

W.P(MD) No.10747 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 22.11.2024

Delivered on : .04.2025

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

W.P(MD) No.10747 of 2016

And

W.M.P.(MD).No.8325 of 2016 & 6553 of 2021

M.Wilson Sahayaraj

... 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,

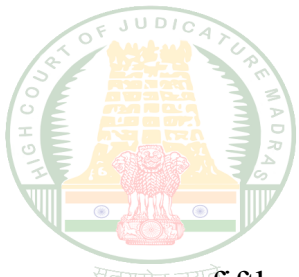
Government Advocate

ORDER

This 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 :

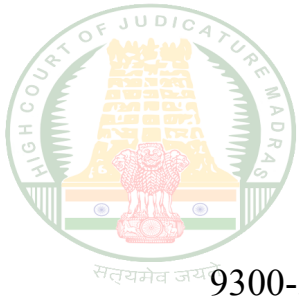
a) The petitioner was appointed as Secondary Grade Teacher in Thoppampatti Union, Dindigul District and he was transferred to Sanarpatti Union. Since he had completed ten years of service as Secondary Grade Teacher on 17.09.1987. The respondent awarded selection grade pay in the cadre of Secondary Grade Teacher as per the



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fifth pay commission the scale of pay for selection grade in the secondary grade teacher post is 5300-150-8300. On 05.06.2022, he was promoted as Elementary School Headmaster in Sanarpatti Union. The scale of pay for the post of primary School Head Master is 5300-150-8300. On 25.07.2007, he was promoted as middle school headmaster in panchayat Union middle school, Kanavaipatti, Sanarpatti union. Likewise, one Mr.Britto Leenesraj, who is junior to the petitioner appointed as Secondary Grade Teacher in some other union subsequently he was transferred to Sanarpatti, Union like the petitioner. Subsequently, he has completed ten years of service as Elementary School. Since the selection grade of scale of pay of lower post and the scale of pay of the promotional post is identical, selection grade of scale of pay in the cadre of promotional post can be given by counting the service rendered in selection grade in the lower post. On the said rule, Mr.Britto Leensraj in the cadre of Primary School Headmaster, his pay revised and selection grade pay in the cadre of primary school headmaster as per Government letter dated 07.02.2011 15,600-39,100+5400. Subsequently, he was promoted as Middle School Headmaster with scale of pay of



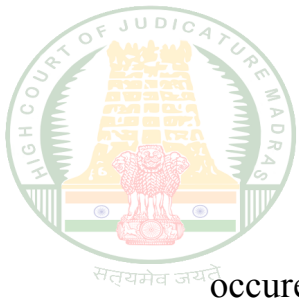
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9300-34,800-PB2-4,700. Since the grade pay for the post of Middle School Headmaster is Rs.4,700/- only. The said Mr.Britto Leenesraj given option to retain in the scale of pay Rs.15,600-39,100+5400 (Grade pay) as per new revised pay rules.

b) By virtue of awarding selection grade pay in the case of primary Headmaster and permitted to retain in the Grade of Primary Headmaster and permitted to retain in the Grade pay of Rs.5400/-. The said Britto Leenseraj is getting higher pay than the petitioner in the cadre of Middle School Headmaster. Hence, he made a representation to the respondents requesting to refix the scale of pay on par with his junior. Based on the TamilNadu Revised Scales of Pay Rules 2009 and clarifications issued by the Government, the second respondent herein by proceedings dated 12.05.2015 rectified pay parity and refix his pay on par with his juniors. In the said order, the second respondent clearly described in a tabular column how his junior is getting higher pay than the petitioner. The tabular attached along with pay fixation order dated 12.05.2015 treated as part and parcel of this affidavit. Accordingly, his pay has been fixed on par with his juniors with effect from the date on which the difference

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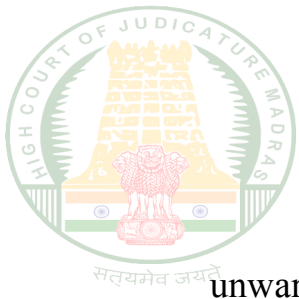


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occured i.e., on 01.01.2011 without any hindrance. However, to his shock and surprise the second respondent without issued earlier government order in G.O.Ms.No.710, dated 23.09.1994 of TamilNadu Revised Pay Scales of pay Rules, 2009 by fixing G.O.Ms.No.234, Finance (Pay Cell) department dated 01.06.2009 and the clarification letter dated 17.08.2009 of the Secretary to Government issued impugned order in Na.Ka.No.375/A2/2016 dated 28.04.2016 served on 03.06.2016 that since his junior is getting more pay than the petitioner, his pay has been stepped up on par with his junior . Wherein since grade pay of pay the petitioner and his junior is differ the said fixation order was cancelled and directed to repay the excess amount. Hence, he filed this writ petition stated that he has not been issued any notice from the authorities and not given any opportunity to submit his explanation on that ground the impugned order is liable to be dismissed.

c). The Honourable Supreme Court of India held in number of cases that when thereis no misrepresentation onpart of the employe the recovery there is no par of hte employee and recovery order is not sustainable. The impunged order of the respondents is unsustainable,



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unwarranted, arbitrary, illegal. The Juniors of the petitioner is getting more pay than him, based on the aforesaid Government Orders only the respondents herein fixed his pay on par with his junior. By virtue of the impugned order, the respondents herein directed the petitioner to repay the excess amount and take steps to recover his salary which is just and necessary that suitable interim orders may be given.

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

a). The respondents seriously disputed the contention of the petitioner by stating that as per Rule (1)(b) of TamilNadu Revised Scale of pay 2009, the Grade Pay of Junior and Senior should be identical. Therefore, there is no rule to rectify pay difference when the junior and senior were receiving different grade pay. The Rule 5(1) of the said rule deals with rectification of pay anomaly among the Junior and Senior in the case where a Senior government employee appointed in a higher post on or after 01.06.2006 or draw less pay in revised pay structure than his junior who is appointed to the higher post on or after 01.06.2006. This writ petitioner is not entitled for the pay he received an comparing his



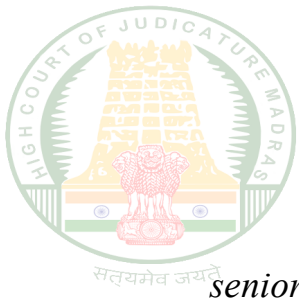
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service with the person who claim as Junior. The petitioner is not entitled for pay he received on wrong rectification. As per Government Order, if a senior is promoted without receiving Special Grade/Selection Grade when the Junior had obtained promotion on receiving the Special Grade/Selection Grade only, the pay anomaly has to be rectified. In the case on hand, the pay fixation in respect of increment has been rectified which is wrong as such the petitioner was directed to refund the wrongly paid money. The writ petitioner himself misunderstood the Government letters and government Orders. More Particularly, the judgement relied on by the petitioner in W.P.(MD).No.18297 of 2013 is no way connected with 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.,

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

(1) In cases 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 the higher post on or after the 1st day of January, 2006, the pay in the pay band of the



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senior Government employee should be stepped upto 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 fulfillment of the following conditions, namely

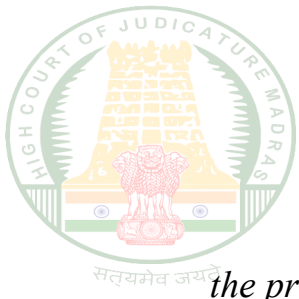
a) both the Junior and the Senior Government employees should belong to the same category and should have been promoted to the same post.

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.

(3) Where a junior who opts to come over to the revised scale from a date subsequent to 1st 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 upto 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



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the pre-revised scales of pay from time to time".

b) The operative portion of G.O.Ms.No.710 is as hereunder:

4. Government have examined the issue in detail. They consider that if the anomaly of junior drawing more pay than the senior due to drawal of advance increment for acquiring higher qualification alone (and not for passing of Account Test, etc.,) by the senior in the Second Tamil Nadu Pay Commission Scale, 1970 and the junior in the Revised Scale 1978 still continues to exist even after fixation of their pay in the 'Tamil Nadu Fifth Pay Commission scales of pay. They accordingly direct that the anomaly of junior drawing more pay than the senior due to drawal of advance increment for acquiring higher qualification alone (and not passing Account Test, Language Test, etc) by the senior in the Tamil Nadu Second Pay Commission Scale of pay. i.e., prior to 1.4.78 and the junior getting advance increment for acquiring the same qualification in the Tamil Nadu Third Pay Commission Scale of Pay i.e., 1.4.78 it continues to exist even after fixation of pay after 1.6.88 in the Tamil Nadu Fifth Pay Commission Scales of Pay, such anomaly be rectified by stepping up the pay of the Senior on par with the pay of the junior from the date from which the junior happens to get more pay in the Tamil Nadu Pay Commission Scales of pay (viz. Tamil Nadu Revised Scales of Pay Rules, 1989).

5. Government also direct that the pay of a senior who got



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advance increment for acquiring higher qualification alone (and not for passing Account Test, Language Test, etc) in the earlier pay Commission Scales of pay i.e., from 02.10.70 and drawing less pay compared to the pay of his junior from the date from which the junior gets more pay in the Tamilnadu fifth Pay. Commission Scales of pay.

6. The date of next annual increment of the senior shall be in the date of next annual increment of the junior.

c). The re-fixation of pay of seniors ordered in paragraphs 4 and 5 above shall be done under FR.27 by the appointing authorities concerned.

d). The director of Elementary Education through his proceedings in Na.Ka.No.30584/C1/2015 issued an order cancelling the re-fixation of Pension – Pay for seniors comparing with Junior. Further, the Director instructed to recover the wrongly paid amount and also directed to initiate disciplinary proceedings upon the Additional Elementary Education Officers who fixed the pay wrongly with Grade Pay of Rs. 5,400/-, which is against G.O.No.179 dated 06.09.2013. In respect of teacher filed this writ petition, showing one Mrs.Shakaya Mary appointed as Secondary Gade Teacher at Kujiliyamparai Union on 07.10.1996, who was transferred to Vedachenthloor on 07.07.1997 as



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Junior, 36 teachers working at Vedachenthoo union were wrongly paid on wrong fixation on Junior, Senior pay anomaly and the Government gone of loss of Rs.29.62lakhs. The order impugned in this petition is sustainable and in accordance with law. The Additional Educational Officers was responsible for colluding with 35 teachers in wrongly rectifying pay anomaly have been taken into task and would fact departmental proceedings for a teacher in Panchayat Union, the Panchyat union is a unit. The Teacher who have much knowledge on fixation cannot escape from clutches of law. Formalities needed where a peson who is left without having knowledge on the event. The Hon'ble Division Bench of this Court reported in 2015(1) CWC 456 (Om Metal Infra Projects Ltd., Vs Union of India) had held that where explanation cannot alter the situation, there is no need for issuance of Notice. Hence, the present writ petition is liable to be dismissed as devoid of merits.

4. After hearing both side Counsels and perused the material available on record.



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5. It shows that the petitioner Wilson Sahayaraj and Britto Leenesraj were appointed on 17.09.1987 as Secondary Grade Teacher. The petitioner has been appointed at Thoppampatti Union. Subsequently, the petitioner transferred to Sanarpatti Union on 22.06.1990 and Britto Leenesraj transferred to some other union on 19.06.1991. The Selection grade pay under Secondary grade Teacher was awarded to the petitioner on 17.09.1997 and on 10.10.1997 to Britto Leenesraj. The petitioner was promoted as Headmaster on 05.06.2002, where Britto Leenesraj has been promoted as 16.06.2003. Britto Leenesraj promoted as Middle School headmaster after awarded selection grade on 05.11.2007 i.e., 18,970/- -9300-34800. The petitioner made request since his junior is getting higher pay then the petitioner based on Rule 5(iii) and 7(iii) of Tamilnadu Revised Scale of Pay Rule, 2009. He made request to refix his pay scale on par with the junior and the same was issued and clarification letter was also issued by the Government to fix teh pay on par with the junior. Subsequently, it was cancelled on 28.04.2016. The petitioner relied upon Rule 5(3) of Tamilnadu Revised Scale of pay as follows :



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Where a Junior who opts to come over to the revised scale from a date subsequent to 1st 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.

The Rule 7(3) of Tamilnadu Revised Scale of pay is clearly states that where junior revised scale from from a date subsequent to 1st 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.

6. In this case, the comparative table filed along with typed set of papers clearly shows that the petitioner was drawn pay equally to the pay of Junior in the pre-revised of pay scale of pay from time to time.



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7. The petitioner Mr. Wilson Sagai Raj and Mr Britto Lens Raj were appointed as Secondary Grade Teacher in different union. Thereafter the petitioner was transferred to Sanarpatti Union on 22.6.1990 and Tr.Britto Raj was transferred to the same union on 19.6.1991. The petitioner and Tr.Britto were completed 10 years service and awarded selection, grades on 17.9.97 and 10.10.1997 respectively. The petitioner was promoted as primary School headmaster on 5.6.2003 and Tr.Britto was promoted to the said post on 16.6.2003. The petitioner promoted to the post of middle school headmaster on 25.7.2007 without awarding selection grade. whereas Tr.Britto was awarded selection grade, and then promoted as middle class headmaster. he opted to retain the selection grade pay of primary school headmaster. By virtue of the awarding selection, grade, pay in the cadre of primary headmaster and permitted to retain the grade pay, he is getting higher pay than the petitioner in the Cadre of middle school headmaster. The second respondent by proceeding dated 12.5.2015, the parity and power with his Junior. However, on 28.4.2016 cancelled the order and directed to recover the amount paid in excess.



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8. The 2nd respondent in the counter, as per rule(5)(1) of Tamil Nadu revised scale of 2009, the grade pay of the junior and senior should be identical. Therefore there is no rule to rectify pay difference with the junior and senior were receiving different grade pay.. Rule 5(1) of the said rule deals with the rectification of pain among the junior and senior case where a senior government employee appointed in higher post before 1.6.2006 or draw less pay in revised pay structure than his junior who is appointed to the higher post on or before 1.6.2005 and referred G.O.Ms.No. 234 finance department dated 1.6.2009.

9. During argument, learned counsels appearing on both sides reiterated their argument as per the petition and counter.

10. On careful scrutiny of rule 5(3) of the Tamil Nadu revised scale of pay rules 2009

Where a junior who opt 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 senior shall be stepped up to the level of pay of the junior with effect from the date from which the junior draws such higher pay, provided that the senior was drawing



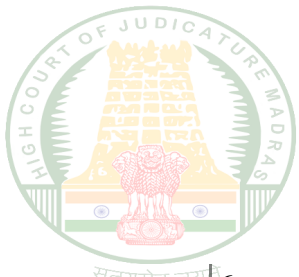
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higher than or equal to the pay of the junior in the pre-revised scale of pay from time to time

11. The comparative chart of pay between the petitioner and Tr.Britto, which was available in the typed set proved that the petitioner was drawing higher/equal pay, than his junior Tr.Britto in the pre-revised scales of pay which is given below:

Sl. No.	SERVICE PARTICULARS	PETITIONER (M.Wilson Sahayaraj)	JUNIOR (Britto Leenesraj)
1.	Date of appointment as a Secondary Grade Teacher	17.09.1987 (Thoppampatti Union)	17.09.1987 (Thoppampatti Union)
2.	Transferred to Sanarpatti Union	22.06.1990 (Sanarpattii Union)	19.06.1991 (Sanarpattii Union)
3.	Selection Grade Pay in Secondary Grade Teacher cadre	17.09.1997	10.10.1997
4.	Promoted as Primary School Headmaster	05.06.2002 (The Scale of pay is 5,300-150-8300)	06.06.2003 (The Scale of pay is 5,300-150-8300)
5.	Selection Grade Pay in Primary School Headmaster	-	10.10.2007 (Selection grade pay) is 15,600-39,100 + 5400)



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6.	Promoted as Middle School Headmaster	25.07.2007 (The Scale of pay is 9,300-34,800-PB-2 – 4,700)	05.11.2007 (Since option was given remained in the same selection grade pay as 15,600-39,100+5400)
7.	Pay Parity aroused on	01.01.2011	

12. Since Tr.Britto , opted to retain his grade pay as per the revised pay rule was permitted to retain the grade pay, he was getting higherpay than the petitioner, which was rectified by the second respondent by its order dt 12.05.2015 which is proper. The impugned order of cancellation dated 28.4.2016, is improper and liable to be setaside.

13. 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:

“9.

11. Further, the right of the seniors claiming parity with



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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.

.....

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,



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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 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 judgment referred above, squarely applicable to this petitioner case. The writ petitioner is senior on the date of appointment, he was promoted much earlier than his junior and had complete their higher education before his junior. The



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petitioner received the increment for his higher education before the revised scale whereas his 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 12.05.2015 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 order of the second respondent dated 28.04.2016 is hereby quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes / No
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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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