



WEB COPY

W.P.No.36693 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.36693 of 2016

1. S.Meena
2. P.Umamaheswari
3. P.Malliga

... Petitioners

Vs.

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
2. The District Elementary Educational Officer,
Tiruvannamalai.
3. The Assistant Elementary Educational Officer,
West Arni, Arni – 632 301,
Tiruvannamalai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to (1) Aa.Thi.Mu.No.5896/A2/14 dated 18.06.2015 of the second respondent and (2) Pro.O.Mu.No.1233/A1/2014 dated 01.07.2015 of the



third respondent and to quash the same and consequently permit the petitioners to resubmit their representation dated 15.10.2014 and further issue direction to the respondent to reconsider the claim of the petitioner their representation dated 15.10.2014 on merits and in accordance with law within a time frame.

For Petitioner : Mr.P.Murali

For Respondent : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The petitioners herein, who have been working as 'Elementary School Headmaster' with effect from 01.10.2005, made a claim for stepping up of their pay by comparing themselves with another person, by name Tmt.S.Saraswathi, who was appointed as an 'Elementary School Headmaster' by way of promotion on 01.10.2006, as the said junior viz., Tmt.S.Saraswathi, has been drawing higher pay than the petitioners. The said claim of the petitioners was negated by the respondents by passing the impugned order dated 01.07.2005, stating that the petitioners and the said junior were initially appointed in different blocks and therefore, their cases cannot be compared. It is aggrieved by the said order, dated 01.07.2005, and the note submitted by the District Educational Officer



dated 18.06.2015, the present writ petition has been filed seeking for a consequential direction to permit the petitioners to submit a fresh representation and to direct the respondents to re-consider the claim made by the petitioners through their representation dated 15.10.2014.

2. The petitioners 2 and 3 are also the similarly situated persons like the petitioner and they are also seniors to the said Tmt.S.Saraswathi.

3. There is no dispute on the factual aspects. It is also not in dispute that the said junior has been drawing higher pay than the petitioners. The reasons assigned in the impugned order stating that the petitioners and the said junior were appointed in different blocks and therefore, their cases cannot be compared does not stand for legal scrutiny for the simple reason that the petitioners as well as the said junior were promoted to the post of 'Elementary School Head Master' only in the present block, viz., Arani, Tiruvannamalai District, where all of them have been working. Hence, the impugned order is liable to be set aside on this ground alone.

4. Further, on examination of the material on record and the counter-



WEB COPY

affidavit filed on behalf of the respondents, it is emerged that the petitioners as well as the said junior were awarded incentive increments for having acquired the Graduation and B.Ed., and thereafter, a Post Graduation and whereas, the junior was awarded incentive increments for having acquired Post Graduate Degree and B.Ed., Thus, both the petitioners and the said junior have equally acquired the higher qualification and they were also awarded with respective increments for which they are entitled to. The difference in pay arose only because of the fact that the petitioners herein have acquired the higher qualification ahead of their junior and while the Fifth Pay Commission pay scales are in operation and whereas the junior acquired higher qualification at a later point of time when the Sixth Pay Commission pay scales are in force. It is because the junior was awarded higher incentives and thereby the pay of the junior was fixed at higher level than the petitioners. Thus, the disparity in pay occurred, though the petitioners as well as the said junior are otherwise equally situated in all respects. Therefore, the claim of the petitioners for stepping up of their pay on par with their junior Tmt.Saraswathi cannot be denied.

5. The very same issue has fallen for consideration recently before



this court in W.P.No.16633 of 2007 dated 10.12.2024, wherein this court, having considered all the aspects, came to the conclusion that the senior is entitled for stepping up of his pay on par with his junior.

WEB COPY

6. In this connection, it would be appropriate to extract the relevant portion of the said order, which reads as under:

“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 negated 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



WEB COPY



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



WEB COPY



have been promoted or appointed should be identical and in the same cadre;”

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



WEB COPY



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



WEB COPY



granted incentive increments for higher qualifications, which he obtained prior to 01.01.1996.

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. 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.”

In the light of the above decision, this court is of the considered view that no fresh elaborate adjudication of this writ petition is required, as the facts of the matter are almost identical in all respects.

7. Though the petitioners have sought for reconsideration of their case afresh by respondents on merits, this court is of the considered view that in the light of the decisions referred to above, there is no necessity of relegate the petitioners to approach the respondents once again by seeking reconsideration of the representation and hence, this court is of the considered view that the petitioners can be extended the similar relief as was extended in W.P.No.16633 of 2007 dated 10.12.2024.



W.P.No.36693 of 2015

8. In the light of the above, the impugned order bearing ஓ.மு.எண்.1233/அ1/2014 dated 01.07.2015 is hereby quashed and the respondents are directed to step up the pay of the petitioners on par with Tmt.Saraswathi, working as 'Elementary School Head Master' with effect from the date on which the said Tmt.Saraswathi was granted incentive increments insofar as Petitioners 2 and 3 are concerned and insofar as the first petitioner is concerned, on par with his Junior viz., Mr.D.Ramesh Babu and pay all consequential benefits to the petitioners, as expeditiously as possible, at any rate with a period of three months from the date of receipt of a copy of this order.

9. Accordingly, the writ petition is allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

21.12.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



W.P.No.36693 of 2022

To

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
2. The District Elementary Educational Officer,
Tiruvannamalai.
3. The Assistant Elementary Educational Officer,
West Arni, Arni – 632 301,
Tiruvannamalai District.



WEB COPY

W.P.No.36693 of 2016



MUMMINENI SUDHEER KUMAR, J.

skr

W.P.No.36693 of 2016



WEB COPY



W.P.No.36693 of 2

21.12.2024