



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HON'BLE DR. JUSTICE ANITA SUMANTH

WP.No.21768 of 2009 and
M.P.Nos.1, 2 & 3 of 2010

1. P.R.Subramanian
2. S.Krishnamurthy
3. K.Kamalakaran
4. G.Munisamy
5. V.P.Vasudevan
6. S.Krishnasamy
7. Swaminathan
8. P.Stanley

... Petitioners

vs.

1. Government of Tamil Nadu
rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
2. Government of Tamil Nadu
rep. by its Secretary to Government,
Finance Department,
Secretariat,
Chennai - 600 009.
3. The Director of School Education,
College Road,
Chennai - 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records of the respondents in relation to the proceedings passed in Na.Ka.No.5759/A1/S3/ 2008 dated 15.02.2008 by the 3rd respondent and Letter No.18172/A1/96-5 dated 04.08.1997 passed by the 1st respondent and quash the same and issue consequential direction to the respondents to fix the pay of the petitioners under Fundamental Rule 22-B from the date of assumption as District Educational Officers and grant consequential benefits.

For Petitioners : Mr.R.Saseetharan

For Respondents : Mr.C.Selvaraj,
Government Advocate



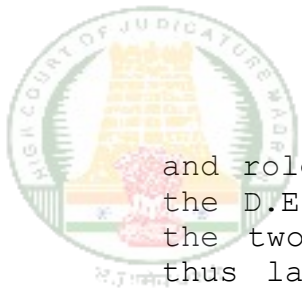
O R D E R

The petitioners raise an interesting issue in this case. All petitioners were initially appointed as B.T. Assistants in schools falling under the erstwhile District Board, that has been dismantled with effect from April 1970. A policy decision had been taken by the Government then to absorb teachers working in District Board Schools as Government Servants with effect from 01.04.1970. Post such absorption, seniority was fixed inter se as between those falling under A-Wing and B-Wing. The fixation of seniority was finally settled after long litigation culminating before the Hon'ble Supreme Court.

2. The petitioners were promoted to the post of District Educational Officer (D.E.O.) from their post as Higher Secondary School Head Master (HSS HM) and the trajectory of their promotions was as follows:

Sl. No.	Name of the Person	Date of appointment as B.T. Assistant	Date of promotion as Head master, High School	Date of promotion as Head master, Higher Secondary School	Date of promotion as District Educational Officer	
					Prior to the issue of G.O.Ms. No.130	After the issue of G.O.Ms. No.130 with retrospective effect i.e. after the judgment of Supreme Court
1	P.R.Subramanian	10.04.1954	09.06.1991	01.07.1978	09.01.1996	19.12.1983
2	S.Krishnamurthy	21.06.1954	08.06.1961	24.10.1984	07.01.1986	20.07.1984
3	K.Kamalakaran	20.06.1958	23.06.1965	22.08.1988	09.03.1992	01.03.1991
4	G.Munisamy	23.05.1958	28.06.1965	01.07.1978	09.03.1992	01.03.1991
5	V.P.Vasudevan	22.04.1958	21.06.1963	01.07.1978		04.01.1989
6	S.Krishnasamy	12.06.1957	04.06.1964	01.07.1978		10.02.1989
7	N.Swaminathan	12.06.1957	17.06.1964	06.08.1978		10.02.1989
8	P.Stanley	19.06.1958	21.07.1964	01.07.1978		01.03.1990

3. The petitioners' claim that assumption of office as D.E.O., brought with it enhanced and increased responsibilities



and roles. Thus, though the scales of pay as between HSS HM and the D.E.O. were equal, the position and status that attached to the two roles, was different and distinct and the petitioners thus lay claim to an increment as provided for in Fundamental Rule 22 B (F.R. 22 B). To this end, the petitioner has circulated material to illustrate such differences in the roles and responsibilities.

4. While a HSS HM is fully engaged in the running and management of the school in question, responsible for the supervision and conduct of teaching as well as administrative activities, a D.E.O has overall responsibility for the schools in a District with specific roles designated shared between the C.E.O, D.E.O and other district officials. In the context of the D.E.Os. reference is made to the Tamil Nadu Educational Assessment and Evaluation Code (Code) which sets out a detailed enumeration of the duties to be performed by a D.E.O, including staff fixation and re-deployment in schools, all aspects of conduct of Government examinations, maintenance of records and overseeing of the same, periodic inspection of officials within the department in that District, preparation of budget bills and tours to be conducted by the D.E.O. in the inspection of the schools, verification of the reports submitted by the Elementary Schools in the District, among others.

5. The Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, also requires the D.E.O. to perform various statutory functions such as verification of returns filed by the Educational Agencies in High Schools, Higher Secondary Schools and Teachers Training Institutes, where additional sections are opened in schools and adjudication of appeals challenging decisions of the competent Authority.

6. Likewise, issues relating to the payment and withholding of Grants fall within his domain, as do issues relating to closure of schools. The Special Rules for the Tamil Nadu Elementary Educational Subordinate Service vest the power of appointment of teachers for all classes and categories specified therein in an educational district upon the D.E.O.

7. Suffice it to say that the roles and responsibilities of a D.E.O. are substantially more, as well as varied when compared with the duties falling upon a HSS HM. It is in this context that one should appreciate the claim of the petitioners to increment.

8. The claim is based upon a reading of F.R. 22 B as follows:

"22-B. Notwithstanding anything contained in these rules, where a Government servant



WEB COPY

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 attached to the post held by him, his initial pay in the level of the higher post in the pay matrix shall be fixed by granting one increment in pay in the level of the lower post and he shall be placed at a cell equal to the pay so arrived at in the level of the higher post in the pay matrix of the higher post, and if no such cell is available in the level of the higher post to which he is promoted, the initial pay shall be fixed at next higher cell in the level of the higher post. However, if the pay so arrived at in the level in the lower post after granting one increment is lower than the minimum pay or the first cell in the level of the higher post, the initial pay shall be fixed at minimum pay or the first cell of the level of higher post."

9. The premise upon which F.R.22B operates is that, where a Government servant holding a post in a substantive or officiating capacity, in this case a HSS HM, is promoted or appointed in another substantive or officiating post carrying duties and responsibilities of greater importance than those attached to the post held previously by him, his initial pay in the level of the higher post in the pay matrix shall be fixed by granting one increment in his pay in the level of the lower post.

10. The State would deny the claim of the petitioners stating that the increment would not apply in the case of those officials who fall within the same pay and grade would apply to only those officers who have, in fact, been granted promotion to a higher cadre or grade of service/pay.

11. To this end, learned Government Pleader would rely upon the Special Rules of the Tamil Nadu Service Manual (Vol-II) State Services as well as Government Letters dated 09.10.2012 and 28.12.2015. As far as the first contention is concerned, Mr. Selvaraj, is right. Admittedly, the positions of HSS HM and D.E.O. fall in identical pay grades.

12. That apart, the Government has clarified vide the above cited letters that only in cases of promotion to a higher post on identical scales of pay would the employee in question be



entitled to the benefit of one increment. The letters relied upon support the case of the petitioners to the effect that even if the scales of pay were the same, if the duties and responsibilities assumed were greater in the post to which the employee was promoted as compared with the previous post, he should be given the increment, as claimed.

13. A perusal of the functions of HSS HM as compared with those of the D.E.O. makes it clear that the scope and functionalities of the role played by a D.E.O. in the cause of Education within a District is far greater and more onerous than that of a HSS HM. It is to address precisely such a situation that F.R. 22 B provides for an increment in the first place, as a D.E.O, would assume far greater responsibilities but continue with the same scales of pay as a HSSHM. In my view, to deny the increment provided under the Regulations, would be a travesty of justice.

14. The claim of the petitioners is accepted and this Writ Petition is allowed. There is a direction to the first respondent to compute the increment to which the petitioners are entitled and pay the same over within a period of eight (8) weeks from today. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sl/kbs

To

1. Secretary to Government,
School Education Department,
Government of Tamilnadu,
Secretariat, Chennai - 600 009.
2. Secretary to Government,
Finance Department,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.



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

+1CC to Mr.R.Saseetharan, Advocate, Sr.No.50051
+1CC to Mr.Government Pleader, Sr.No.50851

WP.No.21768 of 2009 and
M.P.Nos.1, 2 & 3 of 2010

AJS (CO)
K.RK. (17.11.2021)