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W.P.No.16633 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.16633 of 2007

S.Alaguraj

... Petitioner

Vs.

1.The Chief Educational Officer,
Pudukkottai.

2.The Director of School Education
College Road,
Chennai – 6.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent, dated 23.02.2001 issued in the reference number O.Mu.No.8976/Aa2/2000 and quash the same and further direct the respondent to step-up the pay of the petitioner to that of his junior Mrs.Kalaiselvi i.e., to Rs.7,300/- as on 19.05.1996 with consequential benefits.

For Petitioner : Mr.G.Purushothaman

For Respondents : Mr.K.H.Ravi Kumar
Government Advocate.



ORDER

The petitioner herein was appointed to the post of B.T.Assistant in Tamil Nadu School Educational Subordinate Services on 25.07.1980 by way of appointment by transfer, and whereas G.Kalaiselvi was appointed as B.T.Assistant by way of direct recruitment on 21.08.1980. While so, the petitioner was awarded two incentive increments for having acquired M.A and M.Ed Post Graduate degrees while the 5th pay commission scales of pay are in force and whereas, the said G.Kalaiselvi also acquired M.A and M.Ed Post Graduate degrees after the 6th pay commission scales of pay came into force. Thus, by virtue of the incentive increments that were awarded in favour of G.Kalaiselvi after the 6th pay commission came into force, the said G.Kalaiselvi has been drawing higher pay than the petitioner i.e., at Rs.7,300/- and whereas the petitioner has been drawing Rs.6,900/-. Under those circumstances, the petitioner made a claim for stepping up of his pay on par with his junior namely G.Kalaiselvi. The said claim of the petitioner was negatived by the respondents by passing impugned order in O.Mu.No.8976/Aa2/2000, dated 23.02.2001, on the ground that, in terms of Ruling 2(i) of F.R. 22 B of the Fundamental Rules, both the junior and senior officers should have been appointed by way of same method of recruitment



and only then, the senior is entitled for stepping up of his pay on par with his junior. It is aggrieved by the said order dated 23.02.2001, the petitioner approached this Court by filing the present writ petition.

2. The respondents filed counter affidavit. There is no dispute on factual aspects. The only question that arise for consideration is whether the reasons assigned in the impugned order dated 23.02.2001 passed by the respondents are sustainable or not.

3. Ruling 2(i) of F.R. 22 B of the Fundamental Rules reads as under:

“(2) In case where both the senior and junior are drawing the same rate of pay in the 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 the higher post should be stepped up to a figure equal to the pay fixed for the junior 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;”



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4. From the perusal of the above it is evident that, the only requirement that is required to be satisfied for the purpose of claiming stepping up of pay is that both the senior and junior belong to same cadre, and the posts in which they have been promoted or appointed should be identical and in the same cadre.

5. In the instant case, the petitioner herein as well as the said G.Kalaiselvi are admittedly appointed to the cadre of B.T Assistant on 25.07.1980 and 21.08.1980 respectively, and they have been working in the same cadre in the said post as B.T Assistant, and the petitioner has been drawing lesser pay than the said G.Kalaiselvi, and both of them were granted incentive increments for having acquired M.A and M.Ed Post Graduate degrees. Therefore, the reason given in the impugned order, stating that the method of recruitment of both the senior and junior is also be the same, has absolutely no relevance and does not stand for legal scrutiny. Once the senior and junior are working in the same cadre, having been appointed in the same method of recruitment or different method of recruitment, it is in terms of the mandate of the Article 39 (d) of the Constitution of India that the



provision for stepping up of their pay bringing parity among the senior and junior.

6. In the circumstances, the reason assigned in the impugned order is wholly unsustainable and is nothing but a misconception of the respondents in understanding the Ruling 2(i) of F.R. 22 B of the Fundamental Rules. The same is the view taken by the another coordinate bench of this Court in the case of ***D.Manuel Vs. The Chief Educational Officer*** reported in (2009) 08 MAD CK 0374, wherein it was held as under:

“10. Further, the learned Counsel for the petitioner has brought to my notice Rule 5(2) of the Tamil Nadu Revised Scales of Pay Rules, 1998 and the same is extracted here-under:

(2) In cases where a senior employee who had drawn incentive increments in the pre-revised scale and drawn more pay than his junior prior to 1st January 1996 draws lesser pay than his junior in the revised scales of pay consequent on the sanction of incentive increments in the revised scales of pay to the junior for acquiring the same higher/special qualification after introduction of revised scales of pay, then the pay of the senior may be stepped up to the level of that of the junior from the date from which the junior draws such higher pay.

11. This Rule provides an answer to the problem. As per this Rule, if a junior receives more pay pursuant to his acquiring higher qualification after the revision of pay on 01.01.1996, the senior should also be brought on par with the junior, particularly when the senior was granted incentive increments for higher qualifications, which he obtained prior to 01.01.1996.



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12. Further, the right of the seniors claiming parity with juniors pay is a constitutional right guaranteed under Article 39(d) read with Article 14 of the Constitution. However, if junior is granted incentive increment for acquiring higher qualifications and the senior does not acquire such a higher qualification, the senior cannot claim parity. But, if the senior obtained higher qualification prior to the junior and the junior acquires higher qualification later, the scale of pay of senior should be brought on par with the junior, if the junior's pay became more due to the sanction of incentive increment for acquiring higher qualification. Otherwise, it amounts to punishing the senior for acquiring higher qualification at the earlier point of time and it also defeats the very purpose of granting incentive increments for acquiring higher qualification. The very purpose is to persuade the teachers for obtain higher qualification, so that they render better service to the students. Thus, if acquiring higher qualification earlier is put to disadvantage to a person, the very scheme of providing incentive increment for acquiring higher qualification gets defeated.”

7. The reliance placed by Mr.K.H.Ravikumar, learned Government Advocate, on the decision of another coordinate bench of this Court, in W.P.No.7598 of 2010 dated 09.03.2022, has no application to the case on hand, as that is the case where the petitioner therein was granted incentive increments while working in lower post, whereas the junior, who was appointed by direct recruitment, was granted incentive increments in the promotional post. Hence, the said decision has no application to the case on



hand.

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8. In the circumstances, the impugned order cannot be sustained and the same is accordingly set aside. Consequently, the respondents are directed to step up the pay of the petitioner on par with G.Kalaiselvi, with effect from the date on which the said G.Kalaiselvi was granted incentive increment and pay all the consequential benefits to the petitioner, as expeditiously as possible, at any rate, within a period of two (2) months from the date of receipt of a copy of this order.

9. Accordingly, this writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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MUMMINENI SUDHEER KUMAR, J.

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To

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