



W.P.No.24030 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM:

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

W.P.Nos.24030, 24033, 24036, 24273, 24275,
24276, 24277, 24278 & 24280 of 2023

and

W.M.P.Nos.23521, 23523, 23525, 23732, 23733,
23735, 23736, 23737, 23739 of 2023

W.P.No.24030 of 2023:-

C.Babu Hariharan

... Petitioner

Vs.

1. The Chief Educational Officer,
Thiruvannamalai.

2. The District Educational Officer,
Thiruvannamalai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Na.Ka.No.3406/A1/2023 dated 12.06.2023 and quash the same and direct the respondents to step up the pay on pay with the junior Saravanan with effect from 22.09.2014 and accordingly direct the respondents to grant the petitioner with monetary benefits.



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In all W.Ps.

For Petitioner : Mrs.Dakshayani Reddy
Senior Counsel
For Ms.S.Suneetha

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

COMMON ORDER

These writ petitions have been filed challenging the order passed by the first respondent thereby rejected the request made by the petitioners to rectify the pay anomaly and to step up the pay on par with their juniors with effect from 22.09.2014.

2. The petitioners were originally appointed as Office Assistant in the office of the second respondent in the year 2007. Thereafter, they were appointed as Lab Assistant by transfer, in the year 2012. The post of Office Assistant is a feeder category to the post of Record Clerk as well as Lab Assistant. In order to appoint a person to the post of Lab Assistant, first appointment to be made in the post of Record Clerk then he will be appointed to the post of Lab Assistant. There was a necessity to fill up the post of Lab Assistant due to upgradation of high



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school to the higher secondary school. Therefore, the government had granted permission to fill up the sanctioned post by way of promotion from the post of Office Assistant. Accordingly, the petitioners were directly appointed to the post of Lab Assistant in the upgraded school as higher secondary school in the sanctioned the post of Lab Assistant.

3. While being so, their juniors who were working as Office Assistant, were promoted to the post of Record Clerk in the year 2012 i.e., after the appointment of the petitioner to the post of Lab Assistant. Thereafter, their juniors were promoted to the post of Lab Assistant from the post of Record Clerk during the year 2019. Though the petitioners were drawing higher scale of pay than their juniors, their juniors were granted increments in the post of Record Clear and subsequently promoted to the post of Lab Assistant and therefore they are drawing higher scale of pay then the petitioners. Therefore, the petitioners submitted representation seeking to step up their pay on par with their juniors and the same was rejected on the ground that their juniors were appointed to the post of Record Clerk and subsequently promoted to the post of Lab Assistant. Whereas, the petitioners were directly appointed to



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the post of Lab Assistant. Hence, the petitioners filed the present writ petitions with the above prayer.

4. The learned Senior Counsel appearing for the petitioners submitted that the rejection of request made by the petitioners is against the fundamental rule 22(b) of the Constitution of India, which prescribed that a government employee is entitled to have his pay stepped up on par with his junior provided both the senior and junior should belong to the same cadre. The petitioners and their juniors were appointed in the same category and in the same post. Therefore, the petitioners are entitled to step up their pay on par with their junior.

4.1. She further submitted that as per the government order in G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009, the government while extending the benefits of sixth pay commission to its employees, directed that senior is entitled to get his pay refixed on par with his junior provided both the junior and the senior should belong to the same category and should have been promoted to the same post. She relied upon the judgment of the Hon'ble Supreme Court of India reported



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in (1997) 3 SCC 176 in the case of **Union of India and ors Vs.**

P.Jagdish and ors., which held as follows:-

“7. So far as the second question is concerned, it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier 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 a 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 and 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 higher post is required to be stepped up to a figure equal to the pay as fixed 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 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



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and the senior officer belong to the same category and the post from which they have been promoted and 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 of juniors getting higher salary than the seniors 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 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



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the difference of salary would not be correct for the reason that the respondents had not worked in the post to which 35% special pay was attached in the lower cader. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions 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 perspectively from the data of the promotion and the fixation of the scale stepping up of scale of pay would be perspective to calculate future increments on the scale of pay in promotional post only perspectively. The appeal is dismissed but in the circumstances there would not no order as to costs.”

4.2. She also relied upon the judgment of the Madurai Bench of this Court in **WA.No.11716 of 2020** dated **26.02.2024**, in which this Court held as follows :-



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“4. The contention of the learned Government Advocate that the junior of the petitioner was granted Special Grade in the lower post as he had no promotion avenue from the post of Lab Assistant and whereas the petitioner has got promotional avenue to the post of Assistant and the petitioner cannot claim parity on par with the junior is concerned, the same does not stand to legal scrutiny as both the petitioner and his junior are working in the post of Junior Assistant with effect from 05.03.2004 and 21.03.2007 respectively. Yet another contention raised by the learned Government Advocate by placing reliance on Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is concerned, the said provision deals with seniority and prescribes limitation of three years for raising objections in respect of seniority, i.e., basing upon the principle that the settled seniority cannot be unsettled after a long lapse of time. But, in the instant case, in fact, there is no dispute about the seniority and that the petitioner is senior to the said Chidamparam.

5. The other contention is raised by the learned Government Advocate contending that the petitioner has already retired from service in the year 2011, but raised objection after the lapse of 8 years i.e. in the year 2019 is concerned the same is factually incorrect. As seen from the proceedings in Na.Ka.No.8443/A1/2011, dated



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06.02.2012 of the District Educational Officer, Karur, the representation of the petitioner was on 11.11.2011 and he has made a request for stepping up of his pay and he has continuously met his higher officials seeking for stepping up of his pay.

6. In the light of the above, the claim of the petitioner for stepping up of his pay in terms of F.R. 22-B2(i)(ii) of the Tamil Nadu Fundamental Rules cannot be denied with effect from the date on which his junior came to be promoted to the post of Junior Assistant, i.e., with effect from 21.03.2007. In case, if the said Chidamparam, who is admittedly junior to the petitioner is drawing higher pay than the petitioner on his appointment to the post of Junior Assistant with effect from 21.03.2007, the Petitioner is entitled for stepping up and fixation of pay with effect from 21.03.2007. In the light of the above, the impugned order cannot be sustainable and the same is liable to be set aside.”

5. The first respondent filed counter and the learned Special Government Pleader appearing for the respondents submitted that the petitioners and their juniors were initially appointed as Office Assistants. The petitioners' juniors were promoted to the post of Record Clerk and thereafter promoted to the post of Lab Assistant. Whereas the petitioners



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were initially appointed as Office Assistant and directly promoted as Lab Assistant. The Office Assistant is the feeder category post for the promotional post of Lab Assistant and Record Clerk. The post of Record Clerk carries lesser pay scale than the Lab Assistant. From the post of Record Clerk, the next level of promotion to the post is either Lab Assistant or Junior Assistant in the school education department. The petitioners had opted their promotion to the post of Lab Assistant. Therefore, they are not entitled for step up on par with their juniors.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. Admittedly, the petitioners as well as their juniors were working in the same post of Office Assistant. Subsequently, the petitioners were promoted to the post of Lab Assistant and their juniors were promoted to the post of Record Clerk. Both the post are coming under the General Subordinate Service Rules. In fact, the post of Office Assistant is the feeder post for the promotional post of both Record Clerk as well as Lab Assistant. The petitioners were promoted to the post of



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Lab Assistant and their juniors were promoted to the post of Record Clerk. Thereafter, their juniors were promoted to the post of Lab Assistant. Therefore, the submission of the respondents cannot be countenance, since both the petitioners as well as their juniors were appointed as Office Assistant during the year 2007 and the petitioners are the seniors. Therefore, the petitioners are seniors as per their appointment.

8. It is relevant to extract the Rule 22(b) of the Fundamental Rules of the Tamil Nadu Government as follows:-

6. It is humbly submitted that the Ruling 2 of Rule 22-B of Fundamental Rules of Tamil Nadu Government inter alia reads as follows:

"....(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



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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 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 re-fixing 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



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above ruling but the actual monetary benefit shall be admissible only with effect from the 1st September 1966."

Accordingly, the cases of seniors drawing less than their juniors in respect of promotion occurring on or after 01.06.1962 shall also be regulated under as per the above Rule. Therefore, the above judgments relied upon the learned Senior Counsel appearing for the petitions are squarely applicable to the case on hand. The petitioners are entitled to step up the pay on par with their juniors with effect from 22.09.2014.

9. In view of the above discussions, the impugned orders cannot be sustained and are liable to be quashed. Accordingly, the impugned orders dated 12.06.2023, passed by the first respondent are hereby quashed. The respondents are directed to step up the pay of the petitioners on par with their juniors with effect from the date of their juniors' promotion to the post of Lab Assistant viz., from 22.09.2014 and granted monetary benefits, within a period of eight weeks from the date of receipt of a copy of this Order.



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WEB COPY 10. With the above directions, all the writ petitions are allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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To
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1. The Chief Educational Officer,
Thiruvannamalai.
2. The District Educational Officer,
Thiruvannamalai.



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G.K.ILANTHIRAIYAN. J.

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