

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.07.2017

PRONOUNCED ON: 25.07.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Appeal No.2698 of 2010

S.Narasimhan

.. Appellant

vs

1.The Government of Tamil Nadu,
rep. By its Secretary,
Education (School) Department,
Fort St. George,
Chennai – 600 009.

2.The Government of Tamil Nadu,
Rep. By its Secretary to the Government,
Finance Department,
Fort St. George,
Chennai – 600 009.

3.The Director of School Education,
College Road,
Chennai – 600 006.

4.The Chief Educational Officer,
Vellore.

.. Respondents

Prayer:- Writ Appeal has been filed under Section 15 of the Letter Patent Act, against the order made in W.P.No.23794 of 2008, dated 05.04.2010 by His Lordship Mr.Justice K.K.Sasidharan.

For Appellant : Mr.R.Saseetharan
For Respondents : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by G.Jayachandran.J.,)

Aggrieved against the order passed by a learned Single Judge of this Court in W.P.No.23794 of 2008 dated 05.04.2010, the appellant is before this Court with this Writ Appeal.

2.Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents.

3.The case of the appellant is that on 12.06.1957 he was appointed as B.T Assistant in the erstwhile District Board School and later, promoted as High School Head Master on 04.12.1963. On 31.07.1987, he was promoted as Higher Secondary School Head Master. Then on 09.03.1992 he was promoted as District Educational Officer. Thereafter, he attained superannuation and retired on 31.08.1993. At the time of his promotion as District Educational Officer, it was specifically mentioned that his promotion is temporary and subject to the result of the various cases pending before

the Tamil Nadu Administrative Tribunal and the Hon'ble Supreme Court in the matter relating to integration of A – wing and B – wing Teachers.

4.The case of the appellant is that while he was promoted as District Educational Officer, he should have been awarded one increment as per Rule 22-B of the Tamil Nadu Government Fundamental Rules and his pay should have been fixed accordingly. This request was made by him on 27.09.2006, much after he was temporarily promoted as District Educational Officer and after attaining superannuation. The authorities after verifying his service records, has rejected his request on the ground that when he was promoted as Higher Secondary School Head Master from the post of High School Head Master on 31.07.1987, he was provided with one increment as per Rule 22-B of the Fundamental Rules. Later, when he was posted as District Educational Officer, the pay scale of District Educational Officer and High Secondary School Head Master was one and the same. Since, his case does not fall under the purview of Rule 22-B of the Fundamental Rules, his request for one increment under the said Rule was not feasible. This was communicated to the appellant on 30.11.2006.

5.On reading of Rule 22-B of the Fundamental Rules and the facts of this case, this Court finds that by virtue of re-fixation of seniority after the disposal of cases pending before the Hon'ble Supreme Court the date of

promotion of the appellant herein as District Educational Officer was preponed to 10.02.1989 notionally. On that date, his pay was lesser than the pay of the District Educational Officer. Rule 22-B of the Fundamental Rules will apply only in case where a Government Servant holding a post in a substantive or officiating capacity is promoted or appointed in a substantive or officiating capacity, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post of by one increment, at the stage at which such pay has accrued. If the monetary benefit after such fixation falls short of five per cent of the pay drawn in the lower post, his pay in higher post shall be so fixed, allowing a minimum increase of five per cent of the pay drawn in the lower post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post is a stage in the time-scale of pay of the higher post, the pay shall be fixed at such stage in the time-scale of pay of the higher post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post exceeds the amount arrived at for fixation of pay in the higher post under this rule but where there is no corresponding stage in the time-scale of pay of the higher post, the pay shall be fixed at the next higher stage in the time-scale of pay of the higher

post.

(Emphasis applied)

6. Since, the appellant on the date of notional promotion or on the date of his temporary promotion as District Educational Officer was not drawing salary in the time scale of the higher post, he is not entitled for any increment or privilege conferred under Rule 22-B of the Fundamental Rules. Further, the promotion was dated back to 10.02.1989 notionally, therefore, the plea of discharging higher duty and responsibility also not sustainable in this case. In addition, he has claimed the extension of benefit though wrongly not immediately on the year 1992, on his actual date of promotion, but, belatedly after nearly 14 years.

7. The learned counsel for the appellant strenuously argued that re-fixation of pay or pension is a recurring cause of action being a continuous wrong committed upon the appellant, his claim of re-fixation of pay ought not to have been dismissed on the ground of laches. Even if there was any laches, the arrears amount should have been restricted to three years period prior to the filing of the writ petition and his plea of re-fixation of pay ought not to have been rejected in toto. In support of his submission, the learned counsel for the appellant relied on a judgment of the Hon'ble Supreme Court rendered in **Union of India and others v. Tarsem Singh**

reported in **2008(8) SCC 644** wherein, the Hon'ble Supreme Court has held as under:-

".....normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained....."

8. Further, the learned counsel for the appellant submitted that while the appellate authority has disposed of the appeal for re-fixation, considering the relevant provision of law, the learned Judge ought not to have been dismissed the writ petition on the ground of laches without

adverting to the merits of the case. To buttress his submission, the learned counsel relied upon a judgment in **Sula Yadav v The State of Rajasthan** reported in **AIR 1977 SCC 2050** wherein, the Hon'ble Supreme Court has held as follows:-

"..... Since the Governor had not dismissed the review application on the ground of delay and having entertained the same held it to be a case not fit for review, we take the view that the Governor dismissed the review application on merits. That being the position, it was not open to the High Court to resurrect the ground of delay in the review application at a remote stage and make it a ground for dismissing the writ application. We therefore allow the appeal, set aside the Order of the High Court and remit the writ application for disposal in accordance with law. It is hoped the High Court will be able to dispose of the same expeditiously. There will be no Order as to costs....."

9.The learned counsel for the appellant further relied upon a judgment of this Court in **The General Manager Home Department v. The Registrar, Central Administrative Tribunal** reported in **2002 (4) CTC 476** wherein it has been held as follows:-

"Learned counsel for the Railways very strenuously argued that here was a case where the employee in the know of all the rules and regulations, had absented himself from the service unauthorisedly. There could be no doubt about the absence because that appears to be an admitted case. But, whether that absence was justifiable or not was for the railway authorities to examine, which they have failed to do. We have therefore deliberately referred to the appeal memo and in our opinion, both the authorities i.e., the appellate authority and revisional authority have gravely erred in not even offering an opportunity of hearing to the respondent. Learned counsel submits that the appeal itself was filed after two years. We find that the appeal was not rejected on the ground of limitation, but on merits. If that was so, the appellate authority was bound to give reasons as to why the grounds raised in the appeal were not being accepted. In short, the writ petition has no merits and it is dismissed."

10. On perusal of the order of the learned Judge which is impugned in the writ appeal, we find that the learned Judge has not dismissed the writ appeal on laches alone but also on the ground of laches. The learned Judge has discussed about the merit of the case and recorded why plea of increment cannot be considered.

11. According to the learned Judge, the judgment of the Supreme Court as well as the subsequent government order dated 8 August, 2006 have nothing to do with the pay fixation. The issue before the Supreme Court was with regard to the dispute between the "A" and "B" wing. The petitioner was rightly given the benefit of the Supreme Court judgment by re-fixing the seniority with effect from 10 February, 1989, though he was promoted only on 9 March, 1992. Therefore, the fact that the petitioner was given retrospective promotion from 10 February, 1989 will not give him a right to claim the benefit of Rule 22-B of the Fundamental Rules and re-fixation of pay retrospectively after a considerable period from his date of retirement. In case, the petitioner was aggrieved by the non-grant of the benefits of FR-22-B, he should have taken up the matter with the department during the period of his service as District Educational Officer.

12. In compliance to the Hon'ble Supreme Court judgment referring seniority among 'A' wing and 'B' wing Teachers, through the Government Order in G.O.Ms.No.130 dated 8 August, 2006 the petitioner was given only the benefit of retrospective promotion. The said order cannot be used to claim increment, which was not the intention of either the judgment of the Supreme Court or the consequential Government order dated 8 August, 2006.

13. Therefore, from any angle, the claim of the appellant that he is entitled for the benefit under Rule 22-B of the Fundamental Rules is found to be incorrect and the authority as well as the learned single Judge has correctly appreciated the position of law and have rejected the plea of the appellant. Besides merit it has also taken note of the fact that the appellant has sought for increment and re-fixation of his pay belatedly much after the date of his retirement. Hence, we do not find any infirmity in the order passed by the learned single Judge.

14. In the result, we do not find any merit in the Writ Appeal and accordingly, the same is dismissed. No costs.

(H.G.R.J.,) & (G.J.J.,)
25.07.2017

Index: Yes/No
Speaking order/non speaking order

jbm

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To

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**HULUVADI G.RAMESH.J.,
AND
G.JAYACHANDRAN.J.,**

jbm



**Pre Delivery Judgment in
W.A.No.2698 of 2010**

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