



WEB COPY



W.P.No.24129 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.24129 of 2012

N.Jayaveeran

...Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by the Director of
Collegiate Education,
College Road,
Chennai - 6.

2. The Joint Director of
Collegiate Education,
Trichirappalli - 620 020.

3.The Secretary and Correspondent,
Khadir Mohideen College,
Adhiramapattinam - 614 701.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 1st respondent in proceeding Na.Ka.No.22439/F3/2001 dated 19.12.2011 and the consequential order of the 2nd respondent in proceeding Na.Ka.No.7583/A2/2010 dated 13.02.2012



W.P.No.24129 of 2012

and quash these orders and consequently direct the respondents to step up the pay and allowances of the petitioner on par with his immediate junior and pay the arrears and the consequential monetary benefits.

For Petitioner : Ms.Swadhi Subramaniam
for Mr.R.Prem Narayan

For R1 & R2 : Mr.C.Jayaprakash,
Government Advocate

For R3 : No Appearance

ORDER

Heard Ms.Swadhi Subramanian, learned counsel appearing on behalf of the petitioner and Mr.C.Jayaprakash, learned Government Advocate for the first and second respondents. There is no representation for the third respondent.

2.1. The third respondent herein is a Minority Aided College. The petitioner herein was appointed as a Lecturer on 11.11.1987. Subsequent to his appointment, one Thiru A.Shaik Abdul Khadir was also appointed to the same post on 08.11.1989. Apparently, the petitioner herein is senior to Thiru.A.Shaik Abdul Khadir.



W.P.No.24129 of 2012

WEB COPY 2.2. On 11.11.1995, the petitioner was placed under senior scale of pay, while his junior was granted the scale on 28.11.1995.

2.3. In this background, the petitioner had availed Extraordinary Leave on Loss of Pay for the period between 11.07.1997 and 20.04.1999, which was also sanctioned by the third respondent management. Thereafter, the petitioner had reported for duty after the leave period.

2.4. Subsequently, on 21.08.1999, the petitioner was granted selection grade of pay, while his junior was granted the same on 28.11.1999.

2.5. In all the aforesaid sequence of events, it is seen that the petitioner is undisputedly senior to Thiru.A.Shaik Abdul Khadir. In this background, while the annual increment was paid to the petitioner on 01.07.2000, his junior was granted the same annual increment on 01.01.2000.

3. By placing reliance on FR 27(2) of the Fundamental Rules of the Tamil Nadu Government, the learned counsel for the petitioner submitted that when admittedly Thiru.A.Shaik Abdul Khadir is junior to the petitioner, the



W.P.No.24129 of 2012

third respondent ought to have granted the annual increment to the petitioner on the same day on which his junior was awarded the annual increment and therefore, sought for rectification of the anomaly that arose, pursuant to the belated sanction of annual increment. In this regard, the petitioner had made a request to the Government, which came to be rejected through the impugned orders dated 19.12.2011 and 13.02.2012.

4. Per contra, the learned Government Advocate appearing on behalf of the respondents 1 and 2 placed reliance on the averments in the counter affidavit and submitted that since the petitioner had availed Extraordinary Leave without pay and allowances, his annual increment was fixed on 01.07.2000 with basic pay of Rs.12,420/- and his junior's annual increment was fixed on 01.01.2000 with basic pay of Rs.12,420/-. In this regard, he submitted that the petitioner's junior is receiving annual increments 6 months in advance than the petitioner. According to the learned Government Advocate, there is no legal scope to accept the request of the petitioner to set right the anomaly.

5. I have given careful consideration to the submissions made by the



W.P.No.24129 of 2012

respective counsels.

WEB COPY

6. Fundamental Rule 27(2) provides that, whenever a junior employee receives higher salary than his senior, the head of the department shall step up the pay of the senior, on par with his immediate junior and such stepping up of pay shall be sent to the Government for ratification. In the instant case, the only reason assigned by the respondents is that since the petitioner had availed Extraordinary Leave without pay and allowances, his junior was granted the annual increments 6 months in advance and that there is no Rule which permits for grant of annual increments for an employee who had availed Extraordinary Leave. I am not in concurrence with the reasoning adopted by the respondents in the counter affidavit.

7. While Fundamental Rule 27(2) clearly provides for setting right the anomaly that arises in the pay scales of two Government employees, it is not permissible for the respondents to take a stand in the counter affidavit that there are no Rules to set right this kind of anomaly. This apart, the service regulations governing the third respondent permits its employees to avail Extraordinary Leave without pay and allowances. When the petitioner has



W.P.No.24129 of 2012

sought for such a sanction for Extraordinary Leave without pay, the third respondent herein had also granted the same. The result of such sanction of leave, would only deprive the petitioner for the pay and allowances for the period of sanctioned leave and the petitioner would be entitled for all other service benefits, including continuity of service during the leave period. Thus, while applying FR 27(2) to the facts of the present case, there is no legal justification on the part of the respondents of having rejected the petitioner's request to step up his pay on par with his junior.

8. It is seen that the anomaly in the pay scales between the petitioner and Thiru.A.Shaik Abdul Khadir arose on 01.01.2000, when the annual increment was sanctioned to the petitioner belatedly. In the light of the above discussions, the petitioner would be entitled for stepping up the pay on par with his junior, with effect from 01.01.2000 onwards and the consequential revised pay scales/pensionary benefits. As such, the impugned order cannot be sustained.

9. In the result, the impugned orders dated 19.12.2011 and 13.02.2012 are quashed. Consequently, there shall be a direction to the second respondent



W.P.No.24129 of 2012

herein to pass appropriate orders, by stepping up the petitioner's scale of pay on par with his junior, namely Thiru.A.Shaik Abdul Khadir, with effect from 01.01.2000, together with the arrears of accumulated salaries to the petitioner, within a period of 2 weeks from the date of receipt of a copy of this order. On passing of such orders, the second respondent herein shall forward the same to the first respondent herein, who shall positively ratify in setting right the anomaly of the petitioner's pay scale, within a period of 4 weeks from the date of receipt of the order passed by the second respondent.

10. Accordingly, the Writ Petition stands allowed. No costs.

10.10.2022

Index:Yes
Speaking order
hvk

To

1.The Director of Collegiate Education,
State of Tamil Nadu,
College Road,
Chennai - 6.

2. The Joint Director of
Collegiate Education,
Trichirappalli - 620 020.

7/8



WEB COPY



W.P.No.24129 of 2012

M.S.RAMESH,J.

hvk

W.P.No.24129 of 2012

10.10.2022