22110 Along with B.Ed. incentive increment Dated 14.07.2011
11	Salary as on 01.04.2012	21530	22780



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12		-	23570 Promotion to Middle School HM on 01.04.2012
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10. On comparing the columns 10, 11, and 12 it is clear that the pay anomaly arises because of the incentive increment granted for higher qualification of B.Ed. (for B.Ed. qualification, whether the said Annathai is entitled to incentive increment or not is a separate question). It is seen that the Tamil Nadu Revised Rules, 2017 was issued in G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017. Since the Tamil Nadu Revised Rules, 2017 is Pari Materia same as that of Tamil Nadu Revised Rules, 1998 and in both the rules same conditions are prescribed. In the said Rules, 2017 under Rule 13, it is stated that pay anomaly can be rectified in the case of seniors and juniors only if conditions are fulfilled and the relevant portion is extracted hereunder:

“13. Removal of Anomalies:

(1) Where in the fixation of pay in the revised pay structure upon appointment or promotion to a higher post, pay of a Government employee gets fixed higher than that of a Government employee senior to him, who has been promoted earlier to the same higher post in the



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same cadre, the pay of such senior government employee in the revised pay structure shall be stepped up to the same Cell in the revised pay structure as that of his junior in that higher post and such stepping up shall be done with effect from the date of promotion of the junior government employee subject to the fulfilment of the following conditions, namely

(a). Both the Junior and the Senior Government employee should belong to the same cadre and the posts in which they have been promoted are identical in the same cadre.

(b). The existing pay structure and the revised pay structure of the lower and higher posts in which they are entitled to draw pay are identical.

(c). The senior Government employees at the time of promotion should have drawn equal or more pay than the junior.

(d). The anomaly should have arisen directly as a result of the application of the provisions of Fundamental Rules or any other rule or order regulating pay fixation on such promotion in the revised pay structure.

Provided that where the pay of the junior employee is greater than that of the senior on account of any advance increments granted to him, the provisions of this sub rule shall not be invoked to step up the pay



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of the senior employee.

2. The order relating to re-fixation of the pay of the senior employee in accordance with sub rule (10) shall be issued under the provisions of Fundamental Rules and the senior employee shall be entitled to the next increment on completion of the required qualifying service one year with effect from the date of re-fixation of pay.”

11. In the present case, even though the petitioner and the said C.Annathai were serving as Secondary Grade Teacher, while considering for promotion, the said C.Annathai was promoted as B.T. Assistant and fixed the B.T. Assistant scale of pay. Whereas the petitioner was not promoted as B.T. Assistant and the B.T. Assistant scale of pay was not granted to the petitioner. Hence from this promotion onwards the petitioner has lost the right to compare the scale of pay with that of the said C.Annathai as per the aforesaid Rules, 2017, since both the petitioner and the said C.Annathai are not in the same cadre. Therefore, as per Sub Clause 1(a) to Rule 13, when the petitioner and the said Annathai are not in the same cadre, then the petitioner cannot compare and the petitioner's pay cannot be stepped up.



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12. Moreover as per Proviso to Sub Clause 1(d) to Rule 13 in the Rules, 2017 states that if the junior employee pay is greater than the senior employee on account of any advance increments, the sub-rule shall not be invoked to step up the pay. In the present case the C.Annathai (junior) has earned two advance increments for M.A. and two increments for B.Ed. and the salary is fixed as Rs.19,650/- and Rs.22,110/- respectively. Whereas the petitioner has earned two advance increments for M.A. as 20,290/- but has not received any advance increment for B.Ed. higher qualification. Hence based on proviso the petitioner is not entitled to set up the pay.

13. It is seen that the respondents had granted the claim of the petitioner and subsequently had realized the mistake and rectified through the impugned order, consequently directed to recover the amount of Rs.4,588/-. Since it is the mistake of the respondent, the respondents shall not recovery the amount. But the petitioner is not entitled to step up pay and hence the



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petitioner's claim is rejected and the impugned order is sustained as far as rejection to step up.

14. For the reasons stated supra, the writ petition is partly allowed.

No costs.

15. As stated supra whether the said Annathai is entitled to incentive increments for B.Ed. qualifications is a separate question. Since the said Annathai was already promoted as B.T. Assistant based on the B.Lit. Tamil Pandit qualification, then the qualification of B.Ed. cannot be considered as higher qualification. The qualification of B.T., B.Ed. B.Lit. are considered on par and hence when the employee had acquired B.Lit., then B.Ed. cannot be considered as higher qualification. Moreover, when a candidate is promoted based on the B.Lit. qualification, then B.Ed. is considered as superfluous qualification. Therefore, the respondents ought to revisit the incentive increments granted to the said Annathai. It is also seen that the incentive increment granted to the said Annathai, several persons started comparing the



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said Annathai and claiming to step up the pay, which is having change reaction.

In one such case by comparing the said Annathai another person namely R.Amalarani, had filed W.P.(MD)No.14950 of 2014 and also contempt petition in Cont.Pet.(MD)No.1103 of 2022. Therefore, this Court is directing the Director of Elementary Education to rectify the mistake after issuing notice to the said Annathai, so that the said chain reaction is stopped and other candidates are not claiming by citing the said Annathai.

21.11.2023

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

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To

- 1.The Secretary,
Government of Tamil Nadu,
Elementary Education Department,
Fort St. George, Chennai-9.
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