



W.P.(MD) Nos.10371 and 10375 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 27.02.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) Nos.10371 and 10375 of 2020

J.Jones Thilaga Rajakumari

... Petitioner
in W.P.(MD) No.10371/2020

S.Jeyanthi

... Petitioner
in W.P.(MD) No.10375/2020

Vs.

1.The District Educational Officer,
Tuticorin.

2.The Block Educational Officer,
Srivaikundam Union,
Tuticorin District.

3.The Secretary,
Hindu Middle School,
Alwarthoppu West,
Srivaikundam Union,
Tuticorin District.

... Respondents
in both W.Ps.



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Prayer in both W.Ps.: Petitions filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No.653/a1/2019, dated 27.08.2019 and quash the same and direct the respondents to step up the scale of pay of the petitioners with effect from the date on which her junior was given higher scale of pay with all consequential benefits.

In both W.Ps.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.D.Sasikumar
Additional Government Pleader

COMMON ORDER

Heard Mr.V.Panneer Selvam, learned counsel for the petitioners and Mr.D.Sasikumar, learned Additional Government Pleader appearing for the respondents and perused the material on record.

2. The issue that arise for consideration in these two writ petitions is one and the same. Hence, both the writ petitions were heard together and are being disposed of by this common order.



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3. The petitioners in W.P.(MD) Nos.10371 and 10375 of 2020 were initially appointed as Secondary Grade Teachers on 11.09.1989 and 21.08.1992 respectively and on completion of 10 years of service in the cadre of Secondary Grade Teacher, they were granted Selection Grade and on acquiring certain higher qualifications, they were also granted incentive increments for such higher qualifications. Thereafter, they were promoted to the post of B.T. Assistant on 01.01.2008 and they have been continuing in the said post as on date. While so, the petitioners, on coming to know that their junior Tmt.S.Umadevi, who was appointed as Secondary Grade Teacher on 21.07.1995, has been drawing higher pay than the petitioners herein, made a claim for stepping up of their pay on par with the said junior. The said claim of the petitioners was considered by Respondent No.1 and their claim was rejected by issuing the impugned proceedings in Na.Ka.No. 653/a1/2019, dated 27.08.2019.

4. According to the petitioners, the said junior S.Umadevi has been continuing in the post of Secondary Grade Teacher for more than 20 years and hence, she was granted Selection Grade and Special Grade scales



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and also the incentive increments for the higher qualifications acquired by her. On implementation of VIII Pay Commission, the pay of the petitioners as well as the said S.Umadevi were revised and since then the said Umadevi is stated to be drawing higher pay than the petitioners.

5. Admittedly, the said S.Umadevi is still continuing in the post of Secondary Grade Teacher. The basis for the petitioners to make a claim for stepping up of their pay is that their junior is drawing higher pay than the petitioners. In order to claim seniority over the said S.Umadevi, the petitioners should also be in the same cadre in which the said Umadevi is working. It is only when the petitioners and the said Umadevi are in the same cadre, the question of *inter se* seniority among them would arise. While admittedly they are working in different cadres, the question of the petitioners comparing themselves with the said S.Umadevi is totally baseless. No doubt, the said S.Umadevi was appointed subsequent to the petitioners in the cadre of Secondary Grade Teacher. It is because of her continuance in the same post for more than 20 years, she was granted Selection Grade and Special Grade pay in the same cadre together with



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incentive increments for the higher qualifications acquired by her. Whereas the petitioners, on completion of 10 years of service, acquired the Selection Grade pay and then were promoted to the higher post of B.T. Assistant and they have been working in the said post. Therefore, there cannot be any comparison between the petitioners and the so-called junior S.Umadevi.

6. The question of stepping up of pay of senior on par with junior would arise only in case if the junior working in the same cadre as that of the senior is drawing more pay for whatever be the reason, that too, in terms of the Fundamental Rules and various Government Orders issued from time to time. But in the instant case, it is not the case of the petitioners that they are entitled under any particular Fundamental Rules or under any Government Order for stepping up of their pay by comparing themselves with the person working in different cadre.

7. Insofar as the reliance placed by the learned counsel for the petitioners on a decision of this Court in W.P.No.17848 of 2016, dated 10.04.2017 is concerned, the same has no application to the case on hand.



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In the said case, discrepancy arose due to the junior opting to come over the revised scales with effect from 01.01.2011 and there was a specific provision providing for rectification of such anomalies under Rule 5(3) of the Tamil Nadu Revised Scales of Pay Rules and this Court directed the respondents therein to consider the claim of the petitioners therein in the context of Rule 5(3) of the Tamil Nadu Revised Scales of Pay Rules.

8. Yet another decision relied upon by the learned counsel for the petitioners in W.P.No.9105 of 2012, dated 30.11.2016 is concerned, a learned Judge of this Court having considered a similar aspect and though noted the fact that the petitioner therein and her junior were working in different cadres, directed stepping up of pay on the ground that the petitioner therein and her junior were working as Graduate Teachers with same qualifications. The relevant paragraph from the said order reads as under:

“8.The case in hand is that, the petitioner was earlier treated as senior to that of Mrs.M.Vijayalakshmi and therefore she was promoted



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as P.G.Assistant on 19.11.2011 and in view of her seniority Mrs.M.Vijayalakshmi was still working as Graduate Teacher at that point of time. The entire disparity arose only during the re-fixation as per the recommendation of the VI Pay Commission. The respondent's ought to have taken into account the petitioner's date of increment was only from 1st July, while her junior's was 1st of January every year and should accordingly re-fixed their respective scale of pays. It is not in dispute that Mrs.M.Vijayalakshmi is drawing higher salary with that of the petitioner. It is also not in dispute that the petitioner and her junior are working as Graduate Teachers with same qualifications. Under such circumstances, the Fundamental Rules relied upon may not be of any assistance to the respondent. On the other hand, the disparity has to be set right by applying Rule 7(ii)(iii) of the Tamil Nadu Revised Scales of Rules, 2009 and thereby step up the pay of the petitioner on par with that of her junior."

9. From the above, especially highlighted portion, it is evident that the learned Judge passed the said order on an impression that both the



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petitioner therein and her junior were working as Graduate Teachers with same qualifications. But that is not the case as is evident from the very same paragraph extracted above. Hence, the benefit of the said order cannot be extended to the petitioners herein, as admittedly the petitioners and the said S.Umadevi are working in different cadres.

10. Then coming to yet another decision relied upon by the learned counsel for the petitioner in ***Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others*** reported in ***(2009) 3 SCC 94***, that is a case where both senior and junior are working in the same cadre, but not in different cadres and as such they were allowed promotional scale. Therefore, the said decision of the Hon'ble Apex Court is also of no help to advance the case of the petitioners herein.

11. No doubt, from the fact that the petitioners, who were appointed ahead of the said S.Umadevi, who were also promoted ahead of her to the post of B.T. Assistant and working in a higher post, have been drawing lesser pay than the said S.Umadevi would appear odd rather



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arbitrary, but the pay fixation would be done taking into consideration the nature of duties and responsibilities that the post would carry and other relevant circumstances while undertaking pay revision. Merely because the junior of the petitioners working in the lower cadre is drawing higher pay by itself cannot confer any right on the petitioners, though it appears to be odd and heart burning. In the absence of any specific rule providing for rectifying such a situation, it is not open for this Court to interfere with such situations on the ground of violation of Articles 14 and 16 of the Constitution of India. Articles 14 and 16 would come into picture only when there is a discrimination among the equals. In the instant case, admittedly the petitioners and their respective junior are not equals, as they have been working in different cadres in different circumstances, as noted above.

12. However, in case if the said junior Tmt.S.Umadevi is also promoted to the post of B.T. Assistant and even after promotion also, the said junior draws higher pay than the petitioners in the cadre of B.T. Assistant, then from the date of her promotion, the petitioners may be



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entitled to claim for stepping up of their pay on par with their junior, but not when the petitioners and the alleged junior are working in different cadres.

13. In the light of the above, this Court does not find any error or illegality in the respective impugned orders and accordingly, both the writ petitions are dismissed. No costs.

26.03.2024

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

ABR



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MUMMINENI SUDHEER KUMAR, J.

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**Pre-delivery Common Order made in
W.P.(MD) Nos.10371 and 10375 of 2020**

26.03.2024