



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.31415 of 2004

G. Sivakanthan

..Petitioner

Vs

1. The Director of School Education,
Chennai - 6.

2. The Chief Educational Officer,
Dharmapuri.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus, calling for the records pertaining the order passed by the 1st respondent in his proceedings No.MU.MU. No.113934/L.2/2003, dated 11.05.2004 and quash the same, and direct the respondents to step up the scale of pay of the petitioner on par with the junior and as per Rule 5 (2) of the scale of pay Rules, 1996 and pass such further orders.

For Petitioner : Mr.P.Murugesan
for Mr.Mani

For Respondents : Mr.Balathandayutham
Government Advocate
for R1 & R2

O R D E R

This writ petition has been filed seeking for issuance of writ of certiorarified mandamus to call for the records in No.MU.MU. No.113934/L.2/2003, dated 11.05.2004 and quash the same, and direct the respondents to step up the scale of pay of the petitioner on par with the junior and as per Rule 5 (2) of the scale of pay Rules, 1996 to the petitioner.

2.According to the petitioner, he joined as BT Assistant on 30.10.1981, and acquired M.Sc., degree in 1986 and M.Ed., degree in 1989 for which incentive increment was given in 1986 and 1989 respectively. Thereafter petitioner was promoted as PG assistant on 10.10.1994 and continuously working as BT Assistant.



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3. The learned counsel for the appellant would submit that petitioner's junior S.Varadharajan joined as BT Assistant on 13.02.1984 and also acquired M.Ed., and M.Sc., degree in 1987 and 1997 respectively for which he was given incentive increment and he was also promoted as PG Assistant on 25.09.1998. Though he is junior both in the cadre of BT Assistant as well as PG Assistant, he was given higher scale of pay Rs.7500/- whereas the petitioner was given Rs.7100/-. The anomaly crept in case of sanction of incentive increments in different pay commissions. To alleviate and remove the anomaly the revised pay scale rules enable the senior to get the scale of pay stepped up under rule 5(2) of the revised scale of pay of rules issued in GO No.162, Finance dated 13.04.1998. Relying on the above rules, the petitioner made representation to the authorities and the authorities without looking into the rules rejected the same on the grounds that the incentive increment was given in the Selection Grade for the Junior and Special Grade was given to the senior.

4.The Selection Grade and Special Grade are not different course. It is only an additional emolument which will not alter the situation. So the petitioner challenging the same, filed Original petition before the Tamil Nadu Administrative Tribunal in OA.No.3162 of 2003, wherein, the the Tribunal directed the first respondent to pass appropriate order. Pursuant to the above direction, the first respondent has passed an order dated 11.05.2004 rejecting the claim on the ground that as on 01.01.1996, the petitioner was working as PG Assistant, whereas his junior working was working as BT Assistant, hence relief cannot be granted.

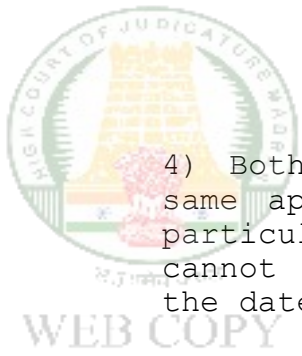
5.Challenging the above order, the petitioner has filed the present Writ petition before this Court.

6. The 2nd respondent filed counter affidavit submitting that the pay of a senior can be fixed on par with the pay of a junior if the following conditions are full-filled with reference to G.O. Ms.No.1400/Fin. (PC) Dept. dated 21.12.1978, G.O.Ms.No.859/Fin (PC) Dept. dated 11.09.1986 and G.O.Ms.No.25/PAr (FR IV) Department dated 23.03.2015.

1)Both the petitioner and Junior employees should belong to same cadre and the posts to which they have been promoted or appointed should be identical and in the same cadre.

2) The Junior and senior should have held identical scales in the lower post should hold identical scales in the higher post.

3)The Junior should not have been drawing more pay than the senior from time to time in the lower post.



4) Both senior and junior should have got appointment in the same appointment unit. A senior Government servant belongs to particular cadre post who got appointment in an appointment unit cannot compare a Government servant who joined in service after the date of his joining in another appointment unit.

5) In case of pay anomaly arising due to award of incentive increment, both the senior and junior should have acquired same type of higher educational qualification and awarded incentive increments equally.

In the counter affidavit, it is also stated that stepping up in the following cases are not admissible.

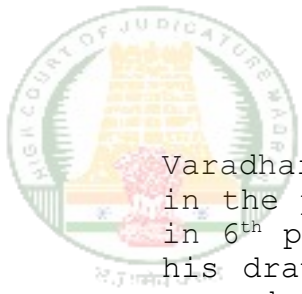
1. Where the senior proceeds on EOL which results in postponement of increment in the lower post, consequently the starts drawing less pay than his juniors in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade.
2. A senior foregoes/refuses promotion leading to his juniors being promoted/appointed to the higher post earlier junior draws higher pay than the senior. The senior may be on deputation while junior avails of the Ad-hoc promotion in the cadre. The increased pay drawn by a junior either due to to Ad-hoc/officiating/regular service rendered in the higher post for periods earlier than the senior, cannot, therefore be as anomaly in strict sense of the term.
 - a) If a senior join the higher post later than the junior for what so ever reasons, whereby he draws less pay than the junior, in such cases junior cannot claim stepping up of pay at par with the juniors.
 - b) If a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post.
 - c) Where a person is promoted from lower to higher post, his pay is fixed with reference to the pay drawn by him in the lower post under FR 22(1)(A)(1) and he is likely to get more pay than a direct appointed whose pay is fixed under different set of rules. In such cases the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to a higher post as seniority alone is not a criteria for allowing stepping up of pay.



d) Where a junior get more pay due to additional increment earned on acquiring higher qualifications.

7. Further it is averred in the counter affidavit that the writ petitioner was initially appointed as B.T. Assistant (Mathematics) by the Chief Educational Officer, Dharmapuri vide Rc.No. 16966/B1/1981 dated 28.10.1981, through District Employment Exchange during 1980-91 academic year. He joined duty in Govt.Hr.Sec. School, Kambainallur on the forenoon of 30.10.1981. His service were regularized as B.T. Assistant post with effect from 30.10.1981 forenoon and his probation declared as B.T. Assistant post on the afternoon of 29.10.1983. He was awarded 1st incentive increment for M.Sc., with effect from 23.01.1986 and 2nd incentive increment for M.Ed., with effect from 04.01.1990 while working as B.T Assistant. He was awarded selection Grade in B.T. Assistant post with effect from 30.10.1991 and he was given reversion 2 times from P.G. Assistant post to B.T. Assistant post for want of P.G. Assistant vacancy i.e. On 30.10.1990 and thereafter on 23.05.1994 after he was given promotion as on 04.12.1989 and 21.01.1994. Thereafter he was promoted to the post of Post Graduate Assistant (Mathematics) with effect from 10.10.1994 forenoon. His pay was fixed as on 30.10.2001 at Rs.8000+100 in 8000-275-13500 scale of pay applying Rule 4(3) presuming that if he had continued as B.T. Assistant, without promotion to P.G. Assistant, he would have drawn pay Rs.8000+100PP in B.T. Assistant special Grade. He was awarded selection Grade in P.G. Assistant post with effect from 25.07.2003. Thereafter he was promoted to the post of High School Headmaster with effect from 04.01.2006 forenoon. In high school Headmaster post he was awarded selection grade from 04.01.2006 combining the identical scale of pay service of selection grade P.G Assistant and ordinary Grade High school headmaster service. He was promoted to the post of Higher Secondary School headmaster with effect from 13.11.2009 forenoon. After rendering total service of 28 years 4 months and 2 days he retired from service on the afternoon of 28.02.2010. He is receiving pension with effect from 01.03.2010 with PPO No. C638560/EDG.

8. Further it is submitted in the counter affidavit that the writ petitioner was working as Post Graduate Assistant, he moved to Tamil Nadu Administrative Tribunal by filing a case in O.A.No.3162 of 2003 praying to give directions to the respondents to fix his pay on par with his junior by name S.Varadharajan, (retired after serving in High School Headmaster's post of Government High School, N. Vellalapatti, Krishnagiri District). The Tamil Nadu Administrative Tribunal, Chennai issued orders in the above case on 22.09.2003 stating that the applicant was sanctioned incentive increments for M.Sc., and M.Ed., in 4th and 5th pay commissions, whereas



Varadharajan was sanctioned one incentive increment for M.Ed., in the pay Commission and another incentive increment for M.Sc., in 6th pay Commission. Therefore anomaly has arisen in as much as his drawing a scale of pay Rs.7100/- already the Government has passed G.O.Ms.No. 162/Fin (PC) dated 13.04.1998 providing for revision of pay and fixing it on par with junior in case, where the junior was getting more pay because of the revision of pay done as a result of pay commission recommendation. Therefore the Tribunal directed that "the respondents to consider the case of the applicant and it appears that G.O. is applicable and the anomaly has to be rectified. In case, if the applicant is not eligible for the correction of the anomaly, he may be informed of the reasons for the same."

9. Further in the counter affidavit it is submitted that S.Varadharajan, who was compared by the writ petitioner as his junior was initially appointed as B.T. Assistant (Science) by the Chief Educational Officer, Dharmapuri vide Rc.No. 23602/B1/1983 dated 10.02.1984, through District Employment Exchange during 1983-1984 academic year. He joined duty in Government High School, Upparapatti on the forenoon of 13.02.1984. His services were regularized in B.T. Assistant post with effect from 13.02.1984 forenoon. His probation declared in B.T. Assistant post on the afternoon of 12.02.1986. while working as B.T. Assistant S. Varadharajan was awarded 1st incentive increment for M.Ed. With effect from 03.01.1987 i.e. in 4th Pay Commission. His pay was stepped up to Rs.1560/- by the Director of School Education, Chennai vide K.Dis No. 86190/L3/1991 dated 22.10.1991 on par with his junior with effect from 01.01.1997 in 6th pay commission. He awarded Selection Graded in B.T. Assistant post with effect from 13.02.1994. He was promoted to the post of Post Graduate Assistant (Chemistry) with effect from 25.09.1998 forenoon. He was awarded selection Grade in post Graduate Assistant post With effect from 13.02.2004 counting Selection Grade B.T. Assistant service and ordinary Grade P.G Assistant service . Thereafter he was promoted to the post of High School headmaster with effect form 08.09.2007 forenoon. After rendering total service of 26 years 8 months and 17 days he retired form service on the afternoon of 31.10.2010. he is receiving pension with effect from 01.11.2010 with PPO No. C638791/EDG.

10. It is submitted that the writ petitioner who is said to be the senior to the S.Varatharajan got 1st incentive increment for M.Sc., on 23.01.1986 in 4th pay commission and 2nd incentive increments for M.Ed on 04.01.1990, whereas the S. Varatharajan who is said to be junior to the writ petitioner got 2 incentive increments for M.Ed. As on 03.01.1987 in 4th pay commission and form M.Sc., as on 01.01.1997 in 6th pay commission.



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i) Junior S. Varadharajan was fixed pay at Rs.6900/- as per G.O. Ms.No. 427/Fin.(PC) Department dated 28.08.1998 in 6th pay commission whereas senior i.e writ petitioner was fixed pay on that date at Rs.6700/- in 6th pay commission (difference of pay Rs.200/-) and as well as ii) Junior S. varatharajan was fixed pay at Rs. 7500/- on the date of award of 2nd incentive increment as on 01.01.1997 for M.Sc., Higher Educational qualification in 6th pay commission whereas senior i.e. Writ petitioner was getting pay on that date at Rs.6900/- in 6th pay commission (difference of pay Rs.600/-)

Hence the difference of pay occurs in between the senior i.e the writ petitioner and junior S. Varadharajan on as on 01.01.1996 and as on 01.01.1997 onwards. Comparative statement is furnished below:-

11.Further he submitted that the proposal for rectifying the pay anomaly was forwarded by the Chief Educational Officer, Dharmapuri in RC.No. 11658/B1/2003 dated 02.12.2003 in pursuance to the orders issued on 22.09.2003 in case O.A. No. 3162/2003 by the Hon'ble Tamil Nadu Administrative Tribunal, Tamil Nadu. The Director of school education in K.Dis.No. 113934/L2/2003 dated 11.05.2004 returned the proposals to the Chief Educational Officer. Dharmapuri stating that the pay anomaly could not be rectified for the following reasons

12. On the date of occurring pay anomaly i.e. On 01.01.1996 the senior i.e. Writ petitioner was working as Post Graduate Assistant and the Junior S.Varadharajan was working as B.T. Assistant, and since the posts are not identical on the date of occurring pay anomaly i.e on 01.01.1996, the pay anomaly could not be rectified (and)

1. The senior should have been drawing more pay than the junior or equal to the pay of the junior until the date of pay anomaly occurring, but in this case the junior has got more pay than the senior as on 01.01.1996 and hence the pay of the senior has not been stepped up on par with the junior as on 01.01.1997.

13.Aggrrieved by the above orders the writ petitioner filed this case challenging the above order, praying the Hon'ble High Court to direct the respondents fix his pay on par with the junior as per rule 5(2) of the scale of pay Rules 1996. Rule 5 (2) of the Tamil Nadu Pre-revised scales of pay rules read as follows:-

(a).In case where a senior employee who had drawn incentive increment in the pre-revised scale and drawn more pay than his junior prior to 2st January 1996 draws lesser pay than his junior in the revised scale of pay consequent on the sanction of

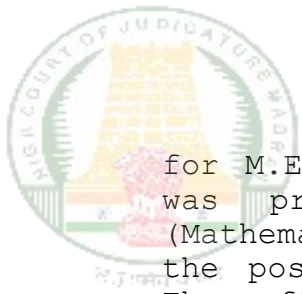


incentive increments in the revised scale of pay to the junior for acquiring the same higher/special qualification after introduction of revised scale of pay then the pay of the senior may stepped up to the level of that of junior from date from which the junior draws such higher pay. Further it is submitted that as per the Government Letter No.20419/FCI/99-5 P&AO Dept. dated 30.12.1999 the pay anomaly can be rectified by Head of Department subject to ratification by Government within a month in respect of serving Government servant. The powers delegated under F.R.27(2) cannot be exercised by the head of the Department in respect of retired Government servant. In other words no other authority shall issue orders of stepping up of pay except the Government in case of Government servants after the retirement. This was reiterated by the Government in Lr.No. 24576/FR.IV/2017-1 dated 23.08.2017 addressed to the Accountant General (A & E), Chennai.

1. Senior i.e. The writ petitioner G.Sivakanthan has drawn more pay than Junior Thiru.S. Varadharajan up to 31.12.1995. But senior has drawn less pay i.e. Rs.6700/- w.e.f 01.01.1996 than the junior who drawn basic pay of Rs.6900/- as on 01.01.1996 due to fixation of pay in the Tamil Nadu Pre-revised scale of pay rules 1998 and due to increment due on 01.01.1196 itself. Difference of pay Rs.200/- as on 01.01.1996 as well as
2. The Senior has drawn less pay i.e. Rs. 6900/- w.e.f. 01.01.1997 than the junior S.Varadharajan who drawn basic pay of Rs. 7500/- due to sanctioned of 2nd incentive increment form M.Sc. As on 01.01.1997 (difference of pay Rs.600/-). The above difference of pay existed in between the writ petitioner and the junior S.Varadharajn from 01.01.1996 to 31.12.2005. Thereafter, i.e. From 01.01.2006 onwards, the senior has got higher pay again, than the junior up to date of retirement.

14.Further it is submitted that since the writ petitioner has already retired from service on the afternoon of 28.02.2010, it is possible to issue orders rectifying the pay anomaly as on 01.01.1997 fixing his pay at Rs.7500/- on par with his junior S. Varadharajan, by the Head of Department i.e. The Director of School Education , Chennai vide, Govt.letterNo.20419/FCI/99-5 P&AO Dept. dated 30.12.1999 and Government in Lr.No.24576/FR.IV/2017-1 dated 23.08.2017.

15. Further learned Government Advocate appearing for respondents would submit that the writ petitioner was initially appointed as B.T. Assistant (Mathematics) by the Chief Educational Officer, Dharmapuri. He was awarded 1st incentive increment for M.Sc. w.e.f. 23.01.1986 and 2nd incentive increment



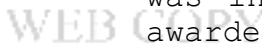
for M.Ed. w.e.f 04.01.1990 while working as B.T. Assistant. He was promoted to the post of Post Graduated Assistant (Mathematics) w.e.f 10.10.1994 forenoon and again promoted to the post of High School Headmaster w.e.f 04.01.2006 forenoon. Thereafter he was promoted to the post of Higher Secondary School Headmaster w.e.f 13.11.2009 forenoon. After rendering total service of 28 years 4 months and 2 days he retired from service on the afternoon of 28.02.2010. S.Varadharajan, who was compared with the writ petitioner as his junior was initially appointed as B.T. Assistant (Science) by the Chief Educational Officer, Dharmapuri. He joined as B.T. Assistant on the forenoon of 13.02.1984 while working as B.T. Assistant S.Varadharajan was awarded 1st incentive increment for M.Ed. With effect from 03.01.1987 i.e. In 4th pay commission. He was promoted to the post of Post Graduate Assistant (Chemistry) with effect from 25.09.1998 forenoon. Thereafter he was promoted to the post of High School Headmaster with effect from 08.09.2007 forenoon. After rendering total service of 26 years 8 months and 17 days he retired from service on the afternoon of 31.10.2010. The proposals for rectifying the pay anomaly was forwarded by the Chief Educational Officer, Dharmapuri in Rc.No. 11658/B1/2003 dated 02.12.2003 in pursuance to the orders issued on 22.09.2003 in O.A No. 3162/2003 by the Administrative Tribunal, Tamil Nadu, The Director of School Education vide K.Dis.No.113934/L2/2003 dated 11.05.2004 returned the proposals to the Chief Educational Officer, Dharmapuri stating that the pay anomaly could not be rectified for the following reasons.

i) on the date of occurring pay anomaly i.e. On 01.01.1996 the senior i.e. Writ petitioner was working as Post Graduate Assistant and the junior S.Varadharajan was working as B.T. Assistant, and since the posts are not identical on the date of occurring pay anomaly i.e. On 01.01.1996 the pay anomaly could not be rectified and

ii) The senior should have been drawing more pay than the junior or equal to the pay of the junior until the date of pay anomaly occurring, but in this case the junior has got more pay than the senior as on 01.01.1996, and hence the pay of the senior has not been stepped up on par with the junior as on 01.01.1997.

16. Heard and perused the records.

17. The case of the writ petitioner is that he joined as BT Assistant on 30.10.1981, thereafter promoted as PG assistant on 10.10.1994 and continuously working as BT Assistant. But his junior S.Varadharajan joined as BT Assistant on 13.02.1984 and promoted as PG Assistant on 25.09.1998 and though he is junior both in the cadre of BT Assistant as well as PG Assistant, he



18. The respondents would submit that the writ petitioner was initially appointed as B.T. Assistant (Mathematics). He was awarded 1st incentive increment for M.Sc. w.e.f. 23.01.1986 and 2nd incentive increment for M.Ed. w.e.f. 04.01.1990 while working as B.T. Assistant. He was promoted to the post of Post Graduated Assistant (Mathematics) w.e.f. 10.10.1994 forenoon and again promoted to the post of High School Headmaster w.e.f. 04.01.2006 forenoon. Thereafter he was promoted to the post of Higher Secondary School Headmaster w.e.f. 13.11.2009 forenoon and he retired from service on the afternoon of 28.02.2010. On the other hand, Mr.S.Varadharajan, who was compared with the writ petitioner as his junior was initially appointed as B.T. Assistant (Science) and while working as B.T.Assistant, he was awarded 1st incentive increment for M.Ed. With effect from 03.01.1987 i.e. In 4th pay commission. He was promoted to the post of Post Graduate Assistant (Chemistry) with effect from 25.09.1998 forenoon. Thereafter he was promoted to the post of High School Headmaster with effect from 08.09.2007 forenoon. He retired from service on the afternoon of 31.10.2010. It is clearly stated by the respondents that on the date of occurring pay anomaly i.e. on 01.01.1996 the senior/Writ petitioner was working as Post Graduate Assistant and the junior S.Varadharajan was working as B.T. Assistant, and since the posts are not identical and therefore, pay anomaly could not be rectified. As per the Fundamental Rules, Pay anomaly rectification cannot be done in the case on hand, since in this case the junior has got more pay than the senior as on 01.01.1996, and hence the pay of the senior has not been stepped up on par with the junior as on 01.01.1997.

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20. A reading of the entire materials placed before this court, would go to show that the claim of the writ petitioner for pay anomaly rectification does not have any basis. Pay anomaly rectification is possible only when the senior citing the junior is getting more pay and when they are in same cadre, same grade and on same scale of pay on the date when pay anomaly comes. When there is no such similar cadre or post held by the writ petitioner, the comparison with his junior for stepping up of pay cannot be sanctioned and therefore, the proposal was returned. Since the posts are not identical on the date of occurring pay anomaly i.e., on 01.01.1996, the pay anomaly could not be rectified. In such view of the matter, the writ petitioner is not entitled for the relief sought for in the writ petition. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

nvsri

To

1. The Director of School Education,
Chennai - 6.
2. The Chief Educational Officer,
Dharmapuri.

+1cc to M/s.C.S.Associates, Advocate, S.R.No.56556

W.P.No.31415 of 2004

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