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W.P.No.1285 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1285 of 2022

M.Suguna

...

Petitioner

Vs.

1.The District Educational Officer,
Vellore, Vellore District.

2.T.Nalini,
Headmaster,
Panchayat Union Middle School,
Periyavarikkam,
Vellore District - 635 802.

...

Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in Na.Ka.No.2337/A3/2021 dated 07.10.2021 and quash the same and direct the first respondent to fix the petitioner's pay on par with her junior, T.Nalini (the second respondent herein) and grant her all consequential benefits.

For Petitioner : Mr.P.Rajendran

For Respondent No.1 : Mrs.S.Mythreye Chandu
Special Government Pleader

For Respondent No.2 : Notice served



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ORDER

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This Writ Petition has been filed challenging the order passed by the first respondent dated 07.10.2021 thereby rejected the request made by the petitioner to set right the pay anomaly between the petitioner and the second respondent.

2. The petitioner was initially appointed as Secondary Grade Teacher on 07.09.1988 in Pernampet Panchayat Union. Now, after promotion, the petitioner is working as Headmaster at the Panchayat Union Middle School, Chinnathamal Seruvu, Pernampet Block, Vellore District. The second respondent was initially appointed as Secondary Grade Teacher on 21.09.1988 in Vellore Panchayat Union. Thereafter, she was transferred to Pernampet Panchayat Union on 23.07.1992. The petitioner's services were regularised in the post of Secondary Grade Teacher with effect from 07.09.1988 and the services of the second respondent were regularised with effect from 21.09.1988.

3. The petitioner was granted selection grade on 07.09.1998 and special grade on 07.09.2008. Whereas, the second respondent was



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granted selection grade on 21.09.1998 and special grade on 21.09.2008.

Thereafter, the petitioner was promoted to the post of Primary School Headmaster on 08.07.2005 and the second respondent was promoted to the post of Primary School Headmaster on 05.01.2006. Subsequently, the petitioner was promoted to the post of B.T. Assistant on 02.09.2008 and the second respondent was promoted to the post of B.T. Assistant only on 23.12.2011.

4. In the meanwhile, the petitioner completed her B.Ed. in the year 1994 and acquired Post Graduation degree in M.A. in the year 1998. She was granted incentive increments for both degrees. The second respondent completed her B.Ed. in the year 2010 and acquired Post Graduation degree in M.A. in the year 2012. However, the petitioner was allowed the incentive increments in the pre-revised scale of pay. But the second respondent was allowed the incentive increments for acquiring the very same higher qualifications in the revised scale of pay. Therefore, the second respondent is drawing higher pay than the petitioner, though, the second respondent is junior to the petitioner. Therefore, the petitioner submitted representation seeking to rectify the pay anomaly and fix the



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pay on par with her junior, namely the second respondent herein.

However, the said request was rejected on the ground that both the petitioner and the second respondent were appointed in different Unions.

5. Already, the petitioner approached this Court by way of filing Writ Petition in W.P.No.8243 of 2014 in which, this Court, by an order dated 16.03.2021 directed the first respondent to consider the request made by the petitioner and rectify the pay anomaly between the petitioner and her junior in the light of the order passed by this Court in W.P.No.42396 of 2006 dated 17.06.2010. It is relevant to extract the portion of the said order as follows:-

“7. The contention of the learned Additional Government Pleader appearing for the respondents at the threshold cannot be accepted for two main reason. Firstly, the petitioner was appointed as Secondary Grade Teacher on 01.06.1979. whereas, V.Sampath become Higher Secondary Teacher only on 04.06.1979 in Madhuranthakam Panchayat Union. Thereafter, on 10.11.1982, the petitioner- Neelavathi, was transferred to Madhuranthakam Panchayat Union from Vedaranyam. After the petitioner's transfer from Vedaranyam to



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Madhuranthakam Panchayat Union, admittedly, on 20.01.1985, the petitioner for having acquired B.Ed higher qualification, was granted incentive increments, whereas V.Sampath, working in Madhuranthakam Panchayat Union, also acquired B.Ed, degree as higher qualification on 31.12.1989 for which also incentive increments were paid to him. Subsequently, the petitioner had acquired M.Ed as the second higher qualification on 22.06.1992, and before the petitioner acquired M.Ed. Degree as second higher qualification, the said V.Sampath also acquired second higher qualification viz., M.A. 25.09.1981. In spite of all those two higher qualifications, possessed by both, as on 01.06.1979, the petitioner - Neelavathi, was paid a scale of pay at the rate of Rs.1,260/- whereas V.Sampath, Secondary Grade Teacher was paid a scale of pay at the rate of Rs.1,230/- on 01.06.1998. While so, after coming into force of the 5th Pay commission, there is no justification on the part of the respondents to pay higher scale of pay of Rs.1,500/- to V.Sampath, while paying lesser scale of pay of Rs.1,400/- to Neelavathi. Secondly, the reasons mentioned by the respondents stating that the petitioner Neelavathi is junior to V.Sampath is neither convincing nor justifiable for not stepping up to the scale of pay of the petitioner on par with



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her junior V.Sampath, who is also a Secondary Grade Teacher, who received lesser pay as on the date of transfer of the petitioner on 10.02.1982 from Vedaranyam to Madhuranthakam Panchayat Union. Admittedly, the petitioner was appointed as Secondary Grade Teacher on 01.06.1979, which is prior to the date of appointment of V.Sampath on 04.06.1979. In that view of the matter, this writ petition deserves to be allowed by setting aside the impugned order passed by the respondent.

8. In view of the above reasons, the impugned order passed by the respondents is set aside and the writ petition is allowed. No costs. In view of the pendency of the matter for a long time, the first respondent is directed to step up the scale of pay of the petitioner on par with V.Sampath within a period of six weeks from the date of receipt of a copy of this order.”

6. On perusal of the counter filed by the first respondent, it is seen that the reason assigned for rejection of the request made by the petitioner relates to the fact that the second respondent hails from another Union and came to the petitioner's Union and as such, the petitioner is not entitled to rectification of pay anomaly on par with her junior for other



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reasons as well. Rule 5 of the Tamil Nadu Revised Scales of Pay Rules, 2009 has been extracted hereunder:-

“a. both junior and the senior government employee should belong to the same category and should have been promoted to the same post.

b. the pre revised scale of pay and the revised scale of pay along with grade pay of the lower and higher posts to which they are entitled to draw pay should be identical.

c. the senior government employee at the time of appointment should have been drawing equal or more pay than the junior.”

7. However, the pay difference occurred on 29.12.2010 the date on which the second respondent was sanctioned with two incentive increments for higher educational qualification for her B.Ed. and M.A. Therefore, the sanction of incentive increments cannot be taken as pay anomaly since it depends upon the date on which such an incentive is sanctioned and the scale of pay applicable on that date.

8. Admittedly, the petitioner acquired her B.Ed. and M.A. in the years 1994 and 1998 respectively and the second respondent acquired



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her B.Ed. and M.A. only in the years 2010 and 2012 respectively.

However, the second respondent was granted incentive increments as per the rules. Therefore, the reason stated in the impugned order in this Writ Petition is completely different from the reasons stated in the counter.

9. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court in the case of *Mohinder Singh Gill Vs. Chief Election Commissioner* reported in (1978) 1 SCC 405 wherein it is held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

10. Therefore, the reasons stated in the counter filed by the first respondent cannot be accepted. That apart, this Court specifically directed the first respondent to consider the request made by the petitioner in the light of the order passed by this Court as extracted



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supra. Even then, without considering the observation made by this Court, once again stated the same reasons rejected the request made by the petitioner. In view of the above, the impugned order passed by the first respondent cannot be sustained and is liable to be quashed.

11. Accordingly, this Writ Petition is allowed and the impugned order of the first respondent in Na.Ka.No.2337/A3/2021 dated 07.10.2021 is hereby quashed. The first respondent is directed to rectify the pay anomaly between the petitioner and the second respondent and re-fix the petitioner's salary on par with the second respondent and grant all consequential benefits within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

04.07.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To



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WEB COM The District Educational Officer,
Vellore, Vellore District.



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G.K.ILANTHIRAIYAN, J.

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