



W.P.No.34321 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

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CORAM

THE HONOURABLE MR.JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No.34321 of 2022
and W.M.P.No.33787 of 2022

S.B.Meera

... Petitioner

Vs.

1.The State of Tamil Nadu rep. By its
Principal Secretary to Government,
School Education Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Villupuram District, Villupuram.

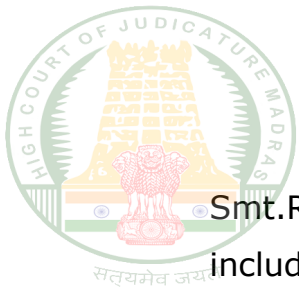
4.The District Educational Officer,
Tindivanam Education District,
Tindivanam, Villupuram District.

5.The Block Educational Officer,
Mylam Block, Tindivanam Taluk,
Villupuram District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to the impugned order issued by the 4th respondent in Na.Ka.No.767/Aa2/2022 dated 04.03.2022 and to quash the same and consequently direct the respondents for stepping up of the scale of pay of the petitioner on par with her junior

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Smt.R.Umarani, with all consequential and other attendant benefits including payment of arrears of salary along with interest, within a time frame to be fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan
For Respondents : Ms.S.Mythreye Chandru,
Spl. Govt. Pleader

ORDER

The petitioner was initially appointed as a secondary grade teacher in Mylam Block, Tindivanam Taluk, Villupuram District on 07.10.1988. While so, she was transferred to Olakkur union on 23.06.1989. Again, she was transferred back to Mylam Block on 25.06.1992. She acquired B.Ed degree qualification in May, 1995 and was sanctioned with an incentive increment for acquiring B.Ed degree as on 29.09.1995. Subsequently, she was promoted to the post of primary school headmaster on 29.11.2006. She was further promoted as B.T. Assistant (Tamil) on 19.06.2014. While so, the petitioner comparing herself with the case of one Umarani who was junior to her, claimed stepping up of pay under F.R.27(2). The respondents considered the same and passed an order rejecting the claim of the petitioner on the ground of Union-wise seniority. Aggrieved by the same, present writ petition is filed.

2. The writ petition is resisted by filing of a counter affidavit.

In the counter affidavit, it is now admitted that the reason



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mentioned in the impugned order regarding the fact that Umarani was not a junior on account of inter union transfer may not be correct. But, however, as per the counter affidavit, it is now mentioned that even though the said Umarani is junior to the petitioner, in view of G.O.Ms.No.303 Finance (Pay Cell) Department dated 11.10.2017, if the pay anomaly arises due to the incentive increment which is granted to the junior employee then in that case stepping up of pay need not be resorted to. It is the contention of the respondents that the petitioner was drawing more pay all along. Only with effect from 30.10.2010, when the said Umarani was granted incentive increment for acquiring M.A. B.Ed., the petitioner was drawing Rs.20,600/- whereas the said Umarani's pay was increased from Rs.19,860/- to Rs.22,260/-. Therefore, when the junior was granted more pay on account of her special qualification, then the petitioner cannot claim parity of pay.

3. Heard Mr.S.Nedunchezhiyan, learned counsel appearing for the petitioner and Ms.S.Mythreye Chandru, learned Special Government Pleader appearing on behalf of the respondents.

4. The learned counsel for the petitioner draws the attention of this Court to grounds (b) and (c) raised in the affidavit filed in support of the writ petition and submits that the pay anomaly arose



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in the year 2010. The relevant Rule which was applicable is contained in G.O.Ms.No.162 Finance (Pay Cell) Department dated 13.04.1998. Rule 5(2) of the then Tamil Nadu Revised Pay Rules, reads hereunder:

"Rule 5(2). In cases where a senior employee who had drawn incentive increments in the pre-revised scale and drawn more pay than his junior prior to 1st January 1996 draws lesser pay than his junior in the revised scales of pay consequent on the sanction of incentive increments in the revised scales of pay to the junior for acquiring the same higher/special qualification after introduction of revised scales of pay, then the pay of the senior may be stepped up to the level of that of the junior from the date from which the junior draws such higher pay."

5. Therefore, if the junior who acquired the very same additional educational qualification as that of the senior and under the revised pay, if the quantum of increment granted is greater, then the pay of the senior has still to be stepped up.

6. Per contra, learned Special Government Pleader would rely upon the G.O.Ms.No.303 Finance (Pay Cell) Department dated 11.10.2017 which was subsequent Revised Pay Rules. According to



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the learned Special Government Pleader, when the subsequent

Revised Pay Rules has come into effect and as per the same when the junior employee draws more pay on account of advance increment, then the pay of senior need not be stepped up. Rule 13 of The Tamil Nadu Revised Pay Rules, 2017 is extracted hereunder for ready reference:

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 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 employees 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



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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 of the senior employee.

(2) The order relating to re-fixation of the pay of the senior employee in accordance with sub rule (1) 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.

7. I have considered the rival submission made on either side and perused the material records.



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8. Even though with the implementation of VII Pay Commission, the Government framed Revised Pay Rules, the basic principle relating to the stepping up of pay of a senior on par with that of the junior is contained in F.R. 27(2) which is extracted hereunder:

'F.R. 27(2): The Heads of Departments shall step up the pay of the senior on par with the pay of his junior. Such cases shall be sent to Government for ratification within one month from the date of refixation. The Government may ratify or refuse to ratify such fixation. If the Government refuses to ratify such fixation or any wrong fixation is noticed at a later date, the excess amount drawn by such fixation shall be recovered from the individual.'

9. Therefore, it can be seen that if for any reasons, while implementing the pay revision, if the junior is drawing more pay than that of the senior, then senior's pay has to be stepped up. The Hon'ble Supreme Court of India considered the said issue in detail. A useful reference can be drawn to the judgment of the Hon'ble Supreme Court in ***Union of India v. P. Jagdish and Ors., reported in AIR 1997 SC 1783***. It is relevant to extract paragraph No.7 which reads as hereunder :-



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'7. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as senior Clerks against the identified posts carrying special pay of Rs.35/- per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at higher level than the respondents. Under the provisions of fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks and the



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respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. The stepping up should be done in such a way that the anomaly in juniors getting higher salary than the senior in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications.

This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the posts to which 35% special pay was attached in the lower cadre. But by reason of promotion the promote-juniors who worked on the said posts, infact, performed the hard duties and earned special pay. Direction to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though

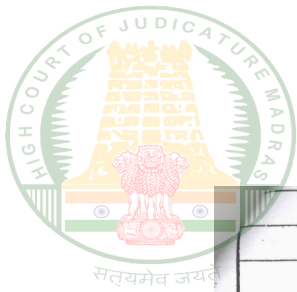


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direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only perceptively (sic) from the date of the promotion and the fixation of the scale stepping up of scale to pay would be perspective(sic) to calculate future increments on the scale of pay in promotional post only perspectively.'

10. Thus, it can be seen that if the pay drawn by the senior is lesser on account of any special qualification that is being obtained by the junior or by virtue of any additional ability of junior, then the pay need not be stepped up. In the instant case, the petitioner is also possessing post graduate degree as well as B.Ed. qualification and has drawn two incentive increments. The junior is also possessing same post graduate degree qualification and is drawing two increments. Merely because the junior obtained post graduate degree and B.Ed. qualification at a later date and under the revised scale of pay, the junior is granted an increment amount which is higher in terms of money it results in pay anomaly. A scanned reproduction of the relevant comparison of pay which is given in page 30 is as follows:



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புணியில் முத்தேவர் இளையவர் ஊதிய ஒப்பு நோக்கு பட்டியல்					
புணியில் முத்தேவர்			புணியில் இளையவர்		
திருமதி.எஸ்.பி.மீரா			திருமதி.இரா.உ.மாராணி		
01.10.2003	காலமுறை ஊதிய உயர்வு	6350+25 VOL2/P12-13	01.10.2003	காலமுறை ஊதிய உயர்வு	6050 VOL1/P28-29
01.10.2004	காலமுறை ஊதிய உயர்வு	6500+25 VOL2/P12-13	01.10.2004	காலமுறை ஊதிய உயர்வு	6200 VOL1/P28-29
01.10.2005	காலமுறை ஊதிய உயர்வு	6650+25 VOL2/P14-15	01.10.2005	காலமுறை ஊதிய உயர்வு	6350 VOL1/P28-29
01.10.2006	காலமுறை ஊதிய உயர்வு	6800+25 VOL2/P16-17	01.10.2006	காலமுறை ஊதிய உயர்வு	6500 VOL1/P30-31
29.11.2006	தொ.ப.த.ஆ.ப.உ.ஊ.நி	6950+25 VOL2/P. 8-19	29.11.2006	தொ.ப.த.ஆ.ப.உ.ஊ.நி	6650 VOL1/P33
01.10.2007	காலமுறை ஊதிய உயர்வு	7100+25 VOL2/P18-19	01.10.2007	காலமுறை ஊதிய உயர்வு	6800 VOL1/P34-35
01.10.2008	காலமுறை ஊதிய உயர்வு	7250+25 VOL2/P22-23	01.10.2008	காலமுறை ஊதிய உயர்வு	6950 VOL1/P34-35
ஊதிய விகிதம் 6500-200-10500			ஊதிய விகிதம் 6500-200-10500		
07.10.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	7300+125 VOL2/P22-23	01.12.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	7100 VOL1/P37
(01.01.2006) ஊதியக்குழு 2009 ஊதிய நிர்ணயம் (அ.ஆணை.எண்.234/நிதி (ஊ.கு) / நாள்.01.06.2009) பணப்பலன் 01.01.2007					
நாள்	ஊதிய பெற்ற விவரம்	ஊதியம்	நாள்	ஊதிய பெற்ற விவரம்	ஊதியம்
ஊதிய விகிதம் 9300-34800-PB2< GP 4300			ஊதிய விகிதம் 5200-20200-P1< GP 2800		
01.01.2006	ஊதிய நிர்ணயம்	16720 VOL2/P	01.01.2006	ஊதிய நிர்ணயம்	16120 VOL2/P10
01.10.2006	காலமுறை ஊதிய உயர்வு	17230 VOL2/P	01.10.2006	காலமுறை ஊதிய உயர்வு	16610 VOL2/P10
29.11.2006	தொ.ப.த.ஆ.ப.உ.ஊ.நி	17750 VOL2/P	29.11.2006	தொ.ப.த.ஆ.ப.உ.ஊ.நி	17110 VOL2/P12
01.10.2007	காலமுறை ஊதிய உயர்வு	18290 VOL2/P	01.10.2007	காலமுறை ஊதிய உயர்வு	14040 VOL2/P10
01.10.2008	காலமுறை ஊதிய உயர்வு	18840 VOL2/P	01.10.2008	காலமுறை ஊதிய உயர்வு	14470 VOL2/P16
07.10.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	19400 VOL2/P	01.12.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	18710 VOL2/P11
01.10.2009	காலமுறை ஊதிய உயர்வு	20000 VOL2/P26-27	01.10.2009	காலமுறை ஊதிய உயர்வு	19280 VOL2/P
01.10.2010	காலமுறை ஊதிய உயர்வு	20600 VOL2/P26-27	01.10.2010	காலமுறை ஊதிய உயர்வு	19860 VOL2/P
30.12.2010	இல் பெறும் ஊதியம்	20600	30.12.2010	எம்.எ.பி.எட்.ஊக்கஊதியம்	22260 VOL2/P
ஒரு நாள் ஊதியக்குழு 2011 ஊதிய நிர்ணயம் (அ.ஆணை.எண்.23/நிதி (ஊ.கு) / நாள்.12.01.2011) பணப்பலன் 01.01.2011					
நாள்	ஊதிய பெற்ற விவரம்	ஊதியம்	நாள்	ஊதிய பெற்ற விவரம்	ஊதியம்
ஊதிய விகிதம் 9300-34800-PB2< GP 4500			ஊதிய விகிதம் 5200-20200-P1< GP 2800		
29.11.2006	தொ.ப.த.ஆ.ப.உ.ஊ.நி	17950 VOL2/P31	29.11.2006	தொ.ப.த.ஆ.ப.உ.ஊ.நி	17310 VOL2/P14
01.10.2007	காலமுறை ஊதிய உயர்வு	18490 VOL2/P31	01.10.2007	காலமுறை ஊதிய உயர்வு	17830 VOL2/P14
01.10.2008	காலமுறை ஊதிய உயர்வு	19050 VOL2/P31	01.10.2008	காலமுறை ஊதிய உயர்வு	18370 VOL2/P14
01.12.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	19630 VOL2/P31	01.12.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	18930 VOL2/P14
01.10.2009	காலமுறை ஊதிய உயர்வு	20220 VOL2/P31	01.10.2009	காலமுறை ஊதிய உயர்வு	19500 VOL2/P14
01.10.2010	காலமுறை ஊதிய உயர்வு	20830 VOL2/P31	01.10.2010	காலமுறை ஊதிய உயர்வு	20090 VOL2/P14
30.12.2010	இல் பெறும் ஊதியம்	20830	30.12.2010	எம்.எ.பி.எட்.ஊக்கஊதியம்	22530 VOL2/P15
(01.12.2008 விருப்பம்) இல் ஒரு நாள் ஊதியக்குழு 2011 ஊதிய நிர்ணயம் (அ.ஆணை.எண்.14483/நிதி (ஊ.கு) / நாள்.05.01.2012) பணப்பலன் 01.01.2011					
நாள்	ஊதிய பெற்ற விவரம்	ஊதியம்	நாள்	ஊதிய பெற்ற விவரம்	ஊதியம்
ஊதிய விகிதம் 15600-39100-PB3< GP 5400			ஊதிய விகிதம் 15600-20200-P1< GP 2800-P2758		
07.10.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	21000 VOL2/P35	01.12.2008	த.ஆதேர்வு ஊதிய நிர்ணயம்	21000 VOL2/P14
01.10.2009	காலமுறை ஊதிய உயர்வு	21630 VOL2/P35	01.10.2009	காலமுறை ஊதிய உயர்வு	21630 VOL2/P20
01.10.2010	காலமுறை ஊதிய உயர்வு	22280 VOL2/P35	01.10.2010	காலமுறை ஊதிய உயர்வு	22280 VOL2/P20
30.12.2010	இல் பெறும் ஊதியம்	22280	30.12.2010	எம்.எ.பி.எட்.ஊக்கஊதியம்	24960 VOL2/P20
01.10.2011	காலமுறை ஊதிய உயர்வு	22950 VOL2/P36	01.10.2011	காலமுறை ஊதிய உயர்வு	25710 VOL2/P20
01.10.2012	காலமுறை ஊதிய உயர்வு	23640 VOL3/P 8-9	01.10.2012	காலமுறை ஊதிய உயர்வு	26490 VOL2/P21
01.10.2013	காலமுறை ஊதிய உயர்வு	24350 VOL3/P 8-9	01.10.2013	காலமுறை ஊதிய உயர்வு	27290 VOL2/P21
01.10.2014	காலமுறை ஊதிய உயர்வு	25080 VOL3/P 10-11	01.10.2014	காலமுறை ஊதிய உயர்வு	23110 VOL2/P23
01.10.2014	ப.ஆ.ப.உ.ஊ.நி	25840 VOL3/P 10-11	01.10.2015	காலமுறை ஊதிய உயர்வு	28960 VOL2/P24-25
01.10.2016	காலமுறை ஊதிய உயர்வு	26620 VOL3/P 10-11	01.10.2016	காலமுறை ஊதிய உயர்வு	29830 VOL2/P26-27

11. From the above, it can be seen that only from 30.12.2010, pay anomaly came into existence. Both the pay and the revised pay are higher. It can be seen that earlier rule position takes this into account and categorically states that if the junior is



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given advance increment under revised pay, the quantum of which is more than the senior's pay, it should be stepped up whereas in the year 2017, that position has not been adverted to at all. In any event, it can be seen that for the anomaly in the year 2010, 2017 Rules cannot be made applicable in support thereof to the pay anomaly de hors what is contained in the relevant revised pay rules, it is only Fundamental Rules which goes into the question. The basic rule is that when the junior and senior are travelling on the same route in the same position and are given the same promotion like the two rails of the same route, suddenly one rail cannot go in advance. If that is kept in mind in this case it cannot be said that the junior drew more pay only because of some additional or special qualification which she obtained but only because of the implementation of the revised pay rules. The very rule with regard to stepping up of pay is only to ameliorate this kind of hardship which arise with the senior. Therefore, I am of the view that the petitioner's case deserves acceptance. The reasons mentioned in the impugned order are also erroneous. Therefore, apart from the reasons mentioned in the impugned order when this Court has found positively that the petitioner is entitled for stepping up of pay, the writ petition deserves to be allowed in the following terms:



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11.1 The impugned order dated 04.03.2022 passed by the fourth respondent is set aside;

*11.2 The respondents shall consider the proposal of the fifth respondent herein dated 20.08.2019 afresh because the petitioner is on lesser pay with effect from 30.12.2010, accordingly redress the grievance of the petitioner by stepping up of pay on par with this junior to Rs.22,260/- with effect from 30.12.2010 and accordingly re-fix the pay of the petitioner and grant him all benefits. Needless to say that the petitioner will be entitled for the actual arrears with effect from the date of filing of writ petition, as per the judgment of Hon'ble Supreme Court in **State of Kerala and Ors. Vs. E.K.Bhaskaran Pillai** reported in **(2007) 6 SCC 524** the petitioner shall be entitled for the arrears from the date of filing of the writ petition i.e., 19.12.2022;*

11.3 The said exercise shall be carried out by the respondents within twelve weeks from the date of receipt of a copy of this order.



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12. In the result, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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26.04.2024

Index:Yes

Neutral Citation: Yes

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To

1.The Principal Secretary to Government,
School Education Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Villupuram District, Villupuram.

4.The District Educational Officer,
Tindivanam Education District,
Tindivanam, Villupuram District.

5.The Block Educational Officer,
Mylam Block, Tindivanam Taluk,
Villupuram District.



WEB COPY



W.P.No.34321 of 2022

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.34321 of 2022

26.04.2024