



Writ Appeal No.700 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.700 of 2020

G.Rajagopal

... Appellant

Vs

- 1.The Government of Tamil Nadu
Rep., by the Secretary to Govt.,
School Education Department,
Fort St., George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Accountant General (Accounts & Entitlements)
No.361 Anna Salai, Teynampet,
Chennai – 600 018.
- 4.The Accounts Officer/Pension 11,
O/o. The Accountant General (Accounts & Entitlements)
No.361 Anna Salai, Teynampet,
Chennai – 600 018.
5. The Branch Officer,
The Accountant General (Accounts & Entitlements)
No.361 Anna Salai, Teynampet,
Chennai – 600 018.

... Respondents



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PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 23.10.2018 made in W.P.No.9694 of 2017.

For Appellant : Mr.R.Saseetharan
For Respondent : Mr.Mr.P.Gurunathan AGP for RR1 & 2)

Mrs.Hema Murali Krishnan for RR3 to 5

JUDGMENT

(Judgment of the Court was made by R.SURESH KUMAR.,J.)

This Writ Appeal had been directed against the order dated 23.10.2018, made by the Writ Court in W.P.No.9694 of 2017.

2. The appellant, who was the Writ Petitioner, was working as a B.T., Assistant in Board High School, subsequently the said post has been merged with the Government High School or the Government Higher Secondary School and therefore, the Teachers like the Writ Petitioner/ Appellant who were working in Board schools were to be called as B wing Teachers and the Teachers who were working in Government schools, were called as 'A' wing Teachers. At one point of time, i.e., on 01.04.1970, since the 'B' wing Teachers also were brought in along with 'A' wing Teachers working in the Government school and had been permitted to work and also the promotion, they earned to the post of Head Master of the High School or High-



er Secondary School, as the case may be, however in fixing the combined seniority, there has been some issue.

3. For the issue of fixing combined seniority, they have gone to the Hon'ble Supreme Court. Ultimately, the Hon'ble Supreme Court by order dated 23.10.1979, has resolved the issue by giving a direction to the stakeholders, i.e., the authority concerned to fix the combined seniority by taking into account the date 01.04.1970 as the date of merger of 'A' wing and 'B' wing Teachers.

4. Once again the issue cropped up, therefore, second round of litigation also emanated, which culminated by the orders of the Hon'ble Supreme Court again by an order, dated 28.04.1998, where also the earlier order passed by the Hon'ble Supreme Court in the year 1979 has been reiterated. Therefore, pursuant to the order passed by the Hon'ble Supreme Court dated 28.04.1998, the Government/Education Department decided to prepare a combined seniority list and such a combined seniority lists were published on 03.12.2004.

5. Though such a combined seniority list had been published consisting of 'B' wing and 'A' wing Teachers as stated supra, by taking the



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date 01.04.1970 as the merger date, before issuance of the combined seniority list, the Teachers who were working in B wing that is District Boards, who were fairly seniors to 'A' wing Teachers have all superannuated including the Writ Petitioner/Appellant.

6. However, the 'A' wing Teachers even though comparatively are juniors to the 'B' wing Teachers as per the combined seniority list, since had service subsequently also, they earned further promotion to the post of District Educational Officer (DEO) and also further promotion to the post of Chief Educational Officer (CEO).

7. Since those juniors got such a promotion of DEO and CEO as stated supra, whereas the seniors like the petitioner/appellant originally belonged to 'B' wing could not earn such promotion, even though they were seniors, as by the time the juniors got such promotion they all got superannuated, they wanted the notional promotion on par with the juniors earned such a promotion.

8. This has been considered and the Government issued two Government Orders under which such a promotion have been allowed to be



taken place.

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9. Therefore, the Teachers who originally belonged to B wing who are seniors in the combined seniority list like the Writ Petitioner/ appellant earned promotion on par with the juniors, who earned such a promotion in the first stage as DEO and second stage as CEO.

10. In this context, it is to be noted that the Writ Petitioner/ Appellant before earning such a notional promotion on par with his juniors, since he was working in lower post, the next increment to be payable to the Writ Petitioner/appellant would fall shortly within a period of three months. Therefore, an option had been given by the petitioner/appellant as per the Rule that, if at all any increment in the lower post, which fall shortly after earning such increment, the next promotion can be operated till such time, the incumbent can wait to earn the promotion.

11. Since the said option had been given by the Writ Petitioner/appellant, having considered the same, the second respondent i.e., the School Education Department has accepted the case of the petitioner/ appellant and forwarded the proposal for revised pension based on the last drawn pay i.e.,



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after earning one increment in the lower post, his promotion can be calculated notionally to the post of DEO, thereafter CEO and accordingly the pay can be calculated for the purpose of last drawn pay based on which the pension can be fixed.

12. Such a proposal had been sent even though by the second respondent who is the Head of the Department, the fourth respondent by order dated 09.11.2016 has rejected the said proposal by giving the following reasons:-

As the notional promotion is on par with junior to refix the pay, the pay has to be fixed only on the date of promotion and exercising option to refix the pay on notional promotion on par with junior is not in order. Hence, the revised pensionary benefits is being admitted for PLD of Rs.11300/-. This may be viewed and corrected in your records.

13. Aggrieved over the same, the said Writ Petition was filed which was considered and rejected by an order of dismissal dated 23.10.2018, by the Writ Court, which is impugned herein.

14. Heard Mr.R.Saseetharan, learned counsel appearing for the appellant, Mr.P.Gurunathan, learned Additional Government Pleader ap-



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pearing for the respondents 1 and 2 and Mrs.Hema Murali Krishnan learned counsel appearing for the respondents 3 to 5 and perused the materials placed on record.

15. In so far as the Department of Education and the State Government is concerned, they supported the case of the appellant/writ petitioner. The only objection that came from the fourth respondent is that the Accountant General who passed the order impugned before the Writ Court, by its order dated 09.11.2016, wherein the reasons stated by the fourth respondent is that as the notional promotion is on par with the juniors to refix the pay, the pay has to be fixed only on the date of promotion and exercising option to refix the pay on notional promotion on par with the juniors is not in order.

16. The meaning being that, once the petitioner/appellant sought for promotion on par with the juniors who has already earned such a promotion, only from that day he is entitled to get such promotion, if such a promotion notionally is given, thereafter if any increment falls on him in the lower post, he would not be available to earn such increment. Therefore, that increment cannot be taken into account for the purpose of



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fixing the total pay at the promoted post, therefore, the last drawn pay is not Rs.11,625/- as claimed by the Writ Petitioner/Appellant and supported by the second respondent, but it is only Rs.11,300/- i.e., Rs.11,625 – 325 (One increment = 11330).

17. In this context, it is to be noted that in so far as giving the promotion to the petitioner/appellant on the basis of the combined seniority by taking into account the merger date as 01.04.1970, is concerned, it is a right conferred on him and therefore, he is entitled to such a promotion.

18. Therefore, once such a promotion has been earned by any of the juniors to him, then from that date, he is eligible or entitled to. However, in the lower post, as he was working only in that lower post before his superannuation, since one increment has fallen due within a period of three months, he is entitled to seek for such an increment and thereafter he can seek for such a promotion. Therefore, the difference of promotion from the actual date to that of his junior earned such promotion are immediately after he earned one increment would not make any difference as every such fixation of promotion as well as the pay was only notional basis and no financial commitment to the Government or De-



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partment concerned.

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19. When that being the position, only in order to calculate the last drawn pay, the said increment, if it is added a sum of Rs.325/- could also be added on the overall pay that would have been drawn otherwise by the petitioner/appellant had he worked in the promoted post before his superannuation.

20. Hence, we are of the considered view that the reasons cited by the fourth respondent in the order dated 09.11.2016 is not in consonance with the pattern being adopted for such allowing of availing one increment which is fell shortly before earning the promotion.

21. This position has not been considered in a proper perspective by the learned Single Judge through the impugned order, therefore, we are of the view that the order impugned is liable to be interfered with.

22. Resultantly, this Appeal is disposed of with the following order:-

a) that the impugned order is set aside and consequently the order passed by the fourth respondent ,dated 09.11.2016 is also set aside.



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b) As a sequel, there shall be a direction to the fourth respondent to calculate the last drawn pay of the petitioner/appellant, as claimed by the petitioner/appellant supported and recommended by the second respondent for a sum of Rs.11,625/- at the time of his superannuation and accordingly, his pension shall be refixed.

c) As a consequence that the arrears between the refixed pension and the actual pension received by him shall be calculated and be paid to the petitioner/appellant and the fourth respondent shall continue to pay the revised pension, as indicated above to the petitioner/appellant till his entitlement. The said exercise shall be completed, within a period of six (6) weeks from the date of receipt of a copy of this order.

With the above directions, the Writ Appeal is allowed accordingly. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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