



WP.No.747 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.747 of 2022 and
WMP.No.826 of 2022

M.Mani

... Petitioner

Vs.

1.The Principal Secretary to Government,
School Education Department,
Secretariat,
Fort St.George,
Chennai 600 009

2.The Director of School Education,
College Road, Chennai 600 006

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records connected with Proc. K.Dis.68148 / 2017 dated 18.04.2018 of the second respondent and the records connected with Lr.21222 / SEI (1) / 2019-4 dt 07.01.2020 of the first respondent, quash the same and consequently to direct the respondents to fix his pay in the post of District Educational Officer at Rs.3900/- with effect from 19.01.1994 and to refix his pay at Rs.4100/- with effect from 01.07.1994 as per refix Ruling 9



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under FR 22 (B) with monetary benefit from 20.10.1994 to regulate the petitioner's pay till petitioner's date of retirement.

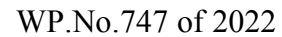
For Petitioner : Mr.B.R.Ganesan

For Respondents : Mr.M.Rajendran,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 18.04.2018 and the order dated 07.01.2020 passed by the first respondent thereby dismissed the appeal filed by the petitioner.

2. The petitioner was appointed as BT Assistant on 20.06.1961. Thereafter, he was promoted to the post of Headmaster. Subsequently, he was promoted as District Educational Officer with effect from 20.10.1994 under Rule 39(a)(i) of General Rules for Tamilnadu State and Subordinate Services, as per GO.Ms.No.992 Education Science and Technology (A1) Department dated 12.10.1994. Thereafter, he retired from service on superannuation from 30.04.1996. He was drawing Rs.4200/- as basic pay in the post of District Educational Officer. As per the judgment of the Hon'ble Supreme Court of India, the seniority list was



3. The learned counsel for the petitioner would submit that on the petitioner's option, as per Ruling 9 of the Fundamental Rules(FR) 22(B), his pay in the post of District Educational Officer has to be fixed at Rs.3900 with effect from 19.01.1995 and the same has to be refixed at Rs.4,100/- with effect from 01.07.1994. However, his pay was not refixed and it resulted in recurring loss in the pension. Therefore, the petitioner filed appeal before the first respondent. However, the same was dismissed.



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4. The learned counsel for the petitioner mainly relied upon the Ruling 17 under FR 27, which states that where a Government servant has been overlooked for promotion / appointment to the next higher post but subsequently promoted / appointed to the higher post after restoration of original seniority on appeal by the Government servant and the said rule is applicable. However, the petitioner was not overlooked for promotions and his seniority was redrawn as per the judgment of the Hon'ble Supreme Court of India. Therefore, Ruling 17 under FR 27 is not applicable to the case of the petitioner.

5. On perusal of the counter filed by the the first respondent revealed that as per the revised seniority list, the petitioner was promoted notionally as District Educational Officer and issued direction to pay arrears of salary only for the period he had acted as District Educational Officer i.e. with effect from 20.10.1994, the actual date of promotion to the post of District Educational Officer. Therefore, the next increment date was fixed as 01.01.1995. After his notional promotion as Chief Educational Officer, his pay was fixed as Rs.4,100/- and thereafter



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refixed as Rs.4,375/- with effect from 24.07.1995. After introduction of the pay commission with effect from 01.01.1996, his salary was revised as Rs.11,950/- in the scale of pay of Rs.10000-325-15200. It is relevant to extract Ruling 17 of FR 27 hereunder:

(17) In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has



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been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

6. Thus it is clear that when a Government servant has been overlooked for promotion to the next higher post but subsequently promoted to that higher post after restoration of original seniority on appeal, his salary shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior. In the case of the petitioner, as per revised seniority list, the petitioner was notionally promoted as District Educational Officer with effect from 19.01.1994 and as Chief Educational officer with effect from 24.07.1995. Therefore, he is not entitled to exercise option when fixing the pay while on notional promotion. Hence, Ruling 17 of FR 27 is clearly attracted to the case of the petitioner. Therefore, the appeal was rightly rejected.

7. In view of the above, this Court finds no infirmity or illegality in the impugned orders passed by the respondents. As such, this writ petition is devoid of merits and liable to be dismissed.

8. Accordingly, this writ petition is dismissed. Consequently,



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connected miscellaneous petition is closed. There shall be no order as to costs.

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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok

To

- 1.The Principal Secretary to Government,
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Chennai 600 009
- 2.The Director of School Education,
College Road, Chennai 600 006



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G.K.ILANTHIRAIYAN, J.

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