



W.P.No.6252 of 2016

IN THE HIGH COURT AT JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.6252 of 2016

and

WMP.Nos.5586 & 5587 of 2016

- 1.K.Arunodayam
- 2.G.Nirmala
- 3.D.Danasekaran
- 4.U.Parvathi
- 5.R.Senthamil Selvi

...Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.

3. The Director of School Education,
DPI Campus, College Road, Chennai- 600 006.



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4.The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.

...Respondents

Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 1st Respondent in Lr.No.2831/Nithi (CMBC) Department/2015-1 dated 15.12.2015, and quash the same and consequently direct the Respondents to rectify the pay anomaly by fixing the scale of pay for the Petitioners working in the post of Middle School Headmaster in PB III Rs.15,600-39,100+5,400 GP with effect from the date of promotion as Middle School Headmaster with all consequential and other attendant benefits and arrears of salary with interest.

For Petitioners : Mr.S.Nedunchezhiyan

For Respondents : Mr.S.Prabhakaran,
Government Advocate

ORDER

Writ petition is filed for issuance of a Writ of Certiorarified Mandamus relating to the impugned proceedings dated 15.12.2015 and quash the same and consequently to direct the respondents to rectify the pay anomaly by fixing the scale of pay for the petitioners working in the post of Middle School Headmaster in PB III Rs.15,600-39,100+5,400 GP with effect from the date of promotion as Middle School Headmaster with all consequential and other



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attendant benefits and arrears of salary with interest.

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2. According to the petitioner's Primary School Headmasters, who reached selection grade were fixed in the pay scale Rs.15,600 – 31,900/- with grade pay Rs.5,400/- in Pay Band III, while the petitioner's who were promoted as Middle School Headmaster on the basis of merit and before reaching selection grade were fixed in the pay scale Rs.9,300 – Rs.34,800/- with grade pay Rs.4,700/- in Pay Band II. The petitioner's grievance is that teachers who worked in the lower and feeder post of Primary School Headmaster were fixed in Pay Band II with Rs. 5,400/- grade pay, but the petitioner's who were promoted to the Higher post of Middle School Headmaster were fixed in Pay Band III (i.e) Rs.4,700/-. The petitioner's therefore state that there is serious Anomaly in Pay Fixation for teachers who were promoted as Middle School Master and teachers who continued to work in the lower post of Primary School Headmaster in the revised Pay Scale Rules. To set right the said Anomaly the petitioner's represented to the first respondent on 01.12.2014 and as the said representation



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was not considered, the petitioner's filed W.P.No.498 of 2015 before this court for a writ of mandamus to set right the pay anomaly. This court vide order dated 18.02.2015 disposed of the writ petition with a direction to the first respondent to consider the petitioner's representation dated 01.12.2014 within 3 months of the date of receipt of a copy of the order. In pursuance of the order of this court dated 18.02.2015, the first respondent passed the impugned order and hence the present writ petition challenging the same.

3.The respondents filed a counter stating, *inter alia*, that as per G.O(Ms).No.234, Finance (Pay Commission) Department, dated 01.06.2009 and as per Pay Commission Rules, 2009, Rule 5(1), the pay anomaly between junior and senior teachers appointed in the same union and holding the same post could be rectified, but the said rule could not be invoked to fix the disparity in pay between junior and senior's teachers. The respondent further stated that as the petitioner's did not complete 10 years of service in the post of selection grade Primary School Headmaster, they could not claim the grade pay of



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Rs.5,400/- fixed for their juniors. The respondent's hence stated that the writ petition was merit-less and deserved to be dismissed.

4.The learned counsel for the petitioner submitted that in the impugned order the respondents relying on 5(1) of the Tamil Nadu Revised Pay Commission Rules, 2009, rejected the petitioner's request stating that stepping up of the pay of the petitioner's could be made only if the petitioner's belong to the same Union and the same post. The learned counsel relying on G.O.Ms.No.25, Personal and Administrative Reforms (FR.IV) Department, dated 23.03.2015, stated that the Government sought to remove the pay anomaly between those promoted to the post of Primary School Headmaster from Selection Grade and those who were promoted without reaching the Selection Grade and therefore the respondents in terms of G.O.Ms.No.25 dated 23.03.2015 ought to have stepped up the petitioner's pay on par with the juniors.



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5.The learned Government Advocate for the respondents did not dispute that the petitioner's belong to the same Union as that of their juniors. The learned Government Advocate did not dispute the applicability of G.O.Ms.No.25, Personnel and Administrative Reforms (FR.IV) Department, dated 23.03.2015 to the petitioner.

6.I have heard both the learned counsels and I have perused the materials placed on record.

7.The Government in order to set right the pay anomaly, issued G.O.Ms.No.25, Personnel and Administrative Reforms (FR.IV) Department, dated 23.03.2015, which reads as follows:

“5. The Government direct that in cases where Government servants who have been appointed / promoted to higher posts without moving to Selection Grade / Special Grade in the lower post and there by happen to draw less pay than their junior who are appointed / promoted to the higher posts after moving to the Selection Grade / Special Grade of the lower post, in the revised



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Scales of pay, the pay of such seniors should be fixed in the higher post equal to the pay of the junior in the higher post with effect from the date of drawal of higher pay by

The junior in the higher post subject to fulfilment of the following conditions:

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

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 under Fundamental Rule 27. The next increment of the senior



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officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of the pay.”

8.The aforesaid G.O was adopted by this Court in various judgments in Writ petitions filed by the similarly placed persons. In W.P.(MD)No.10805 of 2024 this Court held as follows:

“5. Thus from the perusal of the above order issued by the Government, it is clear that the anomaly that has occurred due to grant of Selection Grade/ Special Grade in the lower post to the junior, even before the promotion of the junior to the higher post, resulting in drawing of higher pay than the senior in the promotion post, is sought to be rectified. When the petitioner approached the respondents seeking rectification of the anomaly in the pay of the petitioner and to step up the pay on par with his junior, the respondents, in all fairness, ought to have applied the orders issued by the Government in G.O.(Ms.)No.25, Personnel and Administrative Reforms (F.R.IV) Department, dated 23.03.2015. But for the reasons, the respondents have failed to apply the said Government Order, though the fact situation of the instant case warrants direct application of the said Government Order.”

9.In my view, the said Judgment squarely applies to the facts of the case.

Therefore, the respondent ought to have applied G.O.Ms.No.25, Personnel and Administrative Reforms (FR.IV) Department, dated 23.03.2015 and set right the



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pay anomaly of the petitioner's.

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10.As regards the contention of the respondents that under Rule 5(1) of Tamil Nadu Revised Pay Commission Rules, 2009, the pay anomaly could be rectified only, if the petitioner worked in the same Union and in the same post is concerned, the issue is no longer res integra.

11.This Court in W.P.No.18604 of 2020 held as follows:

5. For similarly placed persons, this Court had passed an order on 19.02.2019 in W.P.(MD) No.24551 of 2018 in the case of Natarajan vs. The District Educational Officer and another by considering the prayer of the petitioner favourably. Even in the said case, the respondent department has denied the stepping up of pay by stating that the petitioner had come from a different union. The said argument was not accepted by the Court and it is held as under:

“4. Both the learned Counsel would submit that the issue raised in this writ petition is covered by a number of decisions already settled in this regard. In those cases, the similar reason given by the respective



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authorities for rejecting the pay parity had been found to be unlawful and unjustifiable and accordingly, the reliefs were given to the individual employees.

5. Further, the learned Counsel for the petitioner relied on the judgment passed by this Court in W.P(MD).No.742 of 2018 dated 07.02.2018 in the case of K.Vijayarani Vs. The District Elementary Educational Officer, Thoothukudi and another, wherein at paragraph No.5, it has been held as follows:

'5.The first respondent has proceeded on the footing that since the petitioner got transferred from Pudukkottai 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 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



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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.' "

12. Therefore, in view of the aforesaid Judgments of this Court, the impugned order dated 15.12.2015 is quashed and the third respondent is directed to rectify the pay anomaly of the petitioner and consequently extent all other attended and monetary benefits within a period of four (4) weeks from the date of receipt of a copy of this order. Accordingly, writ petition is allowed. No costs. Consequently connected WMP's are closed.

19.08.2024

dsn/ah

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No



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To

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Finance Department,
Secretariat,
Fort St. George,
Chennai-600 009.

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School Education Department,
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N.MALA,J.

dsn

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