

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.04.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN**W.P(MD)No.6453 of 2017**

A.K.Ramasamy

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Higher Education Department,
Secretariat,
Chennai - 9.

2.The Director/Commissioner of Technical Education,
Guindy,
Chennai - 25.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the respondents to promote and step up the pay of the petitioner as Librarian from 01.03.2001 instead 09.06.2005, the date on which the petitioner's junior S.Anbu Ganesan got promoted as Librarian on 01.03.2001, consequently, revise the pay and pension of the petitioner from 01.03.2001 in the light of the Judgment of the Supreme Court reported in (2009) 3 SCC 94 and as per the letter of the second respondent, dated 27.02.2017.

For Petitioner : Mr.S.Govindan
For Respondents : Mrs.S.Srimathy,
Special Government Pleader.

ORDER

This writ petition has been filed seeking a direction to the respondents to promote and step up the pay of the petitioner as Librarian from 01.03.2001 instead 09.06.2005 ie., the date on which the petitioner's junior S.Anbu Ganesan got promoted as Librarian on 01.03.2001 and consequently, revise the pay and pension of the petitioner from 01.03.2001 in the light of the Judgment of the Supreme Court reported in (2009) 3 SCC 94 and as per the letter of the second respondent, dated 27.02.2017.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Heard the learned counsel appearing for the petitioner and



the learned Special Government Pleader appearing for the respondents.

3. The case of the petitioner is that he was appointed as an Office Assistant on 03.09.1973 and after periodical promotions, he was promoted as Librarian and retired from service on 31.12.2010. The grievance of the petitioner is that even though his name found place in the list of regularisation of Assistants in Sl.No.22 and his junior S.Anbu Ganesan name found place in Sl.No.63, the petitioner's junior was promoted as Librarian on 01.03.2001 and after submitting detailed representation, the petitioner was promoted as Librarian on 09.06.2005 with a delay of five years. The petitioner submitted several representations to the respondents to rectify the pay anomaly, for which, the second respondent, vide letter, dated 27.02.2017, stated that action is being taken for fixation of pay on par with his junior S.Anbu Ganesan and it is in progress. Since no action has been forthcoming, the petitioner has filed the present Writ Petition.

4. The learned counsel appearing for the petitioner submitted that the issue involved in the Writ Petition is covered by the order of this Court in **W.P(MD)No.758 of 2012 (B.Subburaj Vs. the Managing Director and others)**, wherein, at paragraph Nos.8 to 11, it is held as follows:-

"8. The learned counsel for the petitioner has in respect of his claim, relied on the following judgments of the **Apex Court** and the **Division Bench of this Court** reported in **(2009) 3 SCC 94 (Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others)** and **2011 (1) CWC 652 (K.K.Perumalsamy vs. Tamil Nadu Electricity Board)**.

9. The learned counsel for the petitioner has also by relying upon the judgment reported in **2011 (1) CWC 652 (K.K.Perumalsamy vs. Tamil Nadu Electricity Board and others)** argued that the claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during entire tenure of service and it can be exercised at time of each payment of salary when employee is entitled to the salary computed correctly in accordance with Rules and such right cannot be negated on the ground of delay, when there is no delay.

10. The view expressed by the Division Bench of this Court is squarely applicable to the facts of the present case and the same answers the objections raised against the claim made herein on facts and on the ground of delay and laches. In both the judgments, the Apex Court and our High Court, are of the view that the senior cannot be paid less than his junior. If there was anomaly in seniors pay, due to difference of incremental benefits in both the cases. Similar claim was made by the employee and the same was allowed by



the Honourable Apex Court wherein the Honourable Apex Court was of the view that a senior cannot be paid lesser salary than his junior even if there was a difference in the incremental benefits in the scale given to the senior and the junior and such anomaly should not be allowed to continue and ought to be rectified so that the pay of the senior was also stepped up in order to achieve the object to bring the pay scale of the senior on par with that of his juniors. When that being the legal position, this Court is not inclined to accept the objections raised herein and the same are devoid of merits and acceptance. As such, the petitioner is entitled to the relief as claimed herein for rectification of the pay anomaly and proper pay fixation on par with his juniors.

11. In the result, the writ petition is allowed by directing the first respondent to rectify the pay anomaly among similarly placed persons and to step up the pay of the petitioner like that of the similarly placed persons and on par with his juniors S.Kirubakaran, A.Sasikumar and A.Arunachalam from the date on which such pay anomaly occurred and the uniform pay fixation shall be with consequential monetary benefits. The above said exercise shall be completed within a period of eight weeks from the date of receipt of the copy of this order. No costs."

Thus, the learned counsel prayed for a similar order in this Writ Petition as well, for which, the learned Special Government Pleader appearing for the respondents has no serious objection.

5.Following the abovesaid order, this Writ Petition is disposed of by directing the respondents to step up the pay of the petitioner from 01.03.2001 instead of 09.06.2005, from the date on which, his junior S.Anbu Ganesan got the said relief and revise the pension of the petitioner from 01.01.2011, as per the letter of the second respondent, dated 27.02.2017. The above said exercise shall be completed within a period of eight weeks from the date of receipt of the copy of this order. No costs.

Sd/-

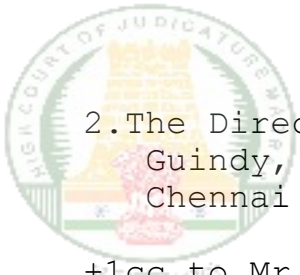
Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Higher Education Department,
Secretariat,
Chennai - 9.



2.The Director/Commissioner of Technical Education,
Guindy,
Chennai - 25.

+1cc to Mr.S.GOVINDAN, Advocate, SR.No.61858

+1cc to M/s.Special Government Pleader,SR.No. 62498

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