



W.P.(MD) No.11716 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.11716 of 2020
&
W.M.P(MD)No.10177 of 2020

R.Vellaiyan (Died)

Mariammal

(Petitioner substituted vide Court order,
dated 30.01.2023 in W.M.P.(MD)No.1182/2023)

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department, Secretariat,
Chennai – 9.
- 2.The Principal Accountant General (A&E),
O/o. The Principal Accountant General (A&E),
Tamil Nadu, No.361, Annal Salai,
Chennai – 600 018.
- 3.The Director of School Education,
O/o. the Director of School Education,
DPI Compund, College Road,
Chennai – 600 006.



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4.The Joint Director of School Education (NSS),
O/o. Joint Director of School Education,
DPI Compound, College Road,
Chennai – 600 006.

5.The Chief Educational Officer,
O.o. The Educational Office,
Karur District.

6.The District Educational Officer,
O/o.the District Educational Office,
Karur, Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fourth respondent in his proceedings in Na.Ka.No.045199/L/E3/2019 dated 19.12.2019 and to quash the same as illegal and consequently to direct the respondents to step up the pay of the petitioner on par with his junior and revise pensionary benefit of the petitioner with an accrued interest thereon and disburse the same within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.V.Om Prakash,
Govt.Advocate for R1, 3to 6
: Ms.S.Mahalakshmi for R2



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ORDER

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This Writ Petition is filed to issue a Writ of Certiorarified Mandamus, to quash the impugned order passed by the fourth respondent in his proceedings in Na.Ka.No.045199/L/E3/2019 dated 19.12.2019 and consequently to direct the respondents to step up the pay of the petitioner on par with his junior and revise pensionary benefits of the petitioner with accrued interest thereon and disburse the same within the period that may be stipulated by this Court.

2. The claim of the Petitioner for fixation of pay on par with his Junior, namely, Chidamparam was negatived by the respondents on the ground that the petitioner and Chidamparam, who claimed to be Junior of the Petitioner, are working in different cadres, namely, the Junior Assistant and Lab Assistant respectively and therefore, the Petitioner is not entitled for extending for benefit of F.R. 22-B2(i)(ii) of the Tamil Nadu Fundamental Rules.

3. Brief facts of the case for disposal, are as under:

The petitioner herein was appointed as Office Assistant on



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22.09.1981 and he was promoted as Lab Assistant on 05.02.1990 and he was conferred with Selection Grade cadre in the category of Lab Assistant on 05.02.2000. Subsequently, the petitioner appointed to the post of Junior Assistant on transfer on 05.03.2004. The claim of the petitioner is that his junior was initially appointed as Office Assistant on 01.06.1982 and thereafter promoted to the post of Lab Assistant on 06.02.1990 and conferred with Special Grade for the cadre of Lab Assistant on 06.02.2000 and then, he was promoted to the post of Junior Assistant on 21.03.2007. He claimed that his junior, namely, Chidamparam was appointed to the cadre of Office Assistant initially subsequent to the petitioner and he was promoted to the post of Lab Assistant to Junior Assistant, subsequent to the Petitioner. Thus, the said Chidamparam is admittedly Junior to the petitioner in all the cadres including the cadre of Junior Assistant. However, the petitioner claimed fixation to step up the pay of the petitioner on par with his junior with effect from 01.01.2006 by placing reliance on the letter issued by the Principal Secretary to Government, Finance (PC) Department, in Letter No.63305 / Pay Cell / 2010-1, dated 08.11.2010, on as 01.01.2006. The Petitioner is working in the cadre of Junior Assistant. The respondents claimed that while the



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junior was working as Lab Assistant, pursuant to the 6th Pay Revision implemented under G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009, pay of the said Chidamparam was fixed by rectifying certain anomaly through the letter on 08.11.2010, basing on the recommendation of One Man Commission, 2010. As on that date, the junior was working as Lab Assistant and the Petitioner was working as Junior Assistant on transfer, i.e., two different cadres and not same cadre. But, insofar as the claim of the petitioner from the date of promotion of his junior to the post of Junior Assistant with effect from 21.03.2007, i.e., the date of which his junior was posted / appointed as Junior Assistant is concerned, the claim of the petitioner cannot be denied. Admittedly, the petitioner herein and the said Chidamparam were initially appointed as Office Assistant in the same cadre and promoted to the post of Lab Assistant and they were also granted Special Grade in the same cadre and they were appointed to the post of Junior Assistant on 05.03.2004 and 21.03.2007 respectively. In case, if the junior of the petitioner is drawing higher pay than the petitioner in the cadre of Junior Assistant with effect from 21.03.2007, it cannot be said that the petitioner is not entitled to step up of his pay with effect from 21.03.2007 i.e., the date on which



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junior was promoted as Junior Assistant. Both of them are working in the cadre of Junior Assistant of the same service. Therefore, the claim of the petitioner for stepping up the pay of the petitioner on par with his junior in the cadre of Junior Assistant cannot be denied.

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,



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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 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



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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.

7. Hence, this Writ Petition stands allowed and the impugned order passed by the fourth respondent in his proceedings in Na.Ka.No. 045199/L/E3/2019 dated 19.12.2019, is hereby set aside, directing the respondents to consider the case of the petitioner for stepping up his pay on par with his junior in the cadre of Junior Assistant with effect from 21.03.2007 and pass appropriate orders as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. The arrears if any payable to the petitioner, the same shall also be paid within the above time. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes
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MUMMINENI SUDHEER KUMAR, J.

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