

W.P.(MD)No.23980 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :	31.01.2025
Pronounced on :	17.02.2025

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THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

Writ Petition No. 23980 of 2017
and
WMP.(MD).Nos.20138 & 20139 of 2017

P.Selvaraj
S/o. C.C.Paul Nadar,
7/23A Thanivilai, Perinbapuram,
Karankadu,
Kanyakumar District – 629 809.

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 0069.
 2. The Director of School Education College Road,
Chennai – 600 006.
 3. Joint Director of School Education (NSS) College Road,
Chennai – 600 006.
 4. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
- Respondents



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Prayer: To issue appropriate Writ, order or direction in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the fourth respondent Chief Educational Officer, kanyakumari District in Na.Ka.No.2475/a1/2015 dated 21.11.2015, quash the same, and further direct the respondents to rectify forthwith the pay anomaly and re-fix the petitioner's pay on par with his junior namely, Tmt.S.Alice Manohara Thangam, w.e.f. 04.12.2009, and pass such further or other suitable order.

For Petitioner : Mr.K.Prabhu
for M/s.Isaac Chambers

For Respondents : Mr.S.R.A.Ramachandran
Additional Government Pleader

JUDGMENT

Heard.

2. When the writ petition was presented for admission, the learned State Government Pleader (SGP) took notice and requested time to file a counter. Consequently, a counter affidavit dated 01.04.2022 was submitted by the 4th respondent on behalf of all respondents.

3. The petitioner, a retired Headmaster of a Government Higher



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Secondary School in Eraniel, had served for 33 years. He was appointed as a PG Assistant on 09.08.1980. During his tenure as a PG Assistant, he obtained a higher qualification an M.Ed. Degree on 01.04.1986. After completing ten years in the position, he was granted a special grade of pay. Later, on 20.12.1993, he earned an M.Phil. degree, which entitled him to a second incentive increment.

4. It was stated that the government revised the scale of allowances in accordance with the recommendations of the 5th Pay Commission through G.O.Ms.No.162, Finance, dated 13.04.1998. This order provided government employees with the option to either retain their existing pay scale or opt for the revised scale. The petitioner chose to remain in the old pay scale from 01.01.1996 to 30.06.1996, as his increment was due on 01.07.1996.

5. On 09.08.2000, his pay was revised, and upon completing 15 years of service, he was granted a special grade pay. Subsequently, he was promoted to the position of Headmaster on 31.07.2001. With effect from 01.06.2009, the 1st Respondent implemented a revised pay scale and allowances based on the 6th Pay Commission recommendations. Meanwhile, the petitioner retired from service on 31.05.2013.



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6. The petitioner submitted a representation on 29.03.2012, stating that his junior in service, Alice Manohara Thangam, was receiving a higher salary than him and, therefore, his pay should be revised to match that of his junior. In response, certain clarifications were sought, and ultimately, the 4th Respondent, through proceedings dated 21.11.2015, rejected his request.

7. Subsequently, the petitioner submitted another representation to the 3rd Respondent on 21.01.2016. When no favourable response was received, he filed a writ petition in 2017 before this Court, challenging the order dated 21.11.2015.

8. The writ petition is liable to be dismissed on the ground of delay and laches. The petitioner retired as early as 31.05.2013 while holding the position of Headmaster of a higher secondary school, overseeing its administration in all respects. If he had any grievances regarding his pay fixation, he should have taken steps to address the issue either before his retirement or immediately thereafter. However, approaching the court after a delay of four years, particularly on the ground that a junior was drawing a higher salary, cannot be entertained. Furthermore, the affidavit submitted by



the petitioner fails to provide any justification for the nearly four-year delay in filing the petition.

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9. It is important to note that the Supreme Court has deprecated the practice of individuals, long after the cause of action has arisen, submitting representations and subsequently filing writ petitions upon receiving a reply, thereby attempting to revive stale claims. In *C. Jacob v. Director of Geology and Mining*, reported in 2008 (10) SCC 115, the Supreme Court made the following observations:

"We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims."

10. Once again, the Supreme Court, in *Karnataka Power Corporation Ltd. through its Chairman and Managing Director v. K. Thangappan*, reported in 2006 (4) SCC 322, held that merely submitting representations does not justify the entertainment of writ petitions. The Court emphasized that delay and laches are crucial factors to be considered. The relevant observation is as follows:



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"In any event, making a representation is not sufficient for filing a belated writ petition.

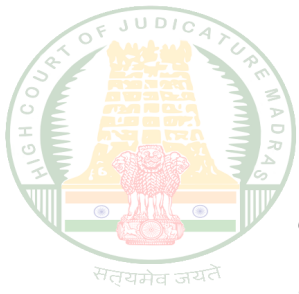
.....

Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party."

11. If such claims are considered after several years—especially from an individual holding both administrative and teaching responsibilities as the head of an institution—and based solely on a so-called junior receiving a higher salary, it would disrupt the entire administration managing teachers' salary accounts. The writ petition is evidently without merit and should be dismissed outright due to undue delay and laches.

12. In their counter affidavit dated 01.04.2022, the 4th Respondent explained the discrepancy in paragraphs 4, 5, 10, and 11, which are reproduced below:

“ 4. I respectfully submit that the petitioner opted to remain in the old scale of pay up to 30-06-1996 and to come



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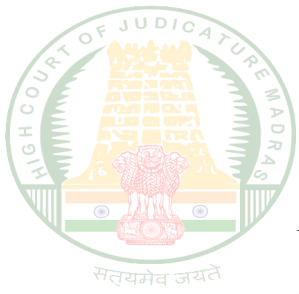


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over to the revised scale of pay on 01-07-1996 after he earned the next increment as per the provisions in rule 7 of G.O.Ms.No.162 Finance Pay Cell Department dated 13-04-1998 (V Pay Commission). Afterwards, on completion of 20 years of service in the category of P.G. Assistant, he was awarded special grade in the category of P.G. Assistant on 09-08-2000. Subsequently, he was promoted as Headmaster, Government Higher Secondary School, on 31-07-2001 and subsequently as District Educational Officer. He retired from service on 31-05-2013 after attaining the age of superannuation. At the time of retirement, he was drawing the pay of Rs.39,680/-.”

“5. I respectfully submit that the petitioner in para 9 stated that his junior, namely Tmt. S. Alice Manohara Thangam, who was appointed as P.G. Assistant on 21-10-1980, was awarded one incentive increment for M.Ed. on 01-07-1987. She was awarded selection grade in the post of P.G. Assistant on 17-02-1991 and special grade on 21-10-2000. She was awarded an incentive increment for M.Phil. on 04-12-2009 in the post of Headmaster Higher Secondary School (Selection Grade) and finally retired on 31-05-2013, i.e., on the same date on which the petitioner retired.”

“ 10. I respectfully submit that the petitioner is not eligible for rectifying the pay anomaly either by the Rule 5 of G.O.Ms.No.234 Finance (Pay Commission) Department dated 01-06-2009 or by the provisions of The G.O.Ms.No.162



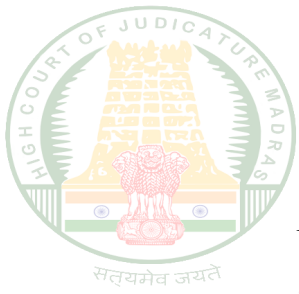
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Finance (Pay Cell) Department 13-04-1998. The clarification issued in G.O.Ms.No.320 Finance (Pay Cell) Department dated 02-04-1990 to rectify the pay anomaly due to the sanction of incentive increment, both of the Senior and the Junior should have drawn the same scale of pay, and the pay anomaly was due to the reason that the senior was sanctioned incentive increment in the pre-revised scale of pay and the junior was sanctioned incentive increment in the revised scale of pay. In the instant case, the senior was sanctioned incentive increment in the post of P.G. Assistant (Selection Grade), and the Junior was sanctioned incentive for M.Phil. in the post of Higher Secondary School Headmaster. Accordingly, the petitioner is not eligible for the prayer to fix pay on par with his junior.”

“11. I respectfully submit that from the comparison statement submitted by the petitioner discloses the fact that the petitioner is the senior on the date of initial appointment. He was sanctioned incentive increment for M.Phil in the category of P.G. Assistant on 20-12-1993 whereas the so-called junior was sanctioned incentive increment for M.Phil. in the post of Higher Secondary Headmaster on 04-12-2009. As both of them were sanctioned in different cadres and in different scales of pay, the question of pay anomaly does not arise. The scale of pay should be identical, and the pay anomaly should be the result of the sanction of incentive increment in the same cadre and scale of pay, although in different pay commissions. The petitioner is neither eligible for rectification of pay anomaly as per the F.R. provisions nor according to G.O.Ms.No.320 Finance (Pay Cell)



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Department dated 02-04-1990. Accordingly, there is no merit in the claim of the petitioner, and it is not sustainable in law...."

13. Despite the impugned order being issued in 2015, the Petitioner approached this Court only after two years, merely by submitting a representation to the 3rd Respondent—an action that is neither statutory nor prescribed under the rules. Furthermore, in the written submissions before this Court, there was no mention of the delay in filing the petition. Nevertheless, the Petitioner relied on three judgments of this Court, which are as follows:

- a. W.A.No. 174 of 2011 dt. 5.12.2016
- b. W.A.No.1092 of 2015 dt. 30.1.2018
- c. W.A.No. 1696 of 2022 dt. 18.8.2022

14. All three judgments are to the effect that receiving an incentive increment for acquiring a higher qualification cannot be a valid reason to deny the fixation of pay in a higher scale. They also affirm that a senior who was granted an advance increment in the pre-revised pay scale after the implementation of the Pay Commission's recommendations cannot be denied the pay scale fixed for a junior who benefited from those



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recommendations.

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15. Per contra, the learned AGP for the Respondents relied upon two judgments which are as follows:

1.G. Sivakanthan Vs. The Director of School Education & anr. (W.P.No. 31415 of 2004 dt. 1.11.2021)

2.K. Saratha Vs. The Commissioner of School Education & Ors. (W.P (MD) No.14308 of 2021 dt. 7.11.2022)

16. In the first judgment, in Para 19 it was found as follows:

"The 2nd respondent has clearly pointed out in the counter affidavit that pay of a senior can be fixed on par with the pay of a junior only if both the senior and junior employees belong to the same cadre and the post to which they have been promoted or appointed and they belong to an identical cadre and that the junior and senior should have held identical scales in the lower post and both should also hold identical scales in the higher post. In the case on hand, both the writ petitioner and the junior mentioned by him did not belong to the same cadre and that the pay anomaly arose due to the award of incentive increment to the junior when he acquired a higher educational qualification. The contention raised by the respondents that conditions required for rectification of pay anomaly with reference to the Government Orders dated



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21.12.1978, 11.09.1986, and 23.03.2015 had not been fulfilled in the present case on hand, is acceptable."

17. In the second judgment, in Para 8 it was found as follows:

"8.When the petitioner obtained B.Ed degree in 1996 and MA degree in 2001, during the relevant time, incentive increment given was rather nominal. On the other hand, when Rajakumari acquired B.Ed degree on 28.12.2011, incentive increment was substantial as it was made reference to the revised pay scale. Mrs.V.Rajakumari was lucky and was able to get a higher incentive increment. She was already working in Thanthoni Union when the writ petitioner joined service. When an incentive increment was given to Rajakumari, it was higher. For these two reasons, the pay of Mrs.Rajakumari was placed at a higher level. The writ petitioner cannot have any legal grievance. The impugned order has been correctly passed. It does not call for any interference."

18. The reasoning given in the above two decisions is more apposite to the case on hand. The Petitioner has not made out any case besides his writ petition is liable to be dismissed on grounds of delay. Hence, W.P. (MD) No. 23980 of 2017 will stand dismissed. Accordingly, WMP (MD) Nos. 20138 and 20139 of 2017 also stand dismissed. However, there will be no order as to costs.



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Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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DR. A.D.MARIA CLETE, J.

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Pre-Delivery Judgment made in
W.P.(MD)No.23980 of 2017
and
WMP.(MD).No.20138 & 20139 of 2017



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