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W.P.No.2867 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.2867 of 2022

S.Logesvaran

...

Petitioner

Vs.

1.The Director of School Education,
Chennai-600 006.

2.The Chief Educational Officer,
Thiruvannamalai.

3.The District Educational Officer,
Polur, Thiruvannamalai District.

4.The Block Educational Officer-I,
Kalasapakkam,
Thiruvannamalai District.

...

Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a writ of certiorified mandamus calling for the records of the 4th respondent relating to order in Aa.Thi.Mu.No.1051/A1/2019 dated 27.09.2019 to quash the same and consequently direct to the respondents to step up the pay of the petitioner on par with his junior Tmt.N. Ponni in the category of B.T.Assistant w.e.f..17.08.2015 and thereby rectify the anomaly



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of junior drawing more pay than senior and disburse consequential monetary benefits within a limited time frame.

For Petitioner : Mr.P.Murali

For Respondents : Mrs.S.Mythere Chandru
Special Government Pleader [Edn.]

ORDER

The prayer in this Writ Petition is to quash the impugned order dated 27.09.2019 and consequently to direct the respondents to step up the pay of the petitioner on par with his junior, namely N. Ponni, in the category of B.T. Assistant with effect from 17.08.2015.

2. The case of the petitioner is that the petitioner, as well as the said N. Ponni, were appointed to the post of secondary grade teacher. The petitioner is senior to the said N. Ponni. The petitioner joined service on 07.08.1995, whereas the said N. Ponni joined service on 07.10.1996. Both of them were subsequently promoted as Primary School Headmasters and, thereafter, as B.T. Assistants. However, when advance increments were granted to the said junior, belatedly on 06.05.2012, because the rate of advance increment was higher as calculated as per the revised pay, the junior eclipsed the petitioner, and while the petitioner was drawing the pay of Rs. 24,750/-, the junior



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started drawing the pay of Rs. 25,850/-. It is not that the petitioner did not possess the higher qualification or that he was not granted the advance increment. The fact remains that the petitioner got the same two advance increments in 1999 as well as in 2002. Therefore, when the petitioner, being the senior, has also gotten two advance increments for both B.Ed. and M.A., merely because the advance increments were granted on an earlier date before the revision of pay, the petitioner is now receiving less pay. Therefore, the petitioner prays for the stepping up of pay. The detailed comparison chart between the petitioner and N.Ponni in Form I is furnished along with the typed set of papers on pages 51–58.

3. The writ petition is resisted by the respondents.

4. The comparison is also given in paragraph No.3 of the counter affidavit, which reads as follows:

"3. Regarding the averments made in the paragraphs 3 to 5 it is humbly submitted that the service particulars of the Petitioner and his junior up to 17.08.2015 is as follows:

Particulars	Senior S.Logeswaran	Junior N.Ponni
Date of Appointment as Secondary Grade	07.08.1995	07.10.1996



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Particulars	Senior S.Logeswaran	Junior N.Ponni
Teacher		
Declaration of Probation	15.08.1997	06.10.1998
Selection Grade in the post of Secondary Grade Teacher	07.08.2005	07.10.2006
Incentive increment for Educational Qualification while working in Higher the post of Secondary Grade Assistant (M.A., and B.Ed.)	27.12.2007	--
Incentive increment for Higher Educational Qualification while working in the post of Secondary Grade Assistant (B.Ed.)	--	01.06.2011
Promoted Headmaster to Elementary School	02.06.2009	01.10.2011
Incentive increment for Higher Educational Qualification while working in the post of Headmaster (M.A.,) Elementary School	---	06.01.2012
Promoted to B.T. Assistant	02.06.2010	17.08.2015

5. Therefore, it is the specific case of the respondents that the anomaly arises only because of the grant of advance increments to the junior, and therefore, applying the proviso to Rule 13(1) of the Tamil Nadu Revised Pay Rules-2017, if the anomaly arises only because of the advance increment granted to the junior, then the pay need not be stepped up. Further, it is the case of the respondents that, as per Ruling 2 under FR 22(B), it has the same effect.



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6. Heard Mr.P.Murali, the learned counsel for the petitioner and Mrs.S.Mythere Chandru, the learned special government pleader [education] for the respondents.

7. The learned counsel for the petitioner would submit that the pay anomaly is admitted. The fact that N.Ponni is junior to the petitioner is also admitted. The first reason that is mentioned in the impugned order that she belongs to a different subject cannot be countenanced. The advance increment or pay is not fixed subject-wise, and it would not differ on the basis of the subject. Therefore, different subjects cannot be given as reasons. The second reasoning given in the impugned order is that it is due to the advance increment granted after the revision of pay. He would submit that such a defense is not open to the respondents when the petitioner has also gotten the advance increment. He would also place reliance on the judgement of this Court in the case of *S.P. Meera vs. The State of Tamil Nadu* [reported in **2024:MHC:2185**].

8. Per contra, the learned special government pleader would submit that, in this case, the incentive increment itself is granted only after the Revised Pay Rules-2017 come into force. When the difference in pay arises



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while implementing the said revised pay rules, then stepping up shall also be done as per the provisions contained in the said rules. The said rules, Rule 13 (1), more specifically the proviso, categorically rule out that if the pay anomaly is due to the fact that junior is getting an advance increment, then stepping up need not be done. The learned counsel would also place reliance on G.O.Ms. No. 25, P&AR Department, dated 23.03.2015 more specifically on 5(III) to contend that when the higher rate of pay to the junior is attributable to the advance increment, then stepping up of pay need not be resorted to. It is her further case that the post in which the advance increment was drawn also matters. She would submit that the petitioner acquired the higher qualifications and drawn advance increments in the lower post of Secondary Grade Teacher. While the junior drew advance increments in the B.T. Assistant post. Therefore, when the junior has drawn an advance increment in the higher post, the case is not comparable, and therefore, when an anomaly arises on account of the personal qualifications of the said N.Ponni, stepping up cannot be made.

9. I have considered the rival submissions on either side and perused the material records in this case.



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10. As rightly contended by the learned counsel for the petitioner, this Court had an occasion to consider the same question in ***S.P. Meera vs. The State of Tamil Nadu*** (cited supra). In that case, the junior acquired a higher qualification at a later date, and as such, was granted advance increments in a higher quantum as per the revised pay rules, resulting in a pay anomaly. The respondents are reading the proviso to Rule 13(1) of the revised pay rules to deny the stepping up. Whenever the junior's pay increases on account of the advance increments that are granted to her, then stepping up in pay need not be resorted to. But the proviso does not address the situation where the senior also possesses the same higher qualification and has also drawn the advance increment. Therefore, by misapplying the proviso, the benefit is denied by the respondents.

11. On the contrary, the judgement of the Hon'ble Supreme Court of India, in ***Union of India vs. . P. Jagdish and Ors.*** reported in ***AIR 1997 SC 1783*** specifically considered the said situation and held that even in such cases, stepping up of pay has to be resorted to. This court considered the question in detail and, after considering FR 27(2), ordered that relief be granted to the senior. As a matter of fact, placing reliance on FR.22(B) as



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well as G.O.Ms.25 is out of place in the instant case. It is not a case where the pay anomaly arises on account of promotion being granted after the difference in selection grade or special grade pay. This is the case where the anomaly arises only on account of the junior acquiring the higher qualification at a later date and being granted advance increments at a later date after the revised rates of increment. That situation is not governed by F.R. 22(B) or G.O.Ms. No. 25.

12. In fact, the proviso to the revised pay rules in Rule 13(1) also does not address the said situation, and that question has been considered by this Court in ***S.P. Meena*** (cited supra), and relief has been granted to the petitioner. The ratio in the said case would apply, to the present case as well. Accordingly, this petitioner is entitled to succeed. In the said case, also following the dictum of the Hon'ble Supreme Court of India in the case of ***State of Kerela and Ors. Vs. E.K. Bhaskaran Pillai*** reported in (2007) 6 SCC 524, by balancing the interest since the petitioner is approaching this Court belatedly, the arrears were restricted from the date of filing of the Writ Petition. The same would apply in the present case as well.

13. Therefore, the Writ Petition is allowed on the following terms:



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(i) The impugned order dated 27.09.2019 shall stand set aside.

(ii) Then the respondents shall consider the request of the petitioner dated 01.09.2019 afresh and pass orders thereon by stepping up the pay of the petitioner on par with his junior with effect from 17.08.2015 i.e., stepping up at Rs. 25,850/- and accordingly re-fixing the pay and granting all the benefits. However, the petitioner will be entitled to the arrears of pay with effect from the date of filing the Writ Petition, i.e., only with effect from 10.02.2022.

(iii) No costs.

26.06.2024

Neutral Citation :Yes
jrs

To

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D.BHARATHA CHAKRAVARTHY, J.

jrs

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