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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16355 of 2013

and

M.P.No.1 of 2013

N.Premkumar

...Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St. George, Chennai - 9.

2.The Director School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Nagercoil, KK District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent issued in his proceedings Na.Ka.No.1177335/W2/E2/2007 dated 07.02.2008 insofar as denying the monetary benefits to the petitioner getting higher pay from 01.01.1996 to 31.08.1998 and the final order issued by the 2nd respondent in his proceedings Na.Ka.No.27976/L/E3/2012 dated 14.06.2012, quash the same and directing the respondents herein to pay the monetary benefits arising out of the stepping out of pay of the petitioner on par with his junior from 01.01.1996 to 31.08.1998 forthwith.

For Petitioner : Mr.Ebenezer Paul
for Mr.V.Krishnamurthy

For Respondents: Ms.Rajarajeswari,
Government Advocate



ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The anomaly of pay scale between the petitioner and one Thiru.C.Sundaraj, both of whom were employed as P.G.Assistants in the Government Higher Secondary School, Nagercoil, is the grievance of the petitioner in the present writ petition.

3. The anomaly in the pay scale arose on 01.01.1996, when the second respondent herein had passed orders, stepping up the pay of the petitioner on par with his junior Thiru.C.Sundaraj and fixing the pay of the petitioner at Rs.8,825/- per month, with effect from 01.01.1996. However, the respondents have relied on G.O.Ms.No.484, Finance (PC) Department, dated 08.09.1998 and granted the monetary benefits, with effect from 01.09.1998 only. Such a decision of the Government to notionally step up the pay with effect from 01.01.1996 and restrict the monetary benefits from 01.09.1998 onwards, is opposed to Rule 22B of the Tamil Nadu Fundamental Rules.

4. In service jurisprudence, it is a settled proposition of law that when two Government employees hold the same post, the senior cannot be paid a lesser salary than the junior and in case the junior is getting more pay, the department is bound to step up the pay of the senior on par with his junior, with effect from the date on which the anomaly arose. In this case, the anomaly arose on 01.01.1996 and therefore, the decision of the respondents in notionally stepping up the pay with effect from 01.01.1996 but granting the monetary benefits from 01.09.1998, is opposed to the settled proposition of law.

5. Fundamental Rule 22B came up for consideration before an Hon'ble Division Bench of this Court in the case of R.Ramaraj Vs. The Registrar General, High Court of Judicature at Madras and another reported in 2014 SCC Online Mad 8740 and by placing reliance on the Fundamental Rules, the Division Bench had set right the anomaly between the pay scales of a senior and a junior. The relevant portion of the order reads as follows:-

"11. Further, Fundamental Rule 22-B(2) can be relied on for stepping up of the pay of the petitioner on par with his junior, which reads as follows:-

"Rule 22(B)(2) - In case where both the senior and junior are drawing the same rate



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of pay in lower post, the senior who was promoted to the higher post before drawing the next increment in the lower post would be drawing less pay than his junior, who was promoted to the higher post after drawing the next increment in the lower post. In such cases, the pay of the senior officer in that higher post and the stepping up should be done with effect from the date of promotion or appointment of the junior and also subject to the following conditions:-

(i) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre;

(ii) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(iii) The anomaly should be directly as a result of the application of Fundamental Rule 22-B. For example, if, even in the lower post the junior officer draws from time to time, a higher rate of pay than the senior by virtue of grant of advance increments, the provisions contained in this order should not be invoked to step up the pay of the senior officer; and

(iv) The orders refixing the pay of the senior officers in accordance with the provisions of this order should be issued under Fundamental Rule 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

The above ruling shall take effect from the 1st September 1966. Cases of seniors drawing less pay than juniors in respect of promotions occurring on or after the 1st June 1962 shall also be regulated under the above ruling but the actual monetary benefit shall be admissible only with effect from the 1st September 1966."

Applying the said FR 22-B(2) and 27 if we analyse, eligibility of the petitioner to step



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up his pay on par with the 2nd respondent is beyond doubt.

12. The Hon'ble Supreme Court in the decision reported in (2009) 3 SCC 94 (Gurcharan Singh Grewal and another v. Punjab State Electricity Board and others) has considered the similar issue and held that it is a settled principle of law that senior cannot be paid a lesser salary than his junior and if junior is given more pay, the department is bound to step up the pay of senior on par with his junior."

Thus, the proceedings of the second respondent dated 07.02.2008, which grants the monetary benefits from 01.09.1998, cannot be sustained and that the petitioner would be entitled for the monetary benefits from 01.01.1996 onwards.

6. In the light of the above observations, the impugned orders dated 07.02.2008 and 14.06.2012 are quashed. Consequently, the second respondent herein is called upon to consider the claim of the petitioner, in the light of the observations made in this order and pass appropriate orders by granting the monetary benefits to the petitioner, with effect from 01.01.1996 onwards. The second respondent shall endeavor to pass such orders, within a period of four (4) weeks from the date of receipt of a copy of this order.

7. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

hvk
To

1. The Secretary,
School Education Department,
Fort St. George,
Chennai - 9.



2.The Director School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Nagercoil, KK District.

+1cc to M/s.V.Krishnamurthy, Advocate Sr.10848
+1cc to the Government Pleader Sr.11524

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and
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