



W.P.(MD)No.1792 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.1792 of 2020

and

W.M.P.(MD)No.1532 of 2020

P.Paulvannan

... Petitioner

Vs.

1. The Joint Director (NSS),
Chennai - 600 006.

2. The Chief Educational Officer,
Tuticorin District.

3. The District Educational Officer,
Tiruchendur,
Tuticorin District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the first respondent in his proceedings in Na.Ka.No.082911/L/E3/2017 dated 21.05.2018 and quash the same and direct the respondents to step up the scale of pay of the petitioner on par with the petitioner's junior Senthil Narayanan, i.e., from 8500+2400 G.P to 8650+2400 G.P with effect from 01.01.2006 with all consequential benefits.



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For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records of the order passed by the first respondent, vide proceedings in Na.Ka. No.082911/L/E3/2017, dated 21.05.2018, quash the same and direct the respondents to step up the scale of pay of the petitioner on par with his junior, namely, Senthil Narayanan, i.e., from 8500+2400 G.P to 8650+2400 G.P with effect from 01.01.2006 with all consequential benefits.

2. The case of the petitioner is that the petitioner was appointed as Junior Assistant on 01.12.1995 and he was promoted as Assistant on 28.02.2005, upgraded Superintendent on 02.01.2015 and regular Superintendent on 01.09.2018. The petitioner's junior, one Senthil Narayanan, was appointed as Junior Assistant on 06.12.1995 and he was promoted as Assistant on 16.03.2005, upgraded Superintendent on 21.01.2015 and regular Superintendent on 01.09.2018. Admittedly, from the



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date of appointment and in all level of promotions, the said Senthil Narayanan is junior to the petitioner. Till 01.10.2005, the petitioner received higher pay than his junior. The said Senthil Narayanan received yearly increment on 01.01.2006, i.e., after VI Pay Commission. The petitioner received yearly increment on 01.10.2005, i.e., prior to the VI Pay Commission. Since his junior received the yearly increment after the VI Pay Commission, his pay is higher than the petitioner. Therefore, the petitioner made a detailed representation to the respondents on 31.10.2017 and the same was forwarded by the second respondent to the first respondent. But the second respondent rejected the same on 21.05.2018 on the ground that the petitioner has passed the Account Test Part-I only on 31.12.2002 and his junior Senthil Narayanan passed on 30.12.2001 itself. The reason for rejection is totally due to non-application of mind. As per the settled legal position, junior cannot receive higher pay than his senior. Hence, the present petition.

3. The learned counsel appearing for the petitioner would submit that prior to VI Pay Commission, yearly increment is only Rs.100/- and after



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VI Pay Commission, yearly increment is 3%. Since the petitioner received yearly increment on 01.10.2005, i.e., prior to VI Pay Commission, he received only Rs.100/- and his junior received yearly increment of 3% after the VI Pay Commission on 01.01.2006. As on 01.01.2006, before granting yearly increment, the petitioner's scale of pay was Rs.8500+2400 G.P. and his junior scale of pay was Rs.8320+2400 G.P. After receiving yearly increment, the petitioner's junior scale of pay was hiked as Rs.8650+2400 G.P. The pay anomaly arose only for the reason that the petitioner received yearly increment prior to VI Pay Commission and his junior received yearly increment after VI Pay Commission, i.e., after 01.01.2006. Without rectifying the same, rejecting the proposal on the ground of passing of Account Test-Part-I, is totally due to non-application of mind and is liable to be set aside. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned Special Government Pleader appearing for the respondents would submit that as per G.O.(Ms).No.234, Finance (Pay Cell) Department, dated 01.06.2009, the pay anomaly of the senior is happened after the fixation of pay in the revised scale of pay for both senior



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and junior on 01.01.2006, due to sanction of annual increment on an earlier date to the junior than the senior, then the anomaly shall be set right by stepping the pay of the senior equal to the pay of the junior from the date of increment of the junior after the re-fixation of pay. But, in the present case, the petitioner had received advance increment on a later date than his junior and hence, the petitioner could not compare his pay with the junior, who has already drawn higher pay on 31.12.2001 due to sanction of advance increment. Hence, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner is senior to the said Senthil Narayanan. Upto 01.01.2006, the petitioner as well as his junior's pay was one and the same. Only after 01.01.2006, the pay anomaly arose between them. It is also undisputed fact that the petitioner has passed Account Test-Part-I only on 31.12.2002 and his junior has passed the said Test on 30.12.2001 itself. After passing the



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Account Test-Part-I, the petitioner has received the scale of pay as on 01.10.2003 as Rs.3,965+169 P.P and the petitioner's junior has also received the same pay. Even thereafter, on 01.10.2004, there is no pay difference between them. However, the pay difference arose only in the promotional post of Assistant. In this regard, it is relevant to refer to the decision of this Court in the case of ***P.Subburajan vs. The Block Educational Officer and others*** in ***W.P.(MD)No.16062 of 2018***, which reads as under:

"10. However, my attention is drawn to a clarification that has been issued by the State on 17.08.2009. The clarification, issued by the Principal Secretary to Government Finance (PC) Department in Letter No.45113/Pay Cell/2009-1, dated 17.08.2009, responds to various queries that have been raised by the Treasuries and Accounts Department. One of the clarifications sought for is as follows:

"In cases where the junior happen to draw more pay than the senior due to sanction of advance increments for passing Departmental Tests / acquiring higher qualification at a later date whether the pay anomaly can be sorted by the pay fixing authorities themselves by stepping up to the pay equivalent to the junior on the date where the



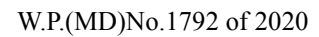
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junior drawn higher pay. Similarly, if a senior drawn such advance increments in the pre-revised scale on or before 31.12.2005 and happen to draw less pay in the revised scale compared to the junior who happen to draw such advance increment on or after 01.01.2006 can also be rectified by the pay fixing authorities. This presumption may please be confirmed."

7. In the above decision, the Government Letter No.45113/Pay Cell/2009-1 dated 17.08.2009, makes it very clear that *"in cases where the junior happen to draw more pay than the senior due to sanction of advance increments for passing Departmental Tests / acquiring higher qualification at a later date whether the pay anomaly can be sorted by the pay fixing authorities themselves by stepping up to the pay equivalent to the junior on the date where the junior drawn higher pay. Similarly, if a senior drawn such advance increments in the pre-revised scale on or before 31.12.2005 and happen to draw less pay in the revised scale compared to the junior who happen to draw such advance increment on or after 01.01.2006 can also be rectified by the pay fixing authorities. This presumption may please be confirmed."*



9. Accordingly, this Writ Petition is allowed. No costs.
 10. Finally, connected Miscellaneous Petition is closed.

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M.DHANDAPANI,J.

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