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W.P. No.16706 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.16706 of 2012

S.P.Rajalingam

... Petitioner

v.

Metropolitan Transport Corporation,
Represented by its,
Managing Director,
Pallavan House,
Chennai 2.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Letter No.23145/SBC1/MTC/08 dated 13.08.2008 passed by the respondent and quash the same consequently direct the respondent to refix the petitioner's scale of pay as 3620-120-4220-125-6720 or on par with the scale of pay given to Mr.V.P.Arumugam, worked as Checking Inspector in the Respondent Corporation within a reasonable period to be fixed by this Court.



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For Petitioner : Mr.A.S.Kaizer

For Respondent : Mr.R.Balaji,
Standing Counsel for MTC.

ORDER

The writ petition is filed praying for a writ of Certiorarified Mandamus calling for the records passed by the Respondent in Letter No.23145/SBC1/MTC/08 dated 13.08.2008 to refix the petitioner's scale of pay as 3620-120-4220-125-6720 or on par with the scale of pay given to Mr.V.P.Arumugam, worked as Checking Inspector in the Respondent Corporation within a reasonable period.

2. The petitioner joined the services of the Respondent Corporation as Conductor on 17.11.1974, and was absorbed on 03.08.1975. The petitioner discharged duties as Senior Conductor. There was periodical pay review starting with the 6th year i.e., on 01.12.1981; second review was 7 years thereafter i.e., 01.05.1990 and third review including 20 years weightage was done on 01.08.1999 as a Special Grade Conductor. The petitioner was thereafter promoted as Checking Inspector after completing 24 years of service.



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3. It is submitted by the learned counsel for the petitioner that his junior namely Mr.Arumugam was appointed on 28.11.1975 i.e., one year and 10 days after the appointment of the petitioner and was promoted on the very same date as that of the petitioner as Checking Inspector but his salary was fixed at Rs.5845/- which was higher than the scale of pay of the petitioner.

4. It is submitted by the learned counsel for the petitioner that the petitioner submitted representations to refix his salary in view of the pay anomaly and to rectify the same. As there was no response, the petitioner filed a writ of Mandamus in W.P.No.3048 of 2008 wherein this Court vide order dated 06.02.2008 directed the respondent to consider the representation of the petitioner.

5. Pursuant to the above directions of this Court, the impugned order was passed by the respondent on 13.08.2008 wherein the pay anomaly was sought to be justified on the basis that the petitioner was granted third review while he was in the post of Special Grade Conductor whereas the third review for



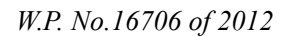
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Mr.Arumugam was granted/ extended after being promoted as Checking Inspector.

6. It is submitted by the learned counsel for the petitioner that disparity in pay was only in view of the pay review being extended to the petitioner and his junior viz., Arumugam while holding different posts. The pay reviews are time bound. The petitioner has no control over the pay review being granted at different stages/posts. It is settled principle that a senior cannot be paid lesser than his junior.

7. To the contrary the learned counsel for the Respondent sought to defend by placing emphasis on Paragraph 6 of the counter, which reads as under:

“It is submitted that the petitioner was granted with 3rd review benefits 01.08.2009 when he was working as a Special Grade Conductor and his basic pay was fixed at Rs.5185, subsequently this petitioner was promoted as Checking Inspector on 12.06.2000 and his pay was fixed at Rs.5490 while Mr.V.P.Arumugam received his promotion as Checking Inspector at first on 12.06.2000 whiel working as as Senior Grade Conductor subsequently he was conveyed with 3rd review benefits on 01.11.2000 hence there is no pay anomaly as stated by the petitioner since he got promoted to the post of Checking Inspector from the post of Special Grade Conductor while Mr.V.P.Arumugam



8. This Court finds merit in the submission of the learned counsel for the petitioner. It is settled principle of law that a senior cannot be paid lesser than his junior. Nor can the fact that the pay reviews were granted at different stages justify the pay anomaly. It is with a view to get over such anomalies that the principle of stepping up is applied. It may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Union of India v. P. Jagdish*, reported in (1997) 3 SCC 176, where considering the disparity in pay due to incremental benefits, the Hon'ble Supreme Court held that though there may be a difference in benefits that can be no reason to justify payment of a lesser salary to a senior. In this regard, it may be useful to refer to the following judgments;

“15. Mr Chhabra also attempted to justify the disparity in the pay of Shri Shori and Appellant 1 by urging that Appellant 1 had been granted the promotional scale with effect from 1-1-1996, where the benefits of increment in the scale were lower. On the other hand, Shri Shori who joined the services of the Board in



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1974, was granted the promotional scale on 17-5-2006, with effect from 1-9-2001, when the increments and the pay scales were higher. Mr Chhabra submitted that it is the disparity in the incremental benefits that led to the anomaly of Appellant 1 getting a lower salary in the promotional scale.

.....

17. Something may be said with regard to Mr Chhabra's submissions about the difference in increment in the scales in which Appellant 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2.”

b. Union of India v. P. Jagdish, reported in (1997) 3 SCC 176

“7. So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs 35 per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the



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pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk.”

9. Before closing, I intend to clarify that there is nothing in the counter nor was anything indicated during the course of argument to suggest that the junior



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Arumugam performed duties which are more onerous or special or different from that of the petitioner. In the absence of any such pleading, the pay anomaly cannot be justified, in view of the same, the impugned order is set aside with a direction to re-fix the petitioner's scale of pay on par with his junior from the date of promotion to the post of Ticket Checking Inspector inasmuch both the petitioner and his junior were promoted on the same date i.e., 12.06.2000.

10. The writ petition is disposed of with the above direction. No costs.

30.08.2023

Index: Yes/No

Internet: Yes/No

Speaking order / Non Speaking order

Neutral Citation: Yes/No

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To

Metropolitan Transport Corporation,
Represented by its,
Managing Director,
Pallavan House,
Chennai 2.



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MOHAMMED SHAFFIQ, J.

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