



WP.(MD).Nos.7664 of 2023 and 15641 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 12.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.7664 of 2023 and 15641 of 2022

W.P.(MD)No.7664 of 2023

C.N.Muthukaruppan

... Petitioner

Vs.

- 1.The District Educational Officer
(Elementary),
Pudukkottai Educational District,
Pudukkottai,
Pudukkottai District.
- 2.The Block Educational Officer
(Circle 2),
Thirumayam Union,
Pudukkottai Educational District,
Pudukkottai District.
- 3.The Assistant Elementary Educational
Officer,
Thirumayam,
Pudukkottai District.
- 4.The Additional Assistant Elementary
Educational Officer,
Thirumayam, Pudukkottai District.

... Respondents



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PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire record pertaining to the impugned orders in proceedings Na.Ka.No.486/A2/2022 dated 06.02.2023 and quash the same as bad-in-law and consequently direct the respondents to re-fix the petitioner salary as on 27.11.2006, on the basis of the petitioner representation dated 21.11.2022 within the time stipulated by this Court.

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate

W.P.(MD)No.15641 of 2022

R.Paul Murugan ... Petitioner

Vs.

1.The District Educational Officer,
Vallioor, Tirunelveli District.

2.The Block Educational Officer II,
Vallioor, Tirunelveli District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to impugned proceedings of the 1st respondent herein in



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O.Mu.No.1630/A3/2020 dated 30.09.2020 and quash the same and consequently direct the respondents herein to step up the pay of the petitioner on par with the petitioner's junior with effect from 05.12.2016 with all monetary benefits.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.P.T.Thiraviyam,
Government Advocate

COMMON ORDER

W.P.(MD)No.7664 of 2023 is filed to quash the impugned order dated 06.02.2023 and consequently directing the respondents to re-fix the petitioner's salary as on 27.11.2006, on the basis of the petitioner's representation dated 21.11.2022.

2. W.P.(MD)No.15641 of 2022 is filed to quash the impugned proceedings of the 1st respondent dated 30.09.2020 and consequently directing the respondents to step up the pay of the petitioner on par with the petitioner's junior with effect from 05.12.2016 with all monetary benefits.



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3. The case of the writ petitioner in W.P.(MD)No.15641 of 2022:

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(i) The petitioner was initially appointed on 01.08.1995 as a Secondary Grade Teacher in Narikudi Union, Virudhunagar District. Subsequently, he was transferred to Vallioor Union, Tirunelveli District on 22.07.1998. He was given with selection grade pay in the cadre of Secondary Grade Teacher on 01.08.2005. He was awarded with incentive increment for his M.A., B.Ed degree with effect from 16.07.2013. Subsequently on 01.06.2013, he was promoted as Primary school headmaster without getting special grade scale in the cadre of Secondary Grade Teacher.

(ii) While so, one Thiru.M.Kanagaraj who is junior to the petitioner appointed as a Secondary Grade Teacher on 14.08.1995 in the Government Elementary School, Mundavillai, Thiruvattar Union, Kanyakumari District was subsequently transferred to Vallioor Union as Secondary Grade Teacher on 07.07.1999. On 14.08.2005, he was awarded with selection grade pay in the cadre of Secondary Grade Teacher and thereafter he was awarded with special grade pay in the cadre of Secondary Grade Teacher on 14.8.2015.



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(iii) Subsequently, he was promoted as Primary School Headmaster on 08.08.2016 and thereafter he was awarded incentive increment for his M.A., and B.Ed degree with effect from December 2016. The petitioner's junior Thiru M.Kanagaraj after getting special grade pay in the cadre of Secondary Grade Teacher was promoted as Primary School Headmaster and received incentive increment for M.A., and B.Ed degree. Whereas, without receiving special grade pay in the cadre of Secondary Grade Teacher, the petitioner was promoted as Primary School Headmaster and received incentive increment for M.A., and B.Ed degree. By virtue of the same, the petitioner's junior is getting higher pay than the petitioner in the cadre of Elementary School Headmaster.

4. The case of the writ petitioner in W.P.(MD).No. 7664 of 2023:

(i) The petitioner joined initially as Secondary Grade Teacher on 10.02.1986 in the Panchayat Union Primary School at Kunnandar Koil Union, Pudukottai district. Later, he was transferred to the Panchayat Union Primary School at Thirumayam Union on 01.07.1986. On completion of 10 years of service, he was awarded selection grade pay with effect from 10.02.1996. He was promoted as Headmaster (Primary



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School) on 03.06.2002 and was posted in Thirumayam Union.

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(ii) He was promoted and posted as Middle School Headmaster on 14.10.2005 in Thirumayam Union. He was awarded special grade pay with effect from 10.02.2006 in the cadre of Primary School Headmaster. He acquired higher qualification namely B.Ed degree on 25.01.1993 and M.A., on 25.05.1994 for which he was awarded with two incentive increments on 25.01.1993 and 25.05.1994 respectively. Presently, the petitioner is working as Middle School Headmaster in Thirumayam Union. While so, the petitioner's junior one Thiru.M.Elango joined service as Secondary Grade Teacher on 24.07.1986. He was thereafter transferred to Ponnamaravathi Union on 05.07.1988 and further transferred to Thirumayam Union on 14.09.1990.

(iii) On completion of 10 years of service, he was awarded with selection grade pay in the cadre of Secondary Grade Teacher on 24.07.1996 and thereafter on completion of 20 years of service, he was further awarded as special grade pay in the cadre of Secondary Grade Teacher on 24.07.2006. He was promoted as Primary School Headmaster



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on 03.06.2002. He had acquired M.A., degree even at the time of appointment as Secondary Grade Teacher on 24.07.1986. Even though he had acquired master's degree at the time of appointment, he was not awarded incentive increment for the same at the first instance. He acquired M.Phil degree in the year 2008. Thereafter, he was awarded incentive for M.Phil on 18.01.2013 vide proceedings of AAEEEO dated 28.08.2014, he was further awarded incentive increment with effect from 27.11.2006 for acquiring M.A., degree which was acquired by him in the year 1984.

(iv) The petitioner's junior Thiru. M.Elango after getting special grade pay in the cadre of Secondary Grade Teacher was promoted as Middle School Headmaster and received incentive increment for M.A., and M.Phil degree. Whereas, without receiving special grade pay in the cadre of Secondary Grade Teacher, the petitioner was promoted as Middle School Headmaster and received incentive increment for B.Ed and M.A., By virtue of the same, the petitioner's junior is getting higher pay than that of the petitioner in the cadre of Middle School Headmaster.



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5. The pay parity tabular of both the writ petitions are extracted

hereunder:

W.P.(MD)No.15641 of 2022:

Sl. No.	Details	R.Paul Murugan	M.Kanagaraj
1.	Date of 1 st appointment	01.08.1995	14.08.1995
2.	Cadre of appointment	Secondary Grade	Secondary Grade
3.	Pay at the initial appointment	Rs.1200	Rs.1200
4.	TRB Bank No	----1524/1995	----4053/1995
5.	Date of joining in Narikudi Union, Virudhunagar	01.08.1995	-
6.	Date of joining in Government Elementary School. Mundavillai, Thiruvattar Union	---	14.08.1995
7.	Date of Joining in Vallioor Union	22.07.1998	07.07.1999
8.	Date of annual increment	JULY-01	JULY-01
9.	01.01.1996 5 th pay commission pay fixation	4625 (4500-125-7000)	4625 (4500-125-7000)
10.	Incentive increment for M.A., and B.Ed., qualification	16.07.2013	-----
11.	Date of annual increment (after promotion)	APRIL-01	APRIL-01
12.	Primary School Head Master	01.06.2013	08.08.2016
13.	Selection grade in cadre of Secondary Grade	01.08.2005	14.08.2005
14.	Special Grade in cadre of Secondary Grade	-----	14.08.2015



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15.	01.07.2018 pay as on	74600 ----- (Level 17 Cell 25)	74600 ----- (Level 17 Cell 26)
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W.P.(MD)No.7664 of 2023:

Sl. No.	Details	Senior Employee	Junior Employee
1.	Employee Name	Mr.C.N.Muthukkaruppan	Mr.M.Elango
2.	Present Post	Middle School Head Master	Middle School Head Master
3.	School Name and address	Panchayat Union Middle School, Sethurappatti	Panchayat Union Middle School, Melur
4.	Date of Joining (First Post)	Secondary Teacher, Gundrandarkoil Block 10.02.1986	Secondary Teacher, Gundrandarkoil Block/24.07.1986
5.	Regularization Date	10.02.1986 FN Gundrandarkoil Block	24.07.1986 FN Gundrandarkoil Block
6.	Date of Joining in Present Block (Thirumayam)	01.07.1986 Thirumayam	14.06.1990 Thirumayam
7.	Seniority No	-----	----
8.	'A' (or) 'B' Cadre	Does not arise	Does not arise
9.	Selection grade date	SGT 10.02.1996 PSHM 03.06.2002 MSHM---	SGT 10.02.1996 PSHM 03.06.2002 MSHM---



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10.	Special grade date	SGT PSHM 10.02.2006 MSHM	SGT PSHM 24.07.2006 MSHM
11.	Name of the Promotion Post and Joining date	PSHM 03.06.2002 MSHM 14.10.2005	PSHM 03.06.2002 MSHM 27.11.2006
12.	Regularization date for higher post	PSHM 03.06.2002 MSHM 14.10.2005	PSHM 03.06.2002 MSHM 27.11.2006
13.	Higher Education qualification / effective date for incentives	B.Ed., 25.01.1993 M.A. 25.05.1994	M.Phil 18.01.2013
14.	Higher qualification Incentives Normal stage / Selection grade / special grade	SGT Normal	PSHM Special grade
15.	Selection grade / Special grade effective date salary	B.Ed 1410 1200 --- 2040 M.A 1500 1200 ---2040	M.Phil 27800 15600-39100 + 5700
16.	Account Test part 1 Passed date	-----	----

6. The petitioners made representations to the respondents requesting to refix their scale of pay on par with their juniors. However, the petitioner's request was rejected by the proceedings of AAEO dated 28.07.2014 and the Block Educational Officer II vide the proceedings dated 16.06.2002. Challenging the same, the petitioners filed



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W.P.(MD)No. 5892 of 2015 and W.P.(MD)No. 7472 of 2022 respectively before this court. This court, by order dated 26.10.2022 in W.P.(MD)No. 5892 of 2015 and order dated 27.07.2020 in W.P.(MD)No. 7472 of 2020 allowed the writ petitions setting aside the impugned orders, directing the respondents to reconsider the case of the petitioners.

7. Pursuant to the same, the impugned order in proceedings in NA.Ka. No.486/A2/2022 dated 06.02.2023 in W.P.(MD)No. 7664 of 2023 and impugned order O.Mu.No.1630/A3/2020 dated 30.09.2020 in WP(MD)No. 15641 of 2022 came to be issued by the respondents. Challenging the same, these writ petitions came to be filed.

8. Heard, the learned counsel for the petitioners, the learned government advocates Mr. N. Ramesh Arumugam and Mr. Thiraviyam and anxiously perused the available materials on record.

9. The case of the respondents is that the pay anomaly rectification by comparing junior getting more pay than the senior should be worked out in compliance with the conditions set forth in G.O.Ms.No.234 dated



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01.06.2019 wherein it has been mandated that both the junior and the senior Government employee should belong to the same category and should have been promoted to the same post. However, in these cases the seniors, that is the petitioners who were originally appointed as Secondary Grade Teachers and thereafter promoted as Middle School Headmaster / Primary School Headmaster without obtaining special grade pay. But the juniors who were originally appointed as Secondary Grade Teachers were promoted as Primary School Headmaster / Middle School Headmaster after obtaining special grade pay.

10. The seniors were not promoted to the same post like the junior and hence, the senior has not fulfilled their conditions in G.O.Ms.No.234 dated 01.06.2009. The petitioners and their juniors joined in the present block on different dates and were promoted on different dates and hence the same cannot be compared. If the petitioners and the juniors first appointment is in the same place only, then the salary could be compared and not otherwise.



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11. A careful perusal of the pay parity tabular which has been tabulated supra would clearly throw light on the fact that the petitioners are certainly seniors to the persons cited as juniors in their respective tabular supra. The said fact is clearly borne out by records. Therefore, it is clear from the above that both in terms of joining service and in terms of being transferred to a different block, petitioners are seniors to their respective juniors namely M. Elango and M.Kanagaraj.

12. The fulcrum of the lis in both the petitions are no more res integra and the same has been dealt with by this court in W.P.No. 34455 of 2019 dated 06.01.2020 and the relevant portion of the same is extracted as follows:

“9.It will be relevant to refer the judgment of this Court in WP (MD).No.24551 of 2018 dated 19.02.2019. The relevant portions of the judgment is extracted hereunder:

“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:



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“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 un-sustainable 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 of time. Therefore, by no stretch of imagination the said Shanthi could have stolen 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.

6.The second respondent had filed a Counter affidavit, wherein it has been stated as follows:

11. It is to be noted that B.Anuradha (Panchayar Union Area, S.Pudhur) was appointed in the very same S.PudhurUnion, ie., on 27.07.1999 and got transferred to the same Thirupathur Union on 01.11.2000.These two panchayat Union areas are same



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distinct and that the Teaches appointed in the same Union area, compared for fixation of pay with his junior, who came from one Unit to another Unit, cannot be done.

12.So even basically, the question of comparison cannot be entertained and her request cannot be entertained and his request cannot be considered even at the initial stage. So, the prayer of the petitioner can be set aside even at the primary stage.

7.Following the decisions as mentioned above, this Court had, inWP(MD)No.8046 of 2018, also passed an order in the following terms:-

“9.Therefore, it became obvious that the petitioner all along from the date of selection and appointment has been senior and has been marching ahead of the said Ms.R.Vijayalakshmi. Therefore, the pay disparity if anything found between the petitioner and the third party, who is admittedly junior to the petitioner, the same shall be set right by the respondent and the anomaly must be redressed. In this regard, the only reason cited by the second respondent in the impugned order is that if both the petitioner and the third-party, who is junior to the petitioner, are



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appointed in the same Panchayat Union, then only the pay disparity can be redressed and as a result pay can be stepped up to the senior person. These reasons cannot be accepted as the seniority will not get changed, unless, the person gives up such right of seniority, if he is transferred from one Union to other Union by losing the right of seniority. It was in the case on hand, the petitioner all along has been senior and thereafter, would have been available to the respondents for promotion. Moreover, as rightly pointed out by the learned counsel for the petitioner that the issue is no more res integra, as the learned single Judge of this Court in the case of Vijayarani, cited supra, had an occasion to consider the similar issue and ultimately, the learned Single Judge has given findings, which reads thus:

“.....5.The first respondent has proceeded on the footing that since the petitioner got transferred from Pudukottai 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 un-sustainable 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 march over the petitioner. The order impugned in this writpetition 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.

6.This Writ petition is allowed accordingly. No costs.

10.In view of the legal position and factual matrix of this case, I am of the considered view that the petitioner shall be entitled to seek pay parity on par with his junior, namely, one, Ms.R.Vijayalakshmi, who according to the petitioner gets a higher pay, who is junior to the petitioner all along. Therefore, the said grievance of the petitioner shall be redressed and his pay shall be stepped up on par with his junior.

8.In view of the above said orders, it is clear that the issue raised in this writ petition is covered by the number of decisions, as the reason given in the impugned order was no more being a valid one and therefore, on that ground, this impugned order is liable to be quashed and accordingly, the same is quashed.”



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10. The above judgment was also subsequently followed in WP.(MD).No.6358 of 2019 dated 25.04.2019.”

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13. In yet another case, the Hon'ble Division Bench of this court in W.A.(MD)No. 151 of 2022 dated 21.02.2022 has dealt with a similar case and the relevant portion of which is extracted as follows:

“2. Learned Special Government Pleader for the appellants has vehemently submitted that, learned Single Judge fell in error while allowing the petition, since the petitioner was not entitled to stepping up of pay. It is submitted that the claim by the petitioner is against the policy of the State. It is submitted that, therefore this appeal be entertained.

3. On the other hand, learned advocate for the respondent / original writ petitioner has submitted that, not only no error is committed while recording the impugned order, number of petitions were filed on this line and identical orders were passed and many of those orders were even challenged by the State and those appeals are also dismissed. Attention of this Court is invited to few of such orders, as under:

(i) Order dated 18.03.2021 recorded on W.A.No.178 of 2021;

(ii) Order dated 15.04.2021 recorded on W.A(MD)No. 27 of 2020;

(iii) Order dated 15.04.2021 recorded on W.A(MD)No. 740



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of 2019;

(iv) Order dated 15.04.2021 recorded on W.A(MD)No. 215

of 2020;

(v) Order dated 15.04.2021 recorded on W.A(MD)No. 30

of 2020;

(vi) Order dated 15.04.2021 recorded on W.A(MD)Nos. 1223 and 1258 of 2020;

(vii) Order dated 15.04.2021 recorded on W.A(MD)Nos. 911 and 955 of 2020;

(viii) Order dated 15.04.2021 recorded on W.A(MD)No. 182 of 2021;

(ix) Order dated 15.04.2021 recorded on W.A(MD)No. 828 of 2021.

4. *Learned Special Government Pleader for the appellants is not in a position to dispute that, the subject matter of those appeals and the present appeal, in substance is the same. In view of this, no different view needs to be taken in this appeal.*

5. *For the above reasons, this appeal is dismissed."*

14. As against the order passed by the Hon'ble Division Bench in the aforesaid writ appeal, a review application in Rev.Applc(MD)No. 89 of 2022 was also filed and the Hon'ble Division Bench by its order dated 02.08.2022 dismissed the said review application on 02.08.2022.



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15. It is clear from the above judgments that even after the transfer of the teacher to the new union and placing the teacher at the bottom of the seniority list, the fact remains that the junior has got into the new division only at a later point of time. Therefore, the junior cannot be permitted to take a march over a senior teacher.

16. In the instant cases, the facts clearly establish that the petitioners are very much seniors to their respective juniors, namely M. Elango and M.Kanagaraj respectively, both in terms of joining service and also joining in the new union and the above judgments also clearly cover the facts and circumstances of the present writ petitions.

17. In view of the above discussion, this court is of the considered view that the impugned order passed by the second / third respondent respectively vide proceedings dated 30.09.2020 and 06.02.2023 require interference and accordingly the same are quashed. The petitioners are entitled to seek pay parity on par with their respective juniors, namely M. Ilango and M.Kanagaraj, who according to the petitioners are getting a higher pay.

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18. The second respondent / third respondent are directed to rectify the pay anomaly in the case of the petitioners and accordingly, step up the pay of the petitioners on par with their juniors and extend all the consequential benefits. Necessary orders shall be passed in this regard by the second respondent / third respondent respectively within a period of six (6) weeks from the date of receipt of a copy of this order.

19. Accordingly, these writ petitions are disposed of with the above directions. No costs.

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

To

1. The District Educational Officer
(Elementary),
Pudukkottai Educational District,
Pudukkottai,
Pudukkottai District.

2. The Block Educational Officer
(Circle 2),
Thirumayam Union,
Pudukkottai Educational District,
Pudukkottai District.

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3. The Assistant Elementary Educational Officer,
Thirumayam,
Pudukkottai District.
4. The Additional Assistant Elementary Educational Officer,
Thirumayam, Pudukkottai District.
5. The District Educational Officer,
Vallioor, Tirunelveli District.
6. The Block Educational Officer II,
Vallioor, Tirunelveli District.



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