

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.16134 of 2008

S.Sabapathy

.. Petitioner

Vs

1.The Director of School Education,
Chennai - 600 006.

2.The Joint Director of School Education,
Chennai - 600 006.

3.The Chief Educational Officer,
Vellore.

4.The Headmaster,
Govt. Hr. Secondary School,
Vallimalai - 632 520.
Vellore Dist.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the 3rd respondent relating to the orders in Pro.O.Mu.No.2148/A3/2007, dated 26.1.2008, to quash the same and to issue consequential directions to rectify the anomaly of the petitioner who is senior to S.Arulselvam drawing lesser pay than that of his said junior with effect from 27.5.2001 and to stepup the petitioner's pay on par with his Junior from 27.05.2001 with all consequential monetary benefits and to disburse the arrears within a stipulated period.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.R.Govindasamy
Spl. Government Pleader
for respondents 1 to 3
No Appearance (for R4)

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records of the 3rd respondent relating to the orders in Pro.O.Mu.No.2148/A3/2007, dated 26.1.2008, to quash the same and to issue consequential directions to rectify the anomaly of the

petitioner, who is senior to S.Arulselvam, drawing lesser pay than that of his said junior with effect from 27.5.2001 with all consequential monetary benefits and to disburse the arrears within a stipulated period.

2. Succinctly put, the facts are as under: According to the petitioner, he was initially appointed as Graduate Assistant (Maths) and joined service on 20.12.1988 in the Government High School, Pernampakka, Tiruchirapalli District and was thereafter promoted as Post Graduate Assistant (Maths) in Government Higher Secondary School, Narthanpandi on 29.12.1998. At present, the petitioner is stated to be working as P.G.Assistant (Mathis) in Government Higher Secondary School, Vallimalai, Vellore District.

3. It is the case of the petitioner that his junior, S.Arulselvam, was appointed as Graduate Assistant on 8.2.1989 and was granted selection grade from 8.2.1999 and was promoted as P.G. Assistant only on 18.12.2002, much later than the petitioner, and in fact, both of them were drawing same pay up to 26.5.2001. It is stated that an anomaly arose with effect from 27.5.2001 and 30.12.2001, when his junior was sanctioned incentive increment for passing M.Sc. Degree, M.Ed. Degree examination in the revised scale of pay as per Pay Commission recommendations, whereas the petitioner was granted incentive increment with effect from 26.9.1990 for passing M.Sc. Degree examination and with effect from 25.5.1993 for passing M.Ed. Degree examination in the pre-revised scale of pay. It is alleged that due to the same, anomaly continues till date.

4. It is averred that the petitioner made a representation to the respondent authorities for rectifying the anomaly and for stepping up the pay on a par with his junior as contemplated under G.O.Ms.No.710, Finance (CMPC) Department, dated 23.8.1994 and on 1.12.2006, the said representation was forwarded to the Chief Educational Officer, Vellore. It is stated that the second respondent by proceedings dated 26.1.2008 had informed the Headmaster of the fourth respondent school that since the petitioner and his junior were serving in different posts, the anomaly cannot be rectified.

5. Assailing the said proceedings, the present writ petition is filed.

6. The learned counsel appearing on behalf of the petitioner vehemently contended that the claim of the petitioner is strictly in accordance with G.O.Ms.No.710, Finance (CMPC) Department, dated 23.8.1994 and Rule (2) of Fundamental Rule 22-B and, nowhere in the above said government order it is stated that both the senior and junior should serve in the same post and, therefore, the impugned proceedings of the second

respondent is misconstrued and liable to be set aside.

7. The learned Special Government Pleader appearing on behalf of respondents 1 to 3 submitted that on the crucial date, i.e., on 27.5.2001, the petitioner was working as P.G. Assistant, whereas his junior was working as B.T. Assistant, which is a different category and, therefore, the pay anomaly cannot be equated as sought by the petitioner, more so when Rule 22B-B(2) of the Fundamental Rules prescribes that both junior and senior should belong to the same cadre and post in which they have been promoted or appointed.

8. I heard Mr.M.Ravi, learned counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 3 and perused the documents available on record. No representation on behalf of the 4th respondent.

9. Before adverting to the merits of the case, it is apposite to refer to the relevant portion of G.O.Ms.No.710, Finance (CMPC) Department, dated 23.8.1994, which reads as under:

"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, Language Test, etc) by the senior in the Second Tamil Nadu Pay Commission Scales, 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, such anomaly can be rectified at least 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 for passing Account Test, Language Test, etc) by the senior in the Tamil Nadu Second Pay Commission Scale of Pay, i.e., prior to 1.4.1978 and the junior getting, advance increment for acquiring the same qualification in the Tamil Nadu Third Pay Commission Scale of Pay, i.e., after 1.4.1978, it continues to exist even after fixation of pay after 1.6.1988 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 Fifth Pay Commission Scale of Pay (viz., Tamil Nadu Revised Scales of Pay Rules, 1989).

5. Government also direct that the pay of a senior who got 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 2.10.1970, and drawing less pay compared to the pay of his junior, who got advance increment for the same qualification in the Fifth Pay Commission Scales of Pay, i.e., after 1.6.1988, be stepped up on par with the pay of his junior from the date from which the junior gets more pay in the Tamil Nadu Fifth Pay Commission Scale of Pay."

10. It is the case of the petitioner, based on the aforesaid government order, that nowhere there is a stipulation therein that both the senior and junior should have served in the same post while anomaly had arisen. Of course, on a bare perusal of the aforementioned government nothing so is stated. However, it is also not stated in the government order that irrespective of the cadres which they held, such anomaly in pay between senior and junior should be rectified.

11. That apart, as per Rule 22-B(2) of the Fundamental Rules, if a junior is getting higher scale of pay, then senior's pay shall be stepped up to the pay of his junior from the date of such payment. However, the anomaly of senior drawing less pay than junior could be rectified only if both junior and senior officers belong to the same cadre and the post in which they have been promoted, or appointed, shall be identical in the same cadre.

12. In the case on hand, admittedly, the petitioner was granted incentive increment in the cadre of B.T. Assistant and his junior, with whom comparison is drawn, was granted incentive increment in the cadre of P.G. Assistant. Therefore, the claim of the petitioner is hit by Rule 22-B(2) of the Fundamental Rules.

13. For the foregoing reasons, the writ petition is devoid of merits and the same is dismissed. No costs. Consequently, M.P.No.2 of 2008 is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1.The Director of School Education,
Chennai - 600 006.

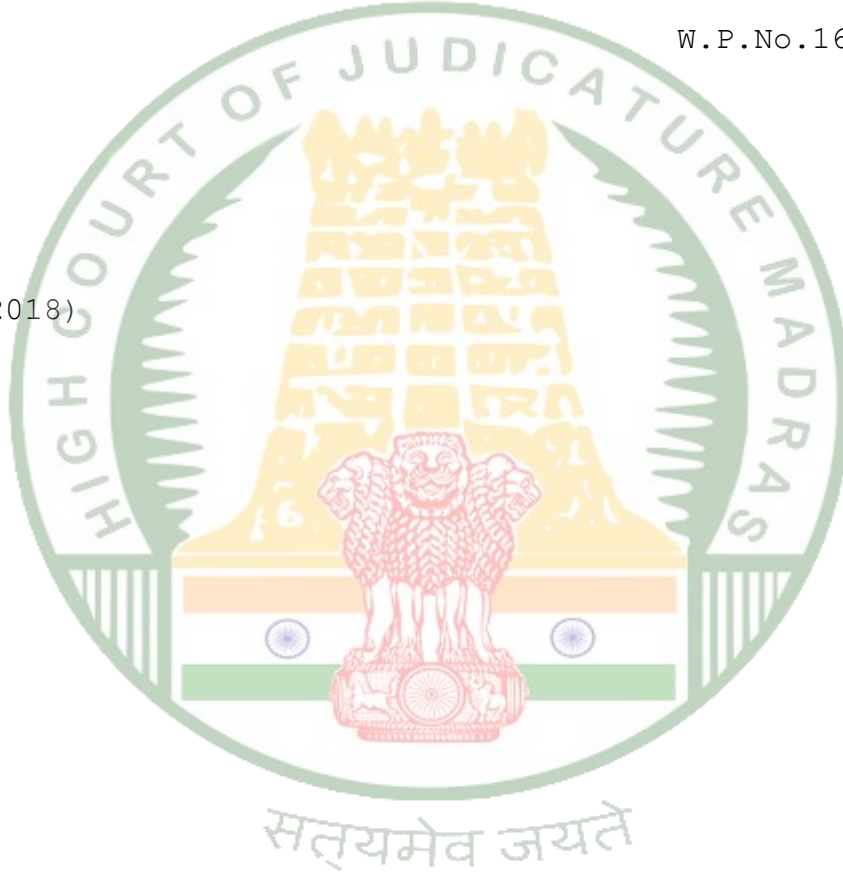
2.The Joint Director of School Education,
Chennai - 600 006.

3.The Chief Educational Officer,
Vellore.

+1 CC to Mr. Ravi, Advocate sr 64786.

W.P.No.16134 of 2008

NM(CO)
SP(27/09/2018)



WEB COPY