



W.P.No.13127 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

**W.P.No.13127 of 2023**

A.Rajagopal

... Petitioner

-Vs-

1. The Secretary to the 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.



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6. The Block Educational Officer,  
Sirkazhi and Taluk,  
Mayiladuthurai District.

... Respondents

**Prayer :** Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in relates to the impugned rejection order passed by the 5<sup>th</sup> respondent in Na. Ka. No.947/A3/2022 dated 07.02.2023 and quash the same and consequently direct 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.

For Petitioner : Mr.V.Kasinatha Bharathi

For Respondents : Mrs.S.Mythreye Chandru  
Special Government Pleader

### **ORDER**

This Writ Petition has been filed challenging the order passed by the fifth respondent dated 07.02.2023, thereby refused to fix the salary of the petitioner on par with his junior.

2. Heard the learned counsel on either side and perused the materials available on record.



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3. The petitioner had joined as Secondary Grade Teacher in Sirkazhi Union, on 11.09.1987. After completion of ten years of service, he was granted selection grade with effect from 11.09.1997. Thereafter, he was promoted to the post of Primary School Headmaster on 16.06.2003. Subsequently, he was promoted to the post of Middle School Headmaster on 27.11.2006. His junior one G.Babu, who was also appointed on the same date of the petitioner viz., 11.09.1987 as secondary grade teacher, was promoted to the post of Middle School Headmaster on 05.11.2007 and he has been fixed with pay scale higher than the petitioner as on date of 21.05.2011- Rs.26580/15600-39100-5400. As on 21.05.2011, the petitioner and his junior G.Babu are working in the same cadre as B.T.Headmaster, the educational qualification and other criteria are equal. Therefore, there is a pay anomaly and as such, the petitioner submitted a representation. However, it was not considered and as such, the petitioner was constrained to approach this Court in W.P.No.6674 of 2013. This Court, by an order dated 20.10.2022, directed to consider the representation and pass orders in accordance with law, within a period of eight weeks from the date of



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receipt of a copy of the order. However, the fifth respondent rejected the request made by the petitioner by an order dated 07.02.2023.

4. A perusal of the counter and the submission made by the learned Special Government Pleader appearing for the respondents revealed that both the petitioner and his junior G.Babu were appointed on same date viz.,11.09.1987 as Secondary Grade Teacher. The petitioner's junior were given selection grade on 11.09.1997. Thereafter, the petitioner was promoted to the post of Primary School Head Master on 16.06.2003 and his scale of pay was fixed as Rs.6350+75PP5300-150-8300. Thereafter, his junior was promoted to the post of Primary School Headmaster on 10.09.2004. Till then, both their scale of pay are one and the same. The petitioner was promoted to the post of Middle School Headmaster before completion of ten years in identical scale of pay. Therefore, the petitioner was not granted any selection grade to the post of Primary School Headmaster. However, his junior was granted selection grade in the post of Primary School Headmaster from 11.09.2007 and he was promoted to the post of Middle School Headmaster on 05.11.2007.



Therefore, there was pay anomaly between the petitioner and his junior.

5. In order to rectify the said anomaly, the Government issued G.O.Ms.No.25 Personnel and Administrative Reforms (FR.IV) Department dated 23.03.2015 ordered that in the instance of pay anomaly due to the junior drawing more pay than senior in cases where the senior got promotion before moving to selection grade/special grade of lower post and his junior got promotion after moving to selection grade/special grade in the revised pay as a result of introduction of Tamil Nadu Revised Scale of Pay Rules, 2009.

6. Rule 5 of the Tamil Nadu Revised Scale of Pay Rules, 2009 reads as follows:-

*"5. Rectification of anomaly of junior getting more pay than senior:-*

*(1) In cases where a senior Government employee appointed to a higher post before the 1<sup>st</sup> day of January, 2006 draws less pay in the revised pay structure than his junior who is appointed to the higher post on or after the 1<sup>st</sup> day of January 2006, the pay in the pay band of the Senior Government employee should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of appointment of the junior*



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*Government employee subject to the fulfillment of the following conditions, namely:-*

*(a) both the junior and the senior Government employees should belong to the same category and should have been promoted to the same post.*

*(b) the pre-revised scale of pay and the revised scale of pay along with grade pay of the lower and higher posts to which they are entitled to draw pay should be identical.*

*(c) the senior Government employee at the time of appointment should have been drawing equal or more pay than the junior.”*

7. Like the petitioner, another Teacher one A.Rajasekar also aggrieved with regard to pay anomaly between himself and his junior G.Babu and approached this Court in W.P.No.13014 of 2023. This Court, by an order dated 06.11.2023 allowed the writ petition and the relevant portion of the order are as follows:-

*“ 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 :-*

*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*



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*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 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*



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*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 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 hound to step up the pay of senior on par with his junior.””*

8. In line that fundamental Rule 22B and decision order passed by this Court in *D.Ramasamy Vs. The Secretary to Government, School Education Department and others*, as stated supra, pay anomaly between the petitioner and his junior requires to be rectified.



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9. In view of the above, the order passed by the fifth respondent dated 07.02.2023 cannot be sustained and it is liable to be quashed. Accordingly, the impugned rejection order passed by the fifth respondent in Na.Ka.No.947/A3/2022 dated 07.02.2023, is hereby quashed. The fifth respondent is directed to grant re-fixation of salary of the petitioner on par with his junior G.Babu, within a period of twelve weeks from the date of receipt of a copy of this order.

10. Accordingly, this writ petition is allowed. There shall be no order as to costs.

28.02.2024

Internet: Yes  
Index : Yes/No  
Speaking/Non Speaking order  
mn



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**G.K.ILANTHIRAIYAN. J.**

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