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W.P.Nos.24648 of 2021 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition Nos.24648, 24653 & 24659 of 2021

W.P.No.24648/2021

Vijipriya

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Petitioner

-Vs-

1. Director of Elementary Education,
DPI Campus,
Chennai 600 006.

2. The District Educational Officer,
Edappadi,
Mettur Block,
Salem District.

3. The Block Educational Officer,
Mettur Block, Edappadi,
Salem District.

...

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in OO.Moo.No.1446/Aa4/2020 dated 11.12.2020 and quash the same and consequently direct the second



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respondent to step up the pay of the petitioner on par with her junior

Mirunalini Raj with effect from 14.06.2018.

W.P.No.24653/2021

K.S.Venkatesan

...

Petitioner

-Vs-

1. Director of Elementary Education,
DPI Campus,
Chennai 600 006.

2. The District Educational Officer,
Edappadi, Mettur Block,
Salem District.

3. The Block Educational Officer,
Kolathur, Edappadi,
Salem District.

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Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in OO.Moo.No.1454/Aa4/2020 dated 11.12.2020 and quash the same and consequently direct the second respondent to step up the pay of the petitioner on par with his junior Mirunalini Raj with effect from 14.06.2018.

W.P.No.24659/2021

A.Thangammal

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Petitioner



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-Vs-

1. Director of Elementary Education,
DPI Campus,
Chennai 600 006.
 2. The District Educational Officer,
Edappadi,
Mettur Block,
Salem District.
 3. The Block Educational Officer,
Mettur Block, Edappadi,
Salem District.
- Respondents

...

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in OO.Moo.No.1440/Aa4/2020 dated 11.12.2020 and quash the same and consequently direct the second respondent to step up the pay of the petitioner on par with her junior Mirunalini Raj with effect from 14.06.2018.



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In all W.P's.:

For Petitioner

: Ms.Dakshayani Reddy
Senior Counsel
for Ms.Suneetha

For Respondents

: Mr.P.Gurunathan
Additional Govt. Pleader

COMMON ORDER

Heard Ms.Dakshayani Reddy, the learned Senior Counsel for the petitioners and Mr.P.Gurunathan, the learned Additional Government Pleader for the respondents.

2. The petitioners have filed these writ petitions challenging the order passed by the second respondent dated 11.12.2020 and to direct the second respondent to step up their pay on par with their junior Mirunalini Raj with effect from 14.06.2018.

3. The petitioner in W.P.No.24648/2021 had joined in service as Junior B.T.Assistant on 09.09.2005 and her services have been regularized with effect from 01.06.2006 and she was promoted to the post of Headmaster on 18.06.2014.



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The petitioner in W.P.No.24653/2021 had joined in service as Junior B.T.Assistant on 08.09.2005 and his services have been regularized with effect from 01.06.2006 and he was promoted to the post of Headmaster on 18.06.2014.

The petitioner in W.P.No.24659/2021 had joined in service as Junior B.T.Assistant on 01.07.2004 and her services have been regularized with effect from 01.06.2006 and she was promoted to the post of Headmaster on 12.10.2009.

4. As on today, the petitioners stand as senior than one Mirunalini Raj. The junior Mirunalini Raj got her promotion to B.T. Headmaster on 13.06.2008. However, she opted to get her pay fixed in the higher cadre of B.T.Assistant after getting her selection grade in the lower post. Hence, this along with implementation of the successive pay revision resulted in Mirunalini Raj getting higher pay of Rs.68,300/- as on 13.06.2018 when she got promoted to the post of B.T. Headmaster. But the petitioners' scale of pay on 13.06.2018 is Rs.64,400/-. No doubt Mirunalini Raj got promoted five years later than the petitioners. But her pay at the Headmaster level is higher than the petitioners. So the



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petitioners claims parity of pay with their junior through stepping up of their pay as approved in the Government Order in G.O.(Ms.)No.25 Personnel and Administrative Reforms (F.R.IV) Department dated 23.03.2015.

5. If the Government employees who are appointed to the same level of post and when promoted to higher post if there is pay anomaly, it is liable to be rectified. Mostly these pay anomalies would arise in view of the following reasons:

- i) The junior getting promotion at a later point of time after attaining the selection grade in the lower post and opts to get the pay fixation in the higher post after availing the selection grade pay;
- ii) Due to implementation of pay revision as per the recommendation of successive pay commissions;
- iii) Getting incentive increments for higher qualification – Senior getting the incentive increments at the lower level post and Junior getting the incentive increments at a higher level post



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6. FR 22 B (ii) would state that in case of both the senior and junior are drawing the same rate of pay in the lower post and the senior was promoted to the higher post before drawing the next increment at the lower post he would draw less pay than the junior, in case the junior was promoted to the higher post after drawing the next increment in the lower post. In such case, the pay of Senior should be stepped up to the pay equivalent to the pay fixed for the junior in that higher post. For better clarity FR 22 B (ii) is extracted below:

“ 22-B. Notwithstanding anything contained in these rules, where a Government servant holding a post in a substantive or officiating capacity, Is promoted or appointed in a substantive or officiating capacity, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment, at the stage at which such pay has accrued. If the monetary benefit after such fixation falls short of five per cent of the pay drawn in the lower post, his pay in higher post shall be so fixed, allowing a minimum increase of five per cent of the pay drawn in the lower post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post is a stage in the time-scale of pay of the higher post, the



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pay shall be fixed at such stage in the time-scale of pay of the higher post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post exceeds the amount arrived at for fixation of pay in the higher post under this rule but where there is no corresponding stage in the time-scale of pay of the higher post, the pay shall be fixed at the next higher stage in the time-scale of pay of the higher post.

...

ii) for fixation of pay on the date of promotion or appointment to the higher post in the manner as provided in rule 22 (1) (a) (1) or rule 22 (1) (b) (1) and for re-fixation of pay under this rule on the date of accrual of next increment in the time-scale of pay of the lower post. Such option shall be exercised within a period of one month from the date of promotion or appointment. The option once exercised shall be final. If no such option is exercised within the said period of one month, the pay shall be fixed in the manner as provided in clause (1) above. If the pay is fixed in the manner as provided in clause (ii) above, next Increment shall be allowed on completion of the required qualifying period of one year with effect from the date of re-fixation of pay.

7. It is claimed by Mr.P.Gurunathan, the learned Additional



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Government Pleader for the respondents, that the petitioners on promotion are not promoted to the same cadre but they were promoted to the post of B.T. Headmaster; but their juniors have been promoted to the selection grade in the lower grade post and hence the petitioners are not entitled to get any pay anomaly so long as their juniors also promoted to the post of the B.T. Headmaster.

8. The pay details of the junior and the senior would show that the pay anomaly between the petitioners and their juniors has started at the time when the junior Mirunalini Raj has got her selection grade pay in the year 2017. At the said point of time the petitioners were getting a pay of Rs.62,500/- under Level 17 and Mirunalini Raj was getting Rs.64,000/- under level 16. So the anomaly was continued to be present even after the promotion of the junior. The condition for stepping up of pay would be that the junior and senior belong to same cadre and the post in which they have been promoted or appointed would only relate back to their original appointment.

9. In the instant case both the petitioners and Mirunalini Raj have been appointed to the same post of B.T.Assistant. The rule would



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prescribe that setting up the pay fixed for a junior officer in that higher post should be done with effect from the date of promotion and appointment of the junior. The above condition shall not be understood in a way that the senior should wait until the junior gets promotion even if there is an anomaly between the junior and the senior in the lower post, despite the fact that they got appointed in one and the same recruitment and the senior continues to be senior until the next promotion. So the object of the rule is that at no point of time the senior should get lower pay than her junior except in case of any special increments like increments for higher qualification is allowed. Even in that case if the junior and the senior have got the same higher qualification and they are eligible to get the incentive increments, the anomaly, if exists, should still be rectified by stepping up.

10. In this regard it is relevant to refer the Government Order in G.O.(Ms.)No.25 Personnel and Administrative Reforms (F.R.IV) Department dated 23.03.2015. The said order would say in unequivocal terms that if the Government employees have been promoted to the higher post without moving to selection grade / special grade in lower post and that causes the senior to draw less pay than the junior, the pay of such



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seniors should be fixed in the higher post equivalent to the pay of the junior. It has been made specific that such stepping up should be made with effect from the date of drawl of higher pay. However it is subject to the following conditions. For the sake of clarity the relevant portion of the said Government Order is extracted under:

“ 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 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 drawl of higher pay by

The junior in the higher post subject to fulfillment 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.



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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 officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of the pay.

11. The learned Additional Government Pleader submitted that such implementation of stepping up shall be done from the date when the junior gets higher pay in higher post and not anytime earlier. The rules and the Government Orders have employed the above words by contemplating a limited situation that the senior happens to get a lower pay only in the event of the junior getting promotion after moving to selection grade or special grade and not otherwise. But, there are other occasions arise during pay revisions that the junior would get higher pay



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even without promotion or sometimes even by getting promotion without moving to selection grade or special grade. So the anomaly of pay between the senior and junior is an all time anomaly and it cannot be restricted that the entitlement of the senior would arise only when the junior also reaches the higher post, and till that time even if the junior gets higher pay, the senior should tolerate the same without making any claim for stepping up.

12. The whole object of accommodating a provision to alleviate anomaly in the pay between the senior and junior by stepping up is to ensure that the senior and junior should get at least identical pay and the senior should not get a lower pay than the junior without any of his fault, but only due to administrative reasons or service circumstances. If the rules are strictly read devoid of the object, that the senior should be allowed to get the anomaly stepped up only from the date when the junior reaches higher post and till then the senior should not claim stepping up even if the junior gets higher pay, would result in an anomalous situation that the senior is penalised for having got his career progress at the earlier point of time. This cannot be the spirit and object of provision. Hence the resultant anomaly of pay between the senior and junior should be



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rectified as and when the junior gets higher pay when they happen to get appointed or promoted in the same cadre. Or in other words, the intersection of anomaly has to be analyzed from the date on which both the senior and junior enters into service either by appointment or by promotion.

13. The second respondent without construing the context and spirit of the rules governing the anomaly stepping up to alleviate the anomaly, had chosen to reject the claim of the petitioners. It is wrong on the part of the second respondent to construe that the date of regularization would be the starting point to consider the seniority and juniority between the two Government employees. All that the rules say is the seniority and juniority between the employees as how they are placed in the seniority list either at the time of their appointment or at the time of their promotion.

14. In view of the above stated reasons, the impugned orders are liable to be quashed and the second respondent should be directed to issue orders by stepping up the pay of these petitioners on par with the junior Mirunalini Raj.



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15. Accordingly, these writ petitions are allowed and the impugned orders passed by the second respondent in OO.Moo.No.1446/Aa4/2020, OO.Moo.No.1440/Aa4/2020 & OO.Moo.No.1454/Aa4/2020 dated 11.12.2020 are hereby quashed and the second respondent is directed to issue orders by stepping up the pay of the petitioners on par with junior Mirunalini Raj on and from 01.06.2016 on which date the junior Mirunalini Raj starts to get higher pay than the petitioners and disburse the arrears as well within a period of eight weeks. No costs.

22.03.2024

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation:Yes/No
bkn



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R.N.MANJULA, J.,

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To:

1. The Principal Secretary to Government,
State of Tamilnadu,
Transport Department,
Secretariat, St. George Fort,
Chennai – 600 009.
2. The Secretary to Government,
State of Tamilnadu,
Transport Department,
Secretariat, St. George Fort,
Chennai – 600 009.
3. The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 1.
4. The Manager
Human Resources Department,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 1.
5. The Senior Deputy Manager
(Human Resources & Development)
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 2.

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