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W.P.No.14910 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.14910 of 2020
and
WMP.No.18512 of 2020

R.Murugesan

.. Petitioner

Versus

1. The Joint Director of School Education,
DPI Campus, Chennai 600006.
2. The Chief Educational Officer,
Tiruvarur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of first respondent in Oo.Moo.No.00905/L/E5/2020 dated 04.06.2020 and quash the same consequently direct the respondents to step up pay of the petitioner on par with his Junior R.Santhanam with effect from 25.08.2015 with all monetary an arrears benefits including the revision of pension.

For Petitioner : Mrs.Dakshayani Reddy, Senior Counsel
for M/s.Suneetha

For Respondents : Mr.T.M.Rajangam
Government Advocate



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4. The grievance to the petitioner is that his junior R.Santhanam, who had joined as a Secondary Grade Teacher only on 29.04.1986, was promoted as B.T.Assistant with effect from 10.06.2005. He received the first incentive increment on 20.12.2009 on acquiring M.A. Degree. The second incentive was given on 20.12.2009 on acquiring B.Ed. Degree. When such incentive increment was granted to the junior, the basic pay of the junior was higher than that of the petitioner. Thus as on 02.03.2009, the petitioner was fixed in the pay scale 9300 - 34800 and Grade pay 4600/- and whereas his junior was fixed in the pay scale 9300 - 34800 and Grade pay 4800/-.

5. In the light of the above anomaly, the petitioner gave a representation seeking for stepping up of pay on par with his junior. The first respondent through the impugned communication dated 04.06.2020 rejected the claim made by the petitioner for stepping up of pay on par with the junior of the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

6. When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the issue involved herein is covered by the



judgment of this Court in W.P.No.8666 of 2023 dated 20.08.2024. The

observations made in the said judgment are profitably extracted below:

"13. The issue that is involved in the present writ petition is covered by the earlier order passed in WP No.34321 of 2022 date 26.04.2024. That was also a case where the junior had obtained incentive increment and the senior sought for stepping up of pay on par with the junior under F.R. 27(2). A very similar defence was taken by the official respondent in that Writ Petition. The same was considered by this Court in the following paragraphs:

"8. Even though with the implementation of VII Pay Commission, the Government framed Revised Pay Rules, the basic principle relating to the stepping up of pay of a senior on par with that of the junior is contained in F.R. 27(2) which is extracted hereunder:

'F.R. 27(2): The Heads of Departments shall step up the pay of the senior on par with the pay of his junior. Such cases shall be sent to Government for ratification within one month from the date of refixation. The Government may ratify or refuse to ratify such fixation. If the Government refuses to ratify such fixation or any wrong fixation is noticed at a later date, the excess amount drawn by such fixation shall be recovered from the individual.'



9. Therefore, it can be seen that if for any reasons, while implementing the pay revision, if the junior is drawing more pay than that of the senior, then senior-s pay has to be stepped up. The Hon-ble Supreme Court of India considered the said issue in detail. A useful reference can be drawn to the judgment of the Hon?ble Supreme Court in **Union of India v. P. Jagdish and Ors., reported in AIR 1997 SC 1783**. It is relevant to extract paragraph No.7 which reads as hereunder :~

'7. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as senior Clerks against the identified posts carrying special pay of Rs.35/~ per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at higher level than the respondents. Under the provisions of fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the



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higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. The stepping up should be done in such a way that the



anomaly in juniors getting higher salary than the senior in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications.

This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the posts to which 35% special pay was attached in the lower cadre. But by reason of promotion the promote~juniors who worked on the said posts, infact, performed the hard duties and earned special pay. Direction to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only



perceptively (sic) from the date of the promotion and the fixation of the scale stepping up of scale to pay would be perspective(sic) to calculate future increments on the scale of pay in promotional post only perspectively.'

10. Thus, it can be seen that if the pay drawn by the senior is lesser on account of any special qualification that is being obtained by the junior or by virtue of any additional ability of junior, then the pay need not be stepped up. In the instant case, the petitioner is also possessing post graduate degree as well as B.Ed. qualification and has drawn two incentive increments. The junior is also possessing same post graduate degree qualification and is drawing two increments. Merely because the junior obtained post graduate degree and B.Ed. qualification at a later date and under the revised scale of pay, the junior is granted an increment amount which is higher in terms of money it results in pay anomaly. A scanned reproduction of the relevant comparison of pay which is given in page 30 is as follows: (Tabular column omitted)

11. From the above, it can be seen that only from 30.12.2010, pay anomaly came into existence. Both the pay and the revised pay are higher. It can be seen that



earlier rule position takes this into account and categorically states that if the junior is given advance increment under revised pay, the quantum of which is more than the senior-s pay, it should be stepped up whereas in the year 2017, that position has not been adverted to at all. In any event, it can be seen that for the anomaly in the year 2010, 2017 Rules cannot be made applicable in support thereof to the pay anomaly de hors what is contained in the relevant revised pay rules, it is only Fundamental Rules which goes into the question. The basic rule is that when the junior and senior are travelling on the same route in the same position and are given the same promotion like the two rails of the same route, suddenly one rail cannot go in advance. If that is kept in mind in this case it cannot be said that the junior drew more pay only because of some additional or special qualification which she obtained but only because of the implementation of the revised pay rules. The very rule with regard to stepping up of pay is only to ameliorate this kind of hardship which arise with the senior. Therefore, I am of the view that the petitioner-s case deserves acceptance. ...”

14. It is trite law that when it comes to stepping up of pay, the Court must only see if the junior and the senior are travelling in the



same route and in the same position and are given the same promotion, like two rails of a train track. In such a scenario, the junior cannot be allowed to advance in terms of pay than the senior. If that happens, then the pay of the senior must be necessarily stepped up on par with the junior to ameliorate the situation.

15. In the case in hand, both the petitioner as well as his junior were appointed as Secondary Grade Teachers. Admittedly, the petitioner was appointed on 10.08.1992 and whereas the junior was appointed on 02.09.1998. By the time the junior was appointed, the petitioner already got one incentive increment on 02.01.1995. Both of them were travelling in the same track and the petitioner got the second incentive on 28.05.2010 after acquiring M.A. Degree. This also happened when the petitioner was working as a Secondary Grade Teacher. In the case of the junior, his incentive increment started only on 27.02.2013 when he acquired M.A. Degree at which point of time, he was also a Secondary Grade Teacher. The petitioner got promotion as B.T.Assistant on 09.06.2010 and whereas the junior got promotion as B.T. Assistant on 27.02.2013. The second incentive increment for the junior happened in the year 2013 i.e. on 13.11.2013. At this point of time, the pay of the junior increased. Looking at the qualification of both the petitioner and his junior, it is seen that the petitioner is equally qualified like his junior and there is no ground to justify the junior getting more pay than the senior for acquiring any qualification more than the petitioner.



16. *It is to deal with situations like this, F.R. 27(2) will come to the aid for stepping up of the pay. The reasons assigned by the respondents is that the junior had acquired the second incentive after his promotion as B.T.Assistant when he was drawing a higher salary and therefore, the petitioner will not be entitled to claim for stepping up of pay since he has obtained the incentive at an earlier point of time. For any reasons, while implementing the pay revision, the junior is drawing more pay than the senior, the pay of the senior has to be stepped up. The law on this issue is now too well settled."*

7. The learned Government Advocate appearing for the respondents drew the attention of this court to the counter affidavit filed by the second respondent, wherein, it has been *inter alia* stated as follows:

"13. Regarding the averments in para 12, 13 and 14 of the affidavit of the petitioner, it is admitted that the representation of the petitioner was submitted to the first respondent along with comparative statement vide LOr.No.5632/B5/2017 dated 08.09.2019 of the second respondent. The proposal was examined by the first respondent with reference to the guidelines issued by the Government. The request of the petitioner was rejected as per the orders of the first respondent proceedings L.Dis.00905/L/E5/2020 dated 04.06.2020. The pay anomaly will arise between the senior and junior only as on the date on which he difference in pay arise i.e.20.12.2009, the date on which the junior



was granted incentive increment for acquiring higher educational qualification i.e. B.Ed. degree. As on 20.12.2019, the petitioner was holding the post of P.G.Assistant whereas the said junior was holding the post of B.T. Assistant. These posts are not identical. The difference in pay caused due to incentive increment for higher educational qualification cannot be considered as pay anomaly since the incentive increment is not statutory entitlement and it only obligatory concession granted by the Government. There is no provision in the existing government order to step up the pay of senior on the date on which the junior was promoted i.e. on a later date on which the pay difference arise. In fact the said junior was promoted as P.G.Assistant after 5 years of the promotion of the petitioner. Hence this contention on the petitioner has no merits.

14. Regarding the averments in ground 'a' of the affidavit of the petitioner, the relevant provisions of ruling 2 under F.R.22.B. is extracted below.

"2. In case when 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 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 case, 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:-

(ii) *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 increment, the provisions contained in this order should not be invoked to step up the pay of senior officer. the case of the petitioner is not within the purview of the above ruling (2) for the following reasons.*

(i) *the difference in pay is not due to fixation of pay after getting the normal increment in the feeder post as on 25.08.2015.*

(ii) *Admittedly, the junior was drawing higher pay from 20.12.2019 in the feeder post by way of incentive increment.*

(iii) *the incentive increment for acquiring higher educational qualification cannot be considered as pay anomaly.*

(iv) *as per the above ruling the pay of the petitioner (senior) has not been fixed as on 25.08.2015 under rule 22.B of FR.*

(v) *The pay of the junior was stepped up on par with his junior as on 01.07.1988 and hence the present pay anomaly cannot be considered directly attributed between the petitioner and his junior.*



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WEB COPY 8. Heard the learned counsel on both sides and perused the materials available on record.

9. In view of the above order passed in a similar case this Court is also inclined to pass the sane order. Accordingly, the impugned proceedings of the first respondent in Oo.Moo.No.00905/L/E5/2020 dated 04.06.2020 is hereby quashed. There shall be a direction to the first respondent to step up the pay of the petitioner on par with the junior R.Santhanam and pay the monetary benefits to the petitioner. This process shall be completed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order.

10. In the result, this Writ Petition is allowed with the above direction. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

17.12.2024

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Internet : Yes / No

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To

1. The Joint Director of School Education,
DPI Campus, Chennai 600006.
2. The Chief Educational Officer,
Tiruvarur.



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J.SATHYA NARAYANA PRASAD, J.

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