



W.P(MD)No.8006 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date of Reservation	28.07.2023
Date of Pronouncement	16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P(MD)No.8006 of 2014

G.Sadaiyandi

: Petitioner

Vs.

The District Judge,
Dindigul District,
Dindigul.

: Respondent

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to the call the records relating to the impugned order vide Roc.No. 2254/2012/A1/PDJ-DGL, dated 28.06.2012 passed by the respondent and quash the same and consequently direct the respondent to refix the petitioner's basic pay and grade pay as per Rule 27(2) of Fundamental Rules on par with the pay of his junior V.Ramachandran as on 01.04.2012.

For Petitioner : Mr.B.Prasanna Vinoth

For Respondent : Mr.K.Samidurai



W.P(MD)No.8006 of 2014

ORDER

WEB COPY

D.BHARATHA CHAKRAVARTHY, J.

This writ petition is filed by the petitioner for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 28.06.2012 passed by the respondent and consequently direct the respondent to refix the petitioner's basic pay and grade pay as per the Rule 27(2) of the Fundamental Rules on par with the pay of his junior V.Ramachandran as on 01.04.2012.

2. The factual matrix on which the case arises is admitted by both sides. The petitioner originally joined service as Examiner on 15.02.1982 and thereafter, was promoted as Junior Assistant on 01.10.1984 and Assistant on 01.04.1992. In the said cadre, he was posted as Sheristadar Category-II with the scale of pay of Rs.5000-175-9200. Subsequently, he was promoted as Sheristadar Category-I with effect from 01.01.2008 in the scale of pay of Rs.15460/-+4900/-. He retired from service upon reaching the age of superannuation with effect from 31.05.2012. At the time of superannuation, he was receiving a pay of Rs.18020/-+4900/-.



W.P(MD)No.8006 of 2014

However, one V.Ramachandran, who is four years Junior to him, who was also working as Sheristadar Category-I was receiving a pay of Rs.18430/-+4900/- with effect from on 01.04.2012. Therefore, the petitioner made an application for stepping up of his pay on par with that of junior under FR 27(2).

3. The respondent, namely, the District Judge, Dindigul, after considering the grievance of the petitioner, dismissed the same, vide order dated 28.06.2012. Aggrieved by the same, the present writ petition is filed.

4. The writ petition is resisted by the respondent on the ground that the case of the said junior V.Ramachandran is not comparable to that of the petitioner case, the petitioner who was promoted as Sheristadar Category-I with effect from 01.01.2008. Subsequent to his promotion, in between the post of Sheristadar Category-II and Sheristadar Category-I, a new post of Bench Clerk Grade-I was introduced in the year 2009, which carries the same scale of pay as that of Sheristadar Category-I. Therefore, the petitioner's junior V.Ramachandran opted for promotion to the said post and therefore, he was initially appointed as Bench Clerk



W.P(MD)No.8006 of 2014

Grade-I with effect from 31.03.2010 and thereafter, further promoted as Sheristadar Category-I with effect from 01.01.2012.

Therefore, since the Bench Clerk Grade-I and the post of Sheristadar Category-I were in the same scale of pay of Rs.9300/-+34800/-, option was given to the said junior of the petitioner and upon exercise of his option, his pay was fixed as per the Fundamental Rules 22(1)(a)(i) by granting him one increment. Accordingly, in view thereof, he was drawing a pay of Rs.18,430/-, while the petitioner was drawing only Rs.18,020/-. Therefore, the case is not comparable.

5. Mr.B.Prasanna Vinoth, the learned counsel for the petitioner would submit that firstly it can be seen that the post of Bench Clerk Grade-I was not available at the time when the petitioner was promoted. Therefore, this anomaly has happened only because of the administrative decisions and therefore, when the junior is drawing more pay than that of the senior, as a natural corollary under FR 27(2), the scale of pay of the junior needs to be stepped up and therefore, the order of the respondent is erroneous in law.



W.P(MD)No.8006 of 2014

6. Per contra, Mr.K.Samidurai, the learned counsel appearing on behalf of the respondent taking us through the original counter affidavit and the additional counter affidavit filed detailing the scales of pay at various point of time and pointing out the reasons for anomaly, submitted that only because of the fixation of pay under FR 22(1)(a)(i), the anomaly occurred. Firstly, when both of them were promoted as Superintendent, while the petitioner opted to fix his scale of pay under FR 22 (B) by giving 5% benefit, as per his option, the pay was fixed at Rs.6025/- from Rs.5600/-. However, in respect of the case of Ramachandran, he had given an option to fix the pay under FR 22(1)(a)(i) and hence, his pay was fixed at Rs.6200/- from Rs.5600/-. Similarly when the post of Bench Clerk Grade-I was upgraded, he opted for promotion to the said post and thereafter, he was promoted as Sheristadar Category-I and hence, the discrepancy.

7. We have considered the rival submissions made on either side and perused the material records of the case.

8. We are now concerned with the scale of pay of the petitioner and his junior Mr.V.Ramachandran in the cadre of



W.P(MD)No.8006 of 2014

Sheristadar Category-I. As on 01.04.2012, the petitioner's Junior Ramachandran was drawing pay at Rs.18430/-+4900/-, whereas, the petitioner was drawing only Rs.18020/-+4900/-. Therefore, it goes without saying that there is an anomaly in the pay. Now the only question is whether or not the petitioner is entitled for stepping up of pay under FR 27(2). It has been repeatedly held by the Hon'ble Supreme Court of India that the petitioner will be entitled to stepping up of pay with that of the junior except in cases where the anomaly in pay is due to some personal qualification or difference in the case of the junior. It can be seen that the anomaly in pay between the petitioner Sadayandi and Ramachandran arose as early as on 01.10.2001, when the petitioner's junior Ramachandran was also promoted as Superintendent. Thereafter, all through the said Ramachandran was drawing more pay than the petitioner continuously which can be seen from the comparative chart provided in the additional counter affidavit. Further anomaly arose because of the fact that the post of Bench clerk Grade-I was not upgraded and available as a promotional post at the time of promotion of the petitioner. The fact remains that the said junior was first promoted as Bench Clerk Grade-I and thereafter, as Sheristadar Grade-I which post



W.P(MD)No.8006 of 2014

carried the same scale of pay and grade pay and therefore once again his pay was fixed by granting an option and the said junior opted for fixation of pay under FR 22(1)(a)(i). Therefore, in the conspectus of the facts of the present case, it can be seen that the lesser pay due to the junior being promoted to a different post and thereafter, gaining his entry to the present cadre from that post, the petitioner cannot compare his case to that of Mr.V.Ramachandran to claim stepping up of pay.

9. In similar circumstances, the Hon'ble Supreme Court of India in **Union of India -Vs- R. Swaminathan (1997 7 SCC 690)** held as follows :

*"....10. As the Order itself states, the stepping up is subject to three conditions: (1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts should be identical; and (3) anomaly should be directly as a result of the application of Fundamental Rule 22-C which is now Fundamental Rule 22(I)(a)(1). We are concerned with the last condition. The difference in the pay of a junior and a senior in the cases before us is not as a result of the application of Fundamental Rule 22(I)(a)(1). **The higher pay received***



W.P(MD)No.8006 of 2014

WEB COPY

by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors. “

(emphasis supplied)

10. In the result, the writ petition fails and it is accordingly dismissed. However, there shall be no order as to costs.

[S.S.S.R., J.] [D.B.C., J.]

16.08.2023

NCC : Yes / No
Index:Yes/No
Internet:Yes/No
sjj

To:

The District Judge,
Dindigul District,
Dindigul



WEB COPY



W.P(MD)No.8006 of 2014



WEB COPY



W.P.(MD)No.8006 of 2014

S.S.SUNDAR, J.
AND
D.BHARATHA CHAKRAVARTHY,J.

sjj

Pre-Delivery Order made in
W.P.(MD)No.8006 of 2014

16.08.2023