



W.A.No.1822 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1822 of 2017

and

C.M.P.No.22806 of 2017

- 1.The Director,
Highways Research Station,
Chennai – 600 025.
- 2.The Deputy Secretary,
Highways Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 3.The Secretary,
Personnel & Administrative Reforms,
Fort St. George, Chennai – 600 009.

...Appellants

Vs.

C.S.Rajasekaran

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 15.04.2014 made in W.P.No.7510 of 2007.



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For Appellants : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader

For Respondent : Mr.P.Rajendran

J U D G M E N T

(Judgment was made by **R.SUBRAMANIAN, J.**)

The respondent approached the Tamil Nadu Administrative Tribunal in O.A.No.4655 of 2002 primarily seeking to rectify the pay anomaly that had arisen in view of fixation of pay in the post of Field Assistant for his junior one Ellappan.

2. The respondent joined the service of the Highways Research Station as Lab Assistant and his services were regularized on 01.01.1977. He reached Selection Grade as Lab Assistant on 13.09.1989. The respondent went on leave on loss of pay for nearly 2 years between 01.05.1981 and 30.11.1983, for which he was imposed a punishment of stoppage of increment without cumulative effect for a period of 2 years.

3. A Junior of the respondent one Mr.Ellappan, with whom the respondent claims parity, was also guilty of taking leave without salary and he



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was also imposed with certain punishments. As per the seniority list dated 01.08.1998 the respondent was placed at Sl.No.48 and Ellappan was placed at Sl.No.52 and both of them had drawn their increments on 01.01.1996 and 01.01.1997.

4. The respondent was promoted as Field Assistant on 25.02.1998 and his pay was fixed at Rs.5,000/- in the pay scale and was increased to Rs.8,000/-. While the respondent was working in promotional cadre, Ellappan got his annual increment on 01.07.1998 and 5% personal pay as per G.O.Ms.No.497, Finance (Pay and Cell) Department dated 15.09.1998. Thereafter, the said Ellappan was promoted as Field Assistant on 08.01.1999 and depending on his pay at the junior post, that is the post of Lab Assistant, his pay was fixed in the post of Field Assistant at Rs.5,600/-. In the pay scale of Rs.5,000/- to Rs.8,000/- as on 01.07.1999. This led to an anomaly and the respondent who was promoted as Field Assistant on 25.02.1998 was drawing lesser pay than Ellappan who was promoted as Field Assistant on 08.01.1999.



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5. The respondent gave a representation seeking to rectify the anomaly and fix his pay also at Rs.5,600/-. This request of the respondent was rejected on the ground that since Ellappan was on leave without salary for lesser period he was drawing higher pay. The reason was obviously erroneous. Therefore, the respondent moved Tamil Nadu Administrative Tribunal seeking to rectify the anomaly. Upon abolition of the Tribunal, the matter stood transferred to this Court and numbered as W.P.No.7510 of 2007. The respondent invoked sub-Rule 2 of Rule 22-B of the Fundamental Rules which reads as follows:-

(2) In cases where both the senior and junior are drawing the same rate of pay in the 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 the higher post should be stepped up to a figure equal to the pay fixed for the junior 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.

6. The only ground that was projected in defense before the writ



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Court was that the respondent was on leave without salary for longer period.

For the said delinquency viz., for availing leave without salary, the respondent has undergone punishment. He cannot be visited with two punishments for the same delinquency. Pay anomaly is a totally different aspect. Rule 22-B(2) seeks to protect the Government servants from such pay anomaly, which arises due to increments being given in the lower post, which results in the junior who is promoted at later point of time drawing a higher salary in the promoted post. The very object of Rule 22-B(2) will be defeated if the defense of the Government is accepted. The writ Court had therefore rightly rejected the said contention.

7. However, before us in the writ appeal it is sought to be contended that Ellappan had spent more time in the lower post and had acquired Selection Grade, therefore his salary is bound to be more. It is only to address these situations, the Government had enacted Rule 22-B. If the junior who is promoted to higher post subsequently draws a higher salary because of him spending more time in the post of lower rank, such anomaly is sought to be rectified by Rule 22-B by equalizing the pay for the Senior as



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well as Junior.

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8. Hence, we do not find any merit in the grounds raised in the writ appeal. Therefore, the writ appeal fails and it is accordingly dismissed. No costs.

(R.S.M., J.) (S.S.K., J.)
20.12.2022

dsa

Internet :Yes

Index :No

Speaking order

To

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