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W.P.No.27556 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 13.12.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.S.RAMESH**

**W.P.No.27556 of 2016**

S.Raja

...Petitioner

**Vs.**

1.State of Tamil Nadu  
rep. by Principal Secretary to Government,  
Personnel & Administrative Reforms,  
(FR. IV) Department,  
Fort St. George,  
Chennai-600 009.

2.The District Elementary Educational Officer,  
Vellore-632 004.

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, calling for the records pertaining to the order passed in G.O.Ms. No.25 dated 23.03.2015 on the file of the first respondent and quash the same insofar as the clause contained in para 5(ii) is alone concerned and call for the order passed in proceedings Oo.Mu.No.3524 Aa 3 2015 dated 09.09.2015 on the file of the second respondent and to quash the same and direct the respondents to refix the scale of pay with effect from 16.08.2010 to



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the petitioner at the level of Rs.15600-39100+GP 5400 in the cadre of B.T. Assistant and direct the second respondent to refix the scale of pay in the post of B.T. Head Master in the scale of pay of Rs.15,600-39,100 + GP 5400 consequently with effect from 19.09.2011 and pay the arrears accrued thereon to the petitioner forthwith.

For Petitioner : Mr.R.Natarajan

For Respondents : Mr.T.Chezhiyan, AGP

### **ORDER**

The petitioner herein seeks rectification of the pay anomaly of himself and his junior Mrs.S.Malathi, wherein his junior is drawing higher scale than that of the petitioner.

2. The brief facts of the case is as follows:-

While the petitioner joined the services of Thimiri Panchayat Union School as Secondary Grade Teacher (SGT) on 18.08.1988, his junior joined as SGT on 18.01.1989 in the same School. The petitioner was promoted as Primary School Head Master in the same school on 21.11.2004 and his junior was promoted as Primary School Head



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Master in Thimiri Panchayat Union School on 21.02.2005. Likewise, while the petitioner was promoted to the post of B.T. Assistant on 05.03.2007, his junior was promoted as B.T. Assistant on 16.08.2010. At this juncture, the petitioner's junior was granted a special grade of pay. Thereafter on 19.09.2011, both the petitioner, as well as his junior, were promoted to the posts of B.T. Head Master/Head Mistress. At this point, there arose a pay anomaly between them. When the petitioner herein had sought for rectification of this pay anomaly, the same came to be rejected by the second respondent herein through his proceedings dated 09.09.2015, stating that the petitioner's scale of pay in the lower and higher posts are not identical as that of his junior, by placing reliance on Clause 5 (ii) of the G.O. (Ms) No.25, Personnel and Administrative Reforms (FR. IV), dated 23.03.2015 and therefore, the rectification of the anomaly was not possible. Challenging the Clause 5 (ii) of the G.O. (Ms) No.25, Personnel and Administrative Reforms (FR.IV), dated 23.03.2015, as well as the order of the second respondent dated 09.09.2015, the present Writ Petition has been filed.

3. Heard Mr. R.Natarajan, learned counsel for the petitioner and Mr.T. Chezhiyan, learned Additional Government Pleader appearing on behalf of the respondents.



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4. In the instances, when there is pay anomaly between pay scales of a senior and junior, in the services of the Government of Tamil Nadu, Fundamental Rule 22-B provides for stepping up the pay of the senior on par with his junior for the purpose of rectifying the anomaly. This position came to be ratified by the Hon'ble Supreme Court in the case of ***Gurcharan Singh Grewal and another V. Punjab State Electricity Board and others*** reported in **2009 (3) SCC 94**. A 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** had placed reliance on Fundamental Rules and by relying on the decision of the Hon'ble Supreme Court in *Gurcharan Singh Grewal's case (supra)*, had held that rectifying of the anomaly of scales between junior and senior is beyond doubt. This Court had an occasion to deal with the similar issue by placing reliance on the aforesaid decisions in the case of ***D. Ramasamy V. The Secretary to the Government, School Education Department, Fort St. George, Chennai-9 and 3 others*** in **W.P.No.24505 of 2014 dated 30.09.2022** and had held as follows:

*"3. In service jurisprudence, it is a settled*



*proposition of law that when two Government employees hold the same post, the senior cannot be paid lesser salary than the junior and in case the junior is getting higher 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 20.07.2008 and therefore, the petitioner herein would be entitled for revision of his pay scale on par with his junior with effect from 20.07.2008.*

*4. This issue of bringing the senior's pay scale on par with the junior is fortified under Fundamental Rule 22B, which came up for consideration before the 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 this Fundamental Rule, the Division Bench had set right the anomaly between the pay scales of a senior and a junior, in the following manner:-*

*"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 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*



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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*



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*from the 1st September 1966.*

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

*5. In the light of the aforesaid decision of the Hon-ble Division Bench, as well as the settled propositions of law that there cannot be an anomaly in the pay scales between a senior and a junior employee, the impugned order cannot be sustained."*

5. The learned Additional Government Pleader placed reliance on the averments made in the counter affidavit and submitted that though G.O. (Ms) No.25, Personnel and Administrative Reforms (FR.IV), dated 23.03.2015, provides for rectification of the anomaly in the pay scale



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of senior and junior, the same is subject to conditions that the pay scales of the lower and higher posts in which they are entitled to draw pay should be identical. Such an objection cannot be sustained in view of the aforesaid decisions extracted which also taken care of such anomalies arising between pay scales of senior and junior when any increment or special grade of pay is granted to the junior, prior to the promotions issued and thereby the pay scales differs.

6. In the instant case, since the junior was deprived of promotions for sometime, she was awarded with the selection grade pay and thereafter when the subsequent promotion to the posts of B.T. Head Mistress was awarded, the anomaly had arisen. By placing reliance on the ratio laid down by the Hon'ble Supreme Court in *Gurcharan Singh Grewal's case (supra)*, as well as by the Hon'ble Division Bench in *Ramaraj's case (supra)*, which has been relied by this Court in *D.Ramasamy's case (supra)*, the objections raised by the respondents, cannot be sustained.

7. In the result, the impugned order dated 09.09.2015 issued by the second respondent, is hereby quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate



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orders, revising the petitioner's pay scale and bringing it on par with his junior namely, Mrs.S.Malathi, B.T. Head Mistress from the date on which such pay anomaly arose and consequently, disburse of the arrears of pay, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above observations and directions, the Writ Petition stands allowed. There shall be no order as to costs.

**13.12.2022**

Index:Yes  
Internet:Yes  
Speaking order

DP



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To

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**M.S.RAMESH,J.**

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