



W.P.No.7598 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
2.02.2022	09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.7598 of 2010

1 A.Rajasekar
Door No.4/172 Nadar Line Gangaikondan
Kovil Street Neyveli-2 Cuddalore Dist. ... Petitioner

Vs.

- 1 The Director of School Education,
College Road, Nungambakkam,
Chennai-6.
- 2 The Joint Director of School Education,
College Road, Nungambakkam
Chennai-6.
- 3 The Chief Educational Officer,
Cuddalore, Cuddalore District. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in O.Mu.No.10174/B2/2009 dated 2.9.2009 issued by the 3rd respondent and quash the same and directing the 2nd respondent to stepped up and fix the new scale of pay to the petitioner revise from the dated of 22.9.1997.



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For Petitioner : Mr.S.Ambigapathi
For Respondents : Mr.V.Nanmaran, A.G.P.

ORDER

According to the petitioner, the petitioner joined as a B.T. Assistant on 30.9.1991 through Teachers Recruitment Board and posted at Ennayaram High School at Villupuram District. Thereafter, the petitioner was transferred to Veppur Higher Secondary School at Cuddalore District. The petitioner was promoted as Post Graduate Assistant Teacher in Chemistry from 6.11.1996 and transferred to Pennadam Higher Secondary School and pay was fixed in the scale of pay of Rs.1820-60-2300-75-3200. The petitioner was transferred to Virudhachalam Boys Higher Secondary School as Post Graduate Assistant in Chemistry department. Again, the petitioner was transferred to Aladi Higher Secondary School in the same district. On 4.7.2009, the petitioner was promoted as Head Master and transferred to Palur Government High School in Cuddalore District.

2. The Grievance of the petitioner is that when the petitioner was working at Virudhachalam Higher Secondary School, one Tmt. K.Chandramala who is working as P.G. Assistant in Zoology department in the same School,



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received higher income than the petitioner. Moreover, she is junior to the petitioner. On 16.4.2009, the petitioner made representation to the third respondent through the School Head Master about the variation of salary between the petitioner and his junior Chandramala, who was appointed on 22.9.1997 as P.G. Assistant. Even after receiving explanation from the petitioner, the third respondent refused to revise the scale of pay of the petitioner and returned the representation. The petitioner made a appeal before the second respondent. The second respondent returned the appeal by stating that the senior was getting incentive increment in the post of B.T. Assistant whereas junior was getting incentive increment in the post of P.G. Assistant. Aggrieved by the same, the petitioner has filed the instant writ petition before this Court.

3. The second respondent has filed counter affidavit wherein it is stated that the petitioner was initially appointed as B.T. Assistant with effect from 30.9.1991 in the Government High School and subsequently promoted as P.G. Assistant with effect from 6.11.1996. The pay of the petitioner was revised in the scale of pay i.e. 6500-200-10500 with effect from 6.11.1996 vide G.O.Ms.No.162, Finance (PC) department. The petitioner was also sanctioned



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incentive increment for M.A. and M.Ed. and thereafter, he was granted incentive increment for M.Phil with effect from 22.9.1997, the date on which the said junior entered into service as P.G. Assistant. The request of the petitioner was rejected as per the orders of the third respondent vide proceedings in O.Mu.No.10174/A2/2009 dated 2.9.2009. The pay of the petitioner was fixed in the revised scale of pay as on 1.1.1996 and subsequently refixed in the promotional post of P.G. Assistant as on 6.11.1996 in 6500-200-10500. It is submitted that the petitioner made a representation on 16.4.2009 to the third respondent seeking stepping up the pay as a second time with effect from 22.9.1997 on par with his junior one Chandramala. The petitioner acquired incentive increment at the stage of B.T. Assistant in the old time scale of pay and promoted as P.G. Assistant as on 6.11.1996 and his pay was fixed at Rs.6700/- in the time scale of pay 6500-200-10500. Whereas his junior was appointed on 22.9.1997 as P.G. Assistant, got higher qualification at the time of appointment itself, her pay was fixed as Rs.6900/- in the scale of pay of 6500-200-10500. As per Rule 22B (1) of Tamil Nadu Fundamental Rule, the pay anomaly cannot be rectified. The petitioner is claiming stepping up of pay on par with Tmt.Chandramanal as on 22.9.1997. The pay of the petitioner and the junior as on 22.9.1997 is identical. Pay anomaly will arise only when



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there is a pay fixation of the senior on any occasion. There was no pay fixation at all on 22.9.1997. Tmt. Chandramala joined in the post of P.G. Assistant on 22.9.1997 and her pay has been fixed at the minimum of the time scale of pay. The increase in pay is due to one incentive increment (2 usual increments) for M.Ed. Degree to Tmt.Chandramala. Incentive increment cannot be considered for the purpose of pay anomaly.

4. The third respondent also filed counter affidavit wherein it is stated that the representation made by the petitioner was rejected for the reason that pay anomaly arises only when the senior and junior should have got the advance increment for higher qualification in the same post. In the present case, the petitioner got advance increment in the post of B.T. Assistant in the pre-revised scale of pay, whereas his junior Chandramala got advance increment in the post of P.G. Assistant in the revised scale of pay. Therefore, the second respondent rightly rejected the claim of the petitioner.

5. Heard the rival submissions of the parties and perused the materials available on record.

6. The sole ground raised by the petitioner is that as per



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G.O.Ms.No.162, page 11, para 5(2), where a senior employee promoted to a higher post before 1.1.1996 drawn less pay in the revised scale of pay than his junior who is promoted to higher post on or after 1.1.1996, the pay of the senior employee may be stepped up to that of the junior with effect from the date on which the junior draws more pay. As per G.O., pay anomaly arises only when his junior is promoted to higher post on or after 1.1.1996, the pay of the senior employee may be stepped up.

7. Admittedly, the petitioner and his junior Tmt.Chandramala were not appointed in the same post. The petitioner was appointed as B.T. Assistant on 30.9.1991 in the scale of pay of Rs.1400-40-1600-50-2300-60-2600. The petitioner got two incentive increments (4 increments) in the pre-revised scale of pay for acquiring two P.G. Degrees viz., M.A. and M.Ed. when he was appointed as B.T. Assistant on 30.9.1991. As such, his duty pay along with two incentive increments comes to Rs.1400+40+40+40+40=Rs.1560/-. It is pertinent to point out here that the petitioner earned Rs.160/- towards two incentive increments i.e. 4 increments and thereafter, the petitioner was promoted as P.G. Assistant on 6.11.1996 and his pay was fixed as Rs.6700/- in the scale of pay of (6500-200-10500) giving 5% benefit under Rule 22B Pre revised scale.



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Whereas his junior Tmt.Chandramala who was directly appointed as P.G. Assistant on 22.9.1997 her pay was fixed as Rs.6500/- in scale of pay of 6500-200-10500. Apart from Duty Pay of Rs.6500/-, incentive increment (2 increments) was given (2 increments) i.e. Rs.6500+200+200=6900/- for acquiring Post Graduation viz., M.Ed. at the time of appointment itself as P.G. Assistant on 22.9.1997. Therefore, it is clear that the pay difference arise at this stage for the reason that his junior Tmt.Chandramala earned Rs.6500+400=Rs.6900/- towards incentive increment (2 increments) by that time, the petitioner drawn a pay of Rs.6700/- for which the petitioner cannot seek stepping up of pay.

8. The guidelines issued in G.O.Ms.No.25, Personnel and Administrative Reforms department, dated 23.3.2015 which reads as follows:

"Para 6 (iii) The pay anomaly should be arising directly as a result of fixation of pay in the promotional post after fixation of pay in the Selection Grade/Special Grade post. For example, if even in the lower post, the junior officer drawn from time to time, higher rate of pay than the senior by virtue of grant of advance increment, the provisions contained in this order should not be invoked to step up the pay



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of the senior officer."

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9. In the instant case, difference of pay not arises as a result of fixation of pay in the promotional post. Even as per G.O.Ms.No.162, pay anomaly arises only when his junior is promoted to higher post on or after 1.1.1996, the pay of the senior employee may be stepped up. But in the case in hand, the junior is not promoted to higher post, but directly appointed as P.G. Assistant. Therefore, the petitioner is not entitled for stepping up of pay as on 22.9.1997 and the appeal preferred by the petitioner was rightly rejected by the second respondent. Such view of the matter, there is no error or illegality in the impugned order passed by the third respondent.

10. Accordingly, the writ petition stands dismissed. No costs.

.03.2022

Speaking / Non Speaking order

Index : Yes/No

Internet : Yes/No

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To

1 The Director of School Education,
College Road, Nungambakkam, Chennai-6.

2 The Joint Director of School Education,

8/9



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College Road, Nungambakkam, Chennai-6.

3 The Chief Educational Officer,
Cuddalore, Cuddalore District.

D.KRISHNAKUMAR, J.

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Pre-Delivery Order in
W.P.No.7598 of 2010



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Dated: 09.03.2022