



WEB COPY



W.P.No.13014 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.13014 of 2023

A.Rajasekar

...Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai 600 009
2. The Commissioner of School Education,
College Road, Nungambakkam,
Chennai 600 006
3. The Director of Elementary Education,
College Road, Nungambakkam,
Chennai 600 006.
4. The Chief Educational Officer,
Mayiladuthurai,
Mayiladuthurai District.
5. The District Educational Officer (Primary)
Mayiladuthurai,
Mayiladuthurai District.
6. The Block Educational Officer,
Sirkazhi & Taluk,
Mayiladuthurai District

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India,
seeking Writ of Certiorarified Mandamus to call for the records in relates to the



W.P.No.13014 of 2023

impugned rejection order passed by the 5th respondent in Na.Ka.No.1018/A3/2022 dated 07.02.2023 and quash the same and consequently direct the respondents to grant refixation of salary of the petitioner on par with his junior G.Babu by stepping up the salary of the petitioner from as on date of 21.05.2011.

For Petitioner : Mr.V.Kasinatha Bharathi

For Respondents : Mrs.V.Yamuna Devi
Special Government Pleader
for R1 to R6

ORDER

This writ petition has been filed challenging the impugned rejection order passed by the 5th respondent in Na.Ka.No.1018/A3/2022 dated 07.02.2023 and for a consequential direction to the respondents to grant re-fixation of salary of the petitioner on par with his junior G.Babu by stepping up the salary of the petitioner from as on date of 21.05.2011.

2. Comparing the pay scale of his junior one Mr.G.Babu, the learned counsel for the petitioner submitted that, since the petitioner is drawing a lesser pay scale than that of his junior, the anomaly requires to be stepped up, on par with his junior. While the petitioner placed reliance on the decision of this Court in the case of [*P.Ramasamy Vs. The Secretary to the Government*,



W.P.No.13014 of 2023

School Education Department and others] in WP No.24505 of 2014 dated 30.09.2022 and submitted that such rectification of pay anomaly requires to be done in view of Fundamental Rule 22B, the learned Special Government Pleader placed reliance on the averments in the counter affidavit and submitted that though Mr.G.Babu is junior to the petitioner, he had obtained his selection grade pay scale in the post of Primary School Head Master, much prior to the petitioner and therefore, the anomaly has arisen.

3. Fundamental Rule 22B, provides for rectification of a pay anomaly between the senior and junior employees when the Senior employee draws lesser scale of pay than that of his junior.

4. This Court in the case of [*D.Ramasamy Vs. The Secretary to Government, School Education Department and others*] in WP No.24505 of 2014 dated 13.09.2022, had an occasion to follow a decision of the Hon'ble Division Bench of this Court in [*R.Ramaraj Vs. The Registrar General, High Court of Madras and another*] reported in 2014 SCC online Madras 8740 and held that there cannot be an anomaly in the pay scales between a Senior and a Junior employee, owing to grant of special grade pay to the junior before the



senior was granted. The relevant portion of the order is as follows :-

WEB COPY

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



WEB COPY

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 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*



WEB COPY

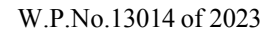
higher rate of pay than the senior by virtue of grant of advance increments, the provisions contained in this order should not be invoked to step up the pay of the senior officer; and

(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.

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

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. The aforesaid extract is self-explanatory. In the instant case, the petitioner was appointed as a Secondary Grade teacher with effect from 17.07.1986 and promoted to the post of Middle school Head Master with effect from 26.06.2006. Whereas, his junior Mr.G.Babu was appointed as the Secondary Grade Teacher w.e.f 11.09.1987 and promoted as Middle School Head Master w.e.f 05.11.2007. While the petitioners' junior received the selection grade scale of pay under the category of Primary school Head Master on 11.09.2007, the petitioner was promoted to the post of Middle School Head Master even before he got the selection grade and thus, the anomaly has arisen. He received his Selection Grade in the post of Middle School Head Master on 26.06.2006 only. In line with Fundamental Rule 22B and the decision of this Court in *D.Ramasamy case* stated supra, the pay anomaly between the petitioner and his Junior requires to be rectified.



W.P.No.13014 of 2023

WEB COPY

7. Accordingly, the impugned order in Na.Ka.No.1018/A3/2022 dated 07.02.2023 passed by the 5th respondent is hereby quashed. Consequently, there shall be a direction to the respondents 4 and 5 to pass orders, rectifying the pay anomaly between the petitioner and Mr.G.Babu and stepping up the petitioner's pay on par with his Junior, within a period of eight weeks, from the date of receipt of a copy of this order.

8. This writ petition stands allowed. No costs.

06.11.2023

rka

Index:Yes/No

Internet:Yes/No



WEB COPY



W.P.No.13014 of 2023

M.S.RAMESH, J.,

rka

To

1. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai 600 009
2. The Commissioner of School Education,
College Road, Nungambakkam,
Chennai 600 006
3. The Director of Elementary Education,
College Road, Nungambakkam,
Chennai 600 006.
4. The Chief Educational Officer,
Mayiladuthurai,
Mayiladuthurai District.
5. The District Educational Officer (Primary)
Mayiladuthurai,
Mayiladuthurai District.
6. The Block Educational Officer,
Sirkazhi & Taluk,
Mayiladuthurai District

W.P.No.13014 of 2023



WEB COPY



W.P.No.13014 of 2023

06.11.2023