

W.P(MD) No.10746 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.11.2024

Delivered on : 16.04.2025

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

W.P(MD) Nos.10746 of 2016

and

W.M.P(MD)Nos.8324 of 2016, 6503 of 2021

H.Jansi Nirmala

... Petitioner

Vs

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

2.The Assistant Elementary Educational Officer,
Sanarpatti Union,
Dindigul District.

... Respondents



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PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to proceedings impugned proceedings of the 2nd respondent herein in Na.Ka.No.375/A2/2016 dated 28.04.2016 and quash the same.

For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.V.Om Prakash,
Government Advocate

ORDER

The Writ Petition is filed by the petitioner with a prayer to issue a Writ of Certiorari, to quash the impugned proceedings of the 2nd respondent in Na.Ka.No.375/A2/2016 dated 28.04.2016.

2.Case of the petitioner in brief are as follows:

(a) The petitioner was appointed as a Secondary Grade Teacher in Panchayat Union Elementary School, Uthangal Puthupatti, Dindigul District and one Jeyalakshmi was appointed as Secondary



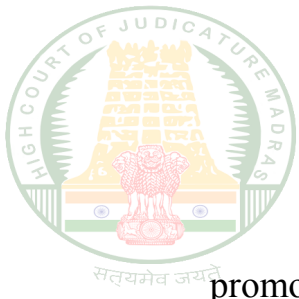
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Grade Teacher on 31.07.1995, in Natham Union, Dindigul District.

Subsequently, petitioner was transferred to Sanarpatti Union on 21.08.2006. She was awarded 1st incentive increment for B.Ed., degree on 28.12.2006, 2nd incentive increment for M.Ed., degree on 28.05.2009. She was promoted as B.T. Assistant on 02.06.2008. The petitioner received an incentive increment for her B.Ed., and M.Ed., before introduction of Tamil Nadu Revised Scale of Pay Rules, 2009. Whereas her junior Jayalakshmi received incentive increment after introduction of Tamil Nadu Revised Scales of Pay Rules, 2009 and by virtue of the same, she was getting higher pay than the petitioner in the cadre of B.T Assistant. The petitioner made a representation to the respondents requesting to refix her scale of pay on par with that of her juniors. Based on Tamil Nadu Revised Scales of Pay Rules, 2009 and as per clarifications issued by the Government, the 2nd respondent by proceedings dated 06.05.2015 rectified the pay parity and stepped up her pay on par with her junior w.e.f. 28.05.2009.

(b) While so, the 2nd respondent issued impugned order in Na.ka.No.375/82/2016 dated 28.4.2016 stating that if a teacher was



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promoted without awarding selection grade pay and then if there was pay parity occurred between the junior and senior the parity will be set right.

Where in, the parity was occurred due to awarding incentive increment for higher qualification under new pay rules. Hence, cancelled the fixation order and direct to recover the excess amount. Aggrieved against the impugned order, the petitioner has filed the writ petition with a prayer to quash the same.

3. Counter and Additional Counter filed by the respondents are as follows:

(a) The petitioner's appointment, incentives and promotion was admitted by the respondents.

(b) As per Rule 5(1)(b) of Revised Rule, the grade pay of the senior and junior should be identical. Therefore, there is no rule to rectify pay difference when the junior and senior were receiving different pay. Rule 5(1) of the said rules deals with rectification of pay anomaly among the junior and senior in the case where a senior government employee appointed in a higher post before 01.06.2006 or draw less pay



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in revised pay structure than his junior who is appointed to the higher post on or after 01.06.2006 or draw less pay in revised pay structure than his junior who is appointed on higher post on or before 01.06.2006. In the case in hand, pay fixation, in respect of increment has been rectified, which is wrong as such the petitioner was directed to refund the wrongly paid the amount.

(c) The Petitioner misunderstood the Government letters and Government Orders. More particularly, the judgment relied on by the Writ Petitioner in W.P (MD) No. 18297 of 2013 is no way connected to the case of the petitioner. G.O.Ms.No.234 Finance Department dated 01.06.2009 speaks on the recommendations of official committee on revision of scale of pay and allowances etc.

(d) As per the Government Order if a senior is promoted without special/selection grade at the same time, if junior is promoted after getting special/selection grade then pay anomaly has to be rectified. This does not apply for incentive increment. Therefore, the re-fixation has been cancelled and proceedings was issued to recover the wrongly paid amount. Hence, prayed to dismiss the writ petition.



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4. Heard the learned counsel on either side and perused the materials available on record.

5. The main grievance of the petitioner is that her junior Jeyalakshmi received an increment after introduction of Tamil Nadu Revised Scale of Pay Rules and drawing higher pay than her, whereas she had received such increment before the introduction of revised pay and pay parity occurred and had given a representation to rectify the pay parity.

6. In this regard a clarification letter dated 17.08.2009 was issued by the Government and his pay fixed on par with his junior and he received the increased pay. But the second respondent served the impugned order dated 12.05.2015 cancelled the increased pay and directed the petitioner to repay the excess amount and also taking steps to recover the same from his salary from June 2016.



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7. The learned Government Advocate appearing for the respondents argued that the petitioner misunderstood the Government Letter and Government Order in G.O.(MS) No. 234, Finance Department dated: 01.06.2009 speaks on the recommendations of Official Committee on revision of scale of pay and allowances, etc., The pay anomaly should have arisen directly as a result of introduction of the revised scale of pay. As per Rule 5(1) (b) of Tamil Nadu Revised Scale of Pay Rule. As per G.O. (MS) No. 234, Finance Department, dated 01.06.2009, in case where a senior Government employee appointed to a higher post before the 1st day of January 2006 draws less pay in the revised pay structure than his junior who is appointed to higher post on or after 1st day of January, the pay in the pay band of senior employee shows to stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post.

8. The stepping up should be done with

“5. Rectification of anomaly of Junior getting more pay than Senior:-



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(1) In cases where a senior Government employee appointed to a higher post before the 1 day of January, 2006 draws less pay in the revised pay structure than his junior who is appointed to the higher post on or after the 1st day of January, 2006, the pay in the pay band of the senior Government employee should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of appointment 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 category and should have been promoted to the same post.

(b) the pre-revised scale of pay and the revised scale of pay along with grade pay of the lower and higher posts to which they are entitled to draw pay should be identical.

(c) the senior Government-employee at the time of appointment should have been drawing equal or more pay than the junior.

(2) The anomaly should have arisen directly as a result of the introduction of the revised scales of pay.



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(3) Where a junior who opts to come over to the revised scale from a date subsequent to 1 January 2006 and happens to get more pay than that of his senior by way of fitment benefit, then the pay of the senior shall be stepped up to the level of the pay of the junior with effect from the date from which the junior draws such higher pay, provided that the senior was drawing pay higher than or equal to the pay of the junior in the pre-revised scales of pay from time to time.”

9. As per above condition stipulated in G.O(MS) No.234 and norms in G.O(MS) No.710 the petitioner is not entitled for the wrong pay to be received and therefore, issued an order to recover the pay and relied upon the judgment in W.P.No.10065 of 2006 M.Sampath Kumar Vs. District Elementary Educational Officer, Thiruvannamalai and stated that the writ petition is liable to be dismissed.

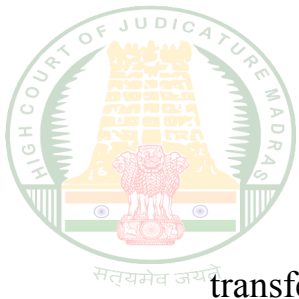
10. The Comparison table of both the writ petitioner Jansi Nirmala and junior A.Jeyalakshmi in pay parity are furnished below :



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Sl. No.	SERVICE PARTICULARS	PETITIONER (H.Jansi Nirmala)	JUNIOR (A.Jeyalakshmi)
1.	Date of appointment as a Secondary Grade Teacher	28.07.1995 (Bathalagundu Union)	31.07.1995 (Natham Union)
2.	Transferred to Sanarpatti Union	06.08.1996 (Sanarpattii Union)	21.08.1996 (Sanarpattii Union)
3.	Selection Grade Pay in Secondary Grade Teacher cadre	28.07.2005	31.07.2005
4.	Additional Qualifications and increments (i) B.Ed., (ii) M.Ed.,	12.08.1996 27.05.2000 In the cadre of Secondary Grade Teacher before introduction of Tamil Nadu Revised Scales of Pay Rules, 2009 (3% for incentive)	28.12.2006 28.05.2009 In the cadre of Secondary Grade Teacher
5.	Promoted as B.T. Assistant	27.11.2006	02.06.2008
6.	Pay Parity aroused on	28.05.2009	

11. The above table shows that the petitioner is senior to Jayalakshmi who belongs to same category and have been promoted in the same post. Both were originally from different unit but were



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transferred to Sanarpatti unit. The petitioner obtained Selection Grade as well as additional increment before her junior. She was promoted as B.T. Assistant much prior to her junior on 27.11.2006. The petitioner states that pay parity occurred on 28.05.2009, due to incentive increment awarded to her junior for higher qualification under New Pay Commission which is 6th Pay Commission. The petitioner had received incentives increments for M.A., on 27.05.2000 under the 5th Pay Commission, whereas her junior Jeyalakshmi later had received a 2nd incentive increment for M.A., on 28.05.2009 which is under the 6th Pay Commission.

12. In this connection, the petitioner referred a judgment in ***The Chief Educational Officer, Villupuram Vs. Kumarasamy Pillai***, reported in ***(2017) 1 Writ LR 922***, a similar issue was dealt in the above case and the Single Judge in paragraph Nos.9 & 12 held as follows :

“9. Adverting to the rival submissions and taking note of Rule 5(2) of the Tamil Nadu Revised Scales of Pay 1998, vide order in W.P.No.11623/2007 dated 16.09.2009, at paragraph Nos.9 to 12 the writ court ordered, as hereunder:



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"9.

11. Further, the right of the seniors claiming parity with juniors pay is a constitutional right guaranteed under Article 39(d) read with Article 14 of the Constitution. However, if junior is granted incentive increment for acquiring higher qualifications and the senior does not acquire such a higher qualification, the senior cannot claim parity. But, if the senior obtained higher qualification prior to the junior and the junior acquires higher qualification later, the scale of pay of senior should be brought on par with the junior, if the junior's pay became more due to the sanction of incentive increment for acquiring higher qualification. Otherwise, it amounts to punishing the senior for acquiring higher qualification at the earlier point of time and it also defeats the very purpose of granting incentive increments for acquiring higher qualification. The very purpose is to persuade the teachers to obtain higher qualification, so that they render better service to the students. Thus, if acquiring higher qualification earlier is put to disadvantage to a person, the very scheme of providing incentive increment for acquiring higher qualification gets defeated.

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12. He also submitted that, pursuant to the directions of the writ court in W.P.No.11623/2007 dated 16.09.2009, against which the instant appeal is filed, the District Educational Officer, Villupuram, vide proceedings in R.C.No.4485/B3 dated 09.08.2011 has also revised the scale of pay of the respondent, Mr.P.Kumarasamy Pillai, subject to the outcome of the instant writ appeal No.174 of 2012. From the above, it could be deduced that the Education Department has not chosen to file any appeal against the order made in W.P.No.11714/2007 dated 24.08.2009, and implemented the same. But chosen to challenge the decision of the writ court in W.P.No.11623/2007, dated 16.09.2009, decided one month later, i.e. on 16.09.2009. There is no reason as to how case of the writ petitioner in W.P.No.11714 of 2007 was different, both on facts and law, which the appellants have chosen to implement without any appeal. Department of Education, cannot be allowed to apply different yardstick. A senior granted advance increments, in the pre-revised scale of pay, before coming into force of the pay commission recommendation, cannot be denied the scale of pay, fixed to a junior, who had the benefit of Pay Commission recommendation. Writ court, has



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rightly taken note of the same, by considering Rule 5(2) of the Tamil Nadu Revised Scales of Pay Rules. As observed by us, in the foregoing paragraphs, there is no infirmity in the order of the writ court.”

13. The above judgment referred, squarely applicable to the petitioner's case. The writ petitioner is senior on the date of appointment, she was promoted much earlier than her junior and had complete their higher education before her junior. The petitioner received the increment for her higher education before the revised scale whereas her junior received the increment after revised scale. Though the respondents set right the pay parity now cancelled the same on the ground that the pay parity occurred due to awarding incentive increment for higher education and cancelled the order passed on 06.05.2015 by impugned order dated 28.04.2016, which is improper and against the natural justice. Therefore, the petitioner is entitled to the relief as he prayed and the writ petition is deserves to be allowed.

14. Therefore, the Writ Petition is allowed and the impugned



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order of the second respondent dated 28.04.2016 is hereby quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.04.2025

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

RM

To

- 1.The District Elementary Educational Officer,
Dindigul,
Dindigul District.
- 2.The Assistant Elementary Educational Officer,
Sanarpatti Union,
Dindigul District.



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R.POORNIMA, J.

RM

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