



W.P.No.24505 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.24505 of 2014

and

M.P.No.1 of 2014

D.Ramasamy

...Petitioner

Vs

- 1.The Secretary to the Government,
School Education Department,
Fort St. George, Chennai - 9.
- 2.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai - 6.
- 3.The District Elementary Education Officer,
Nagappattinam, Nagappatinam District.
- 4.The Additional Assistant Elementary
Education Officer,
Vedaranyam, Vedaranyam Taluk,
Nagapattinam District.

...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 relation to the rejection order passed by the third respondent in Oo.Mu.No.



W.P.No.24505 of 2014

3602/A2/2011 dated 12.10.2011 and quash the same and consequently direct the respondents to grant re-fixation of salary to the petitioner on par with his junior.

For Petitioner : Mr.V.Kasinatha Bharathi

For Respondents : Mr.C.Sathish,
Government Advocate

ORDER

Heard Mr.V.Kasinatha Bharathi, learned counsel for the petitioner and Mr.C.Sathish, learned Government Advocate for the respondents.

2. The petitioner herein was appointed as a Secondary Grade Teacher on 20.07.1988, while his junior, namely V.Sellapandiyan, was appointed to the same post on 21.07.1988. The selection grade was awarded to the petitioner on 20.07.1998 and for his junior, the selection grade was awarded on 21.07.1998. The petitioner was promoted as Primary School Headmaster on 03.06.2002, whereas his junior was promoted 6 years later on 02.06.2008. In this background, while the special grade scale of pay was awarded to the petitioner's junior, the petitioner was not granted the special grade, which created an anomaly in the pay scales between himself and his junior, whereby



W.P.No.24505 of 2014

his junior now draws a higher pay scale than the petitioner. Subsequently, the petitioner was promoted as Block Educational Officer and the anomaly in the pay scale still continues. When the petitioner sought for rectification of this anomaly, the same came to be rejected by the respondents, through the impugned order dated 12.10.2011, stating that the special grade pay was not granted to the petitioner and therefore, the anomaly cannot be rectified.

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



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W.P.No.24505 of 2014

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



W.P.No.24505 of 2014

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 hound 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.

6. In the light of the above observations, the impugned order passed by the third respondent dated 12.10.2011 is quashed. Consequently, there shall be a direction to the respondents to pass appropriate orders, revising the petitioner's pay scale, with effect from 20.07.2008, by bringing his pay scale on par with his junior, namely V.Chellapandiyan, within a period of 4 weeks from the date of receipt of a copy of this order.



W.P.No.24505 of 2014

WEB COPY 7. Accordingly, the Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

30.09.2022

Index:Yes
Speaking order
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To

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W.P.No.24505 of 2014

M.S.RAMESH,J.

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W.P.No.24505 of 2014

30.09.2022