



W.P.(MD)No.6553 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.6553 of 2017

Santhi

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Thoothukudi,
Thoothukudi District.

2.The Assistant Elementary Educational Officer,
Thiruchendur,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records in O.Mu.No.1118/A1/2016, dated 21.09.2016 and quash the same and direct the respondents to fix the pay of the petitioner on par with her junior Mrs.Majella Breez.

For Petitioner : Mr.Chandrapandi,
for Mr.A.Arun Prasad

For Respondents : Mr.T.Amjad Khan,
Government Advocate



W.P.(MD)No.6553 of 2017

ORDER

WEB COPY The issue that arises for consideration in this Writ Petition is whether the pay anomaly of the petitioner can be rectified on account of the fact that the petitioner is promoted as Primary School Headmistress without grant of Special Grade though her junior was granted Special Grade and thereafter, promoted as Primary School Headmistress prior to the promotion of the petitioner as Primary School Headmistress.

2. Since the junior of the petitioner is getting more pay, the petitioner sought to rectify the pay anomaly between the petitioner and her junior which has been rejected under the impugned order dated 21.09.2016, passed by the second respondent. Following tabular column gives the dates with regard to the petitioner's appointment and the appointment of her junior Mrs.Majella Breez.

Sl.No.	Service Particulars	Petitioner (J.Shanthi)	Majella Breez
1.	Date of appointment as a Secondary Grade Teacher	14.12.1990	17.06.1991
2.	Selection Grade in the cadre of Secondary Grade Teacher	14.12.2000	17.06.2001
3.	Special Grade in the cadre of Secondary Grade Teacher	Nil	17.06.2011
4.	Promotion as Primary School Headmistress	12.10.2009	21.09.2011



W.P.(MD)No.6553 of 2017

3. It is not in dispute that Mrs.Majella Breez is getting more salary than that of the petitioner as on date. The issue that arises for consideration is covered by the Government Order issued by the respondents, viz., G.O.(Ms).No. 25, (Personnel and Administrative Reforms) FR.IV Department, dated 23.03.2015.

4. Only due to the fact that the instances have been brought to the notice of the Government that the pay anomaly due to junior drawing more pay than the senior in cases where the senior got promotion before moving to Selection Grade / Special Grade of the lower post and the junior getting promotion after moving to Selection Grade / Special Grade in the revised scales of pay as a result of introduction of Tamil Nadu Revised Pay Rules, 2009, G.O.(Ms).No.25, (Personnel and Administrative Reforms) FR.IV Department, dated 23.03.2015 referred to supra was passed to rectify the pay anomaly. As per the said Government Order, it has been made clear in Clause No.5 that in cases where the Government Servants, who have been appointed / promoted to the higher posts without moving to Selection Grade Pay / Special Grade in the lower post and thereby happen to draw less pay than their Juniors, who were 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



W.P.(MD)No.6553 of 2017

should be fixed in the higher post equal to the pay of the juniors in the higher post with effect from the date of drawal of higher pay by the juniors in the higher post subject to the fulfilment of following conditions:

(a). 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.

(b). The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c). The pay anomaly should be arising directly as a result of 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

(d). 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



W.P.(MD)No.6553 of 2017

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.

5. In the case on hand, as seen from the service particulars of the petitioner as well her junior Mrs.Majella Breez which are detailed hereunder, once again, it is clear that the date of appointment of the petitioner as Secondary Grade Teacher was on 14.12.1990 and the date of appointment of Mrs.Majella Breez as Secondary Grade Teacher was only on 17.06.1991 and therefore, it is an undisputed fact that the petitioner is senior to Mrs.Majella Breez with regard to her date of her initial appointment as Secondary Grade Teacher. On completion of ten years of service, the petitioner was awarded Selection Grade in the cadre of Secondary Grade Teacher on 14.12.2000, whereas, her junior Mrs.Majella Breez was awarded Selection Grade in the cadre of Secondary Grade Teacher only on 17.06.2001. However, the petitioner was not awarded Special Grade in the cadre of Secondary Grade Teacher, but, instead she was directly promoted to the post of Primary School Headmistress on 12.10.2009, whereas, Mrs.Majella Breez was awarded Special Grade in the cadre of Secondary Grade Teacher on 17.06.2011 and only thereafter, she was promoted as Primary School Headmistress on 21.09.2011 i.e., after the date of promotion of the petitioner as Primary School Headmistress which was much earlier on 12.10.2009.



W.P.(MD)No.6553 of 2017

6. Admittedly, the petitioner is getting lesser pay as Primary School Headmistress when compared to her junior Mrs.Majella Breez, who was promoted to the post of Primary School Headmistress only on 21.09.2011. Despite the said fact, she is getting more pay only due to the fact that she was awarded Special Grade in the cadre of Secondary Grade Teacher on 17.06.2011. Only to rectify the pay anamoly in the aforementioned instances, G.O.(Ms).No. 25, (Personnel and Administrative Reforms) FR.IV Department, dated 23.03.2015, was passed by the Government.

7. As seen from the said Government Order, as extracted supra, it is clear from Clause 5 in the said Government Order that where the Government Servants, who have been appointed / promoted to the higher posts without moving to Selection Grade Pay / Special Grade in the lower post and thereby happen to draw less pay than their Juniors, who were 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 juniors in the higher post with effect from the date of drawl of higher pay by the juniors.



W.P.(MD)No.6553 of 2017

WEB COP 8. The case of the petitioner certainly falls under the parameters prescribed in G.O.(Ms).No.25, (Personnel and Administrative Reforms) FR.IV Department, dated 23.03.2015. However, the pay of the petitioner has to be revised only from the date when her junior, viz., Mrs.Majella Breez was fixed higher pay on her promotion to the post of Primary School Headmistress i.e., on 21.09.2011, though the petitioner was promoted to the said post on 12.10.2009 itself.

9. Learned counsel appearing for the petitioner also fairly submitted that the petitioner is not entitled for any additional increments that the petitioner's junior Mrs.Majella Breez had obtained either during the period of her service when she was awarded the Special Grade in the cadre of Secondary Grade Teacher or after being promoted as Primary School Headmistress on 21.09.2011 as the petitioner is not entitled to the same as per G.O.(Ms).No.25, (Personnel and Administrative Reforms) FR.IV Department, dated 23.03.2015. He also relied upon the judgment of this Court, dated 09.08.2023 in ***W.P.No.23878 of 2017*** in the case of ***K.Nirmala Vs. The Government of Tamil Nadu, represented by the Secretary to Government, P & AR Department, Fort St.George, Chennai-600 009 and others***, wherein, G.O.(Ms).No.25, (Personnel



W.P.(MD)No.6553 of 2017

and Administrative Reforms) FR.IV Department, dated 23.03.2015, was

considered and it was made clear that despite the fact that the senior and junior belong to a different union, the aforementioned Government Order is applicable. He would also submit that the order of the learned Single Judge dated 09.08.2023 passed in W.P.No.23878 of 2017 referred to supra has also been upheld by the Division Bench of this Court by order dated 15.07.2024 in W.A.No.1987 of 2024 by dismissing the Writ Appeal filed by the State. As seen from the said decision, since the case of the writ petitioner therein was squarely covered by the first and second conditions of the Government Order, viz., G.O.(Ms).No.25, (Personnel and Administrative Reforms) FR.IV Department, dated 23.03.2015, which pertains to rectification of pay anomalies in cases where juniors drawing more pay than the seniors, the Division Bench directed the said (appellants) to pass appropriate orders to step up the pay of the writ petitioner on par with the juniors in accordance with the said Government Order.

10. In the case on hand also, it is evident that the petitioner is senior to Mrs.Majella Breez as the date of appointment of the petitioner as Secondary Grade Teacher i.e., on 14.12.1990, whereas, the date of appointment of Mrs.Majella Breez as Secondary Grade Teacher was only on 17.06.1991. The



W.P.(MD)No.6553 of 2017

petitioner was also awarded the Selection Grade in the cadre of Secondary Grade Teacher on 14.12.2000, whereas, Mrs.Majella Breez was awarded Selection Grade only on 17.06.2001. Excepting for the fact that the petitioner was directly promoted to the post of Primary School Headmistress without the grant of Special Grade, it is clear that the petitioner is senior to that of Mrs.Majella Breez. Despite the same, her junior Mrs.Majella Breez, is getting higher salary than that of the petitioner as on date only due to the fact that she was awarded Special Scale Pay prior to being promoted as Primary School Headmistress on 21.09.2011.

11. For the foregoing reasons, in accordance with G.O.(Ms).No.25, (Personnel and Administrative Reforms) FR.IV Department, dated 23.03.2015 and as per the decision of this Court in the case of ***K.Nirmala Vs. The Government of Tamil Nadu, represented by the Secretary to Government, P & AR Department, Fort St.George, Chennai-600 009 and others*** passed in ***W.P.No.23878 of 2017***, dated 09.08.2023, as referred to supra, the prayer sought for with regard to the rectification of pay anomaly between the petitioner and her junior has to be granted. However, the question of payment of additional increments to the petitioner as was received by her junior does not arise in view of the aforementioned Government Order which places restrictions



W.P.(MD)No.6553 of 2017

with regard to those payments which has already been fairly conceded by the learned counsel appearing for the petitioner during the course of his submissions.

12. In the result, the impugned order dated 21.09.2016 passed by the second respondent, is hereby quashed and the respondents are directed to fix the pay of the petitioner on par with her junior Mrs.Majella Breez with effect from 21.09.2011, when the petitioner's junior was promoted to the post of Primary School Headmistress and pay the arrears of salary to the petitioner within a period of four months from the date of receipt of a copy of this order.

13. Accordingly, the Writ Petition stands allowed. No costs.

04.09.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

TSG

To

1.The District Elementary Educational Officer,
Thoothukudi,
Thoothukudi District.

2.The Assistant Elementary Educational Officer,
Thiruchendur,
Thoothukudi District.

10/11



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W.P.(MD)No.6553 of 2017

ABDUL QUDDHOSE, J.

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W.P.(MD)No.6553 of 2017

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