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W.P. No.20665 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20665 of 2010

and

M.P.No.1 of 2010

R.Rajagopal

... Petitioner

Vs.

The Director of School Education,
DPI Complex, College Road,
Chennai – 6.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent relating to his proceedings dated 31.05.2010 bearing O.M.No.117912/L/ES/2009 quash the same and direct the respondent to refix salary on par with Thiru.S.Varadharahan, Teacher at Rs.7,500/- from 1.1.1997 and Rs.8,100/- from 1.1.1999.

For Petitioner : Mr.M.Sudhakar

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

ORDER

The petitioner herein, who was appointed on promotion as P.G.Assistant on 13.11.1989, made a claim for step-up of his pay on par with



his junior Mr.S.Varadharajan, who was appointed as Post Graduate Teacher on 25.09.1998. The said claim of the petitioner was negated by the respondents by passing the impugned proceedings on the ground that the petitioner and the said junior Mr.S.Varadharajan are working in different cadres namely P.G Assistant and B.T Assistant as on 01.01.1997 and therefore, the petitioner is not entitled to claim parity on par with the said junior.

2. Further, it is also the case of the respondents that the said junior was granted incentive increments in the 5th pay commission scale of pay and whereas, the petitioner was granted incentive increments for having acquired M.Sc and M.Ed while the 4th pay commission scale of pay was in force. Thus, the difference in pay of the petitioner and the said junior with effect from 01.01.1999 is because of the said reason.

3. During the course of the arguments, the learned counsel for the petitioner fairly submitted that the petitioner and the said junior have been working in different cadres prior to 01.01.1999, that is, till the date on which



the said Mr.S.Varadharajan was promoted to the post of P.G Assistant on 25.09.1998 and therefore, the petitioner is not entitled to claim parity on par with the said Mr.S.Varadharajan till 25.09.1998. Thus, it is evident that the petitioner and the said junior Mr.S.Varadharajan have been working as P.G Assistant with effect from 13.11.1989 and 25.09.1998 respectively and admittedly, the said Mr.S.Varadharajan is junior to the petitioner herein.

4. From the counter affidavit filed by the respondents, it is evident that the petitioner has been drawing lesser pay in the cadre of P.G Assistant than the said Mr.S.Varadharajan, and the reason is that the incentive increments granted to the petitioner while the 4th pay commission scales of pay were in force, whereas the said junior was granted incentive increments while the 5th pay commission scales of pay were in operation. Thus, the reason for junior drawing higher pay than the petitioner is not because of any fault on the part of the petitioner. Admittedly, the petitioner and the said junior Mr.S.Varadharajan, have been working as P.G Assistants, that is, in the same cadre and the petitioner, who is far senior to Mr.S.Varadharajan, has been drawing a lesser pay. Therefore, the petitioner is entitled to step-up of his pay.



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5. The very same issue has fallen for consideration before this Court in W.P.No.16633 of 2007, wherein this Court held as under:

“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 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



WEB COPY



W.P. No.20665 of 2010

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 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.”*

6. In the light of the above, the reason assigned in the impugned order and the counter affidavit for denying step-up of pay of the petitioner on par with his junior is only on the ground of granting incentive increment to the petitioner and the said junior while different pay commission scales of



W.P. No.20665 of 2010

pay are in vogue. The said reason has already been found to be unsustainable by this Court in W.P.No.16633 of 2007, as noted above.

7. In the light of the above, the impugned order cannot be sustained and accordingly, the same is quashed. The respondents are directed to step up the pay of the petitioner on par with his junior, Mr.S.Varadharajan with effect from 01.01.1999 and accordingly, issue appropriate proceedings to revise the pension of the petitioner and pay all the consequential benefits due and payable to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

8. Accordingly, this writ petition is partly allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

08.01.2025

dpa
Index : Yes/No
Speaking Order : Yes/No



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W.P. No.20665 of 2010

MUMMINENI SUDHEER KUMAR,J.

dpa

To:

The Director of School Education,
DPI Complex, College Road,
Chennai – 6.

W.P.No.20665 of 2010

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