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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 19790 of 2024

K.Malathi

... Petitioner

..Vs..

1. The Director of Elementary Education
DPI Compound, College Road
Chennai – 600 006.
2. The District Educational Officer (Elementary)
Thiruvannamalai,
Thiruvannamalai District.
3. The Block Educational Officer
Thiruvannamalai
Thiruvannamalai District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to Pro.Na.Ka.No.2922/A3/2023 issued by the second respondent dated 07.11.2023 to quash the same and issue consequential direction to the second respondent rectify the anamoly of “junior drawing more pay than



senior” by stepping up the pay of the petitioner (senior) on par with his junior (Mrs.T.Devi) with effect from 25.07.2017 and disburse the monetary benefits thereof with interest, within a time frame.

For Petitioner :: Mr. P.Murali

For Respondents :: Mrs. S.Mythreye Chandru
Special Government Pleader

ORDER

The Writ Petition has been filed in the nature of a Certiorified Mandamus seeking records relating to proceedings in Na.Ka.No. 2922/A3/2023 issued by the second respondent on 07.11.2023 and to quash the same. The petitioner seeks consequential direction must be issued to the second respondent to rectify the anamoly of junior drawing more pay than senior by stepping up the pay of the petitioner on par with her junior T.Devi with effect from 25.03.2017 and to disburse the monetary benefits together with interests within a specified time.

2. The petitioner had earlier filed W.P.No. 2672 of 2019 again in



the nature of Certiorarified Mandamus seeking records relating to an order dated 23.05.2018 and to reconsider her representation in the light of Judgment passed in W.P.No. 3698 of 2007 and batch. That particular Writ Petition came up for consideration before this Court on 21.07.2023 and the Court had passed the following order:-

“8. This Court is of the considered view that the anomaly in pay had occurred due to the implementation of the recommendations of the VII pay commission and the petitioner is entitled for stepping up of pay. The contention raised by learned Government Advocate for the respondents that stepping up of pay will not be applicable to those who were transferred from one unit to another unit is rejected since this is a case of drawing of pay and equalizing the pay scale to that of her junior. The transfer from one union to another union would affect seniority but it would not be applicable so far as fixation of pay is concerned.

9. The writ petition stands allowed. A mandamus is issued to the respondents to issue



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necessary proceedings within a period of four months from the date of receipt of a copy of this order. If the respondents require any clarification, they may issue notice to the petitioner herein and seek necessary clarification and but at any rate pass orders within the period of four months. No costs. Connected miscellaneous petition is closed. ”

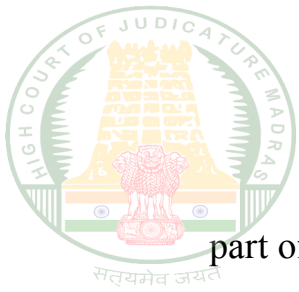
3. Even in the affidavit filed in support of that Writ Petition or in the affidavit filed in support of the present Writ Petition, the petitioner had not disclosed one material fact, namely, that the petitioner had voluntarily given her relinquishment for promotion to the post of Primary School Headmaster for three years. During that particular period, her junior was first promoted to the post of Primary School Headmistress on 25.07.2007. After the period of relinquishment, the petitioner was promoted later on 02.06.2010. Had this fact been disclosed then, the issue of pay anomaly would not have been examined by the Court.

4. The petitioner had voluntarily relinquished her opportunity of being promoted. Naturally when the junior is promoted, for the work



discharged and service rendered in the promoted post, the junior is entitled for that particular scale of pay. The petitioner cannot expect that she must be granted the same scale of pay when she was not even been promoted to the post, namely, Primary School Headmistress. It is not her case that she was overlooked for being promoted and the junior was promoted overlooking the petitioner. The petitioner relinquished her opportunity of being promoted for the period of three years. After the earlier order extracted above was passed, the present impugned order came to be passed. The petitioner cannot seek pay parity with the junior since the petitioner had relinquished her right to be promoted for a period of three years. That fact, namely that she had relinquished promotion, had not been disclosed in the affidavit filed in support of the Writ Petition earlier.

5. The learned counsel for the petitioner stated that in a separate tabular column, the said details have been given. But however, the said tabular column had not even been stated to be the part of the affidavit or to be considered as part of the affidavit or to be considered to be read along with the averments made in the affidavit. It is an independent and separate tabular column. There is no whisper in the tabular column that it should be read along with the affidavit or in the affidavit that the tabular column is



part of the affidavit.

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6. The learned counsel petitioner placed reliance on observation made by a learned Single Judge while examining a different issue in W.P.No.1285 of 2022 wherein the learned Single Judge had placed reliance on the dictum laid down by the Constitution Bench in ***Mohinder Singh Gill Vs. Chief Election Commissioner*** reported in ***(1978) 1 SCC 405***.

7. The Constitution Bench Judgment in that particular case was concerned with a counter affidavit explaining the impugned order passed and had stated that the order cannot be explained by way of counter affidavit and could not be validated by examining the contents in the counter affidavit. The Constitution Bench had very clearly stated that the order impugned must stand on its own legs and should contain necessary reasons as to why the order has been passed.

8. That particular order or dictum laid down would not come to the assistance of the petitioner herein as the facts herein are that the petitioner had suppressed that she had voluntarily relinquished her opportunity of



being promoted for a period of three years. The onus is on the petitioner to explain why she had not stated that particular fact in the affidavit. If that fact had been stated, there is every possibility that the nature of the order passed in W.P.No. 2672 of 2019 taking a different course.

9. In view of the fact that the petitioner had herself given up her right to be promoted and in that interregnum period, the junior had been promoted, I hold that no case has been made to grant the relief sought.

10. The Writ Petition stands dismissed. No order as to costs.

28.03.2025

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Index: Yes/No

Internet: Yes/No



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C.V.KARTHIKEYAN, J.,

vsg

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