

(2025) 12 MAD CK 1921
In the Madras High Court
Case No : Writ Petition No. 2430 Of 2024

S.Abdul Munab

APPELLANT

Vs

District Collector And Others

RESPONDENT

Date of Decision : 17-12-2025

Acts Referred:

Citation : (2025) 12 MAD CK 1921

Hon'ble Judges : M.Dhandapani, J

Bench : Single Bench

Advocate : K.Raja, T.M.Rajangam, J.Sreevidhya

Final Decision : Dismissed

Judgement

M.Dhandapani, J

1. Seeking refixation of pay at Rs.2050/= with effect from 01.10.1992 and for consequential sanction one annual increment and enhancement of pay and to grant all arrears of monetary benefits, including enhancement of monthly pension and to sanction all arrears on the basis of the recommendation of the 1st respondent, the present writ petition has been filed.

2. It is the case of the petitioner that upon completion of two years training as per G.O. No.164, RDD dated 30.07.1992, though he was entitled two increments, however, the same was not granted, which resulted in his agitating his rights to the same before this Court in which he came out successful and accordingly two increments were granted and his pay was fixed at Rs.1800 + 10 (PP) along with 5% personal pay vide proceeding dated 9.7.2015 and his pay was fixed at Rs.1800 + 10 + 91 PP.

3. It is the further case of the petitioner that upon his promotion as Extension Officer on 30.01.1992, as the time scale of pay in the higher post was the less than the pay drawn by him, the petitioner exercised his option to fix his pay in the higher post of Extension Officer after sanctioning one annual increment due

on 01.10.1992 in the lower post of Resident Welfare Officer Grade-I. It is the further averment of the petitioner that if the pay is fixed in that manner, the petitioner would be entitled to have his pay fixed at Rs.2050/- as on 1.10.1992 in the post of Extension Officer, which has been recommended by the 1st respondent to the 2nd respondent vide proceeding dated 7.4.2022 for the purpose of fixing the pension, which would have to be fixed at Rs.9700/- from 31.7.2004, which was made by placing reliance upon FR 22-B. However, the 2nd respondent rejected the recommendation of the 1st respondent and passed the impugned order dated 9.5.2022 and returned the file back to the 1st respondent.

4. It is the further averment of the petitioner that the impugned order has been passed without looking into the option exercised by the petitioner for having his pay fixed after sanctioning one increment in the lower post of Resident Welfare Officer Grade-I on 1.10.1992. It is the further averment of the petitioner that since two increments were given on 9.7.2015 and consequently pay was revised afterwards, the present revision could not be the subject matter of G.O. No.105 dated 9.12.2010 and, therefore, the present writ petition has been filed assailing the said rejection of fixation made by the 1st respondent.

5. Learned counsel appearing for the petitioner submitted that the 2nd respondent had not properly looked into FR 22-B while fixing the pay of the petitioner, which has been properly done by the petitioner. It is the further submission of the learned counsel that even fixing the pay of the petitioner in the manner as done by the 2nd respondent, it crossed the threshold of the fixation in the time scale and once it is beyond the particular time scale, necessarily, the next increment in the time scale ought to be given to the petitioner, which has been properly done by the 1st respondent. However, the said aspect has not been properly appreciated by the 2nd respondent leading to the erroneous rejection of the fixation.

6. It is the further submission of the learned counsel that the pay has been properly fixed by the 1st respondent, but the 2nd respondent has not properly looked into the option exercised by the petitioner to have his increment granted in the lower post and, thereafter, to have his increments fixed in the higher promoted post, which would be beneficial to the petitioner. However, without properly appreciating the aforesaid facts, the 2nd respondent has passed the impugned order, which is perverse, arbitrary and unreasonable and the same deserves to be set aside.

7. Per contra, learned Government Advocate appearing for the 1st respondent, basing his arguments on the counter affidavit submitted that the pay of the petitioner as on 1.8.1992 has been wrongly fixed due to efflux of time of nearly 30 years from 1.8.1992. It is the submission of the learned Government Advocate that from 1.8.1992, the petitioner was entitled for 5% personal pay on Basic Pay only, which was sanctioned in G.O. No.664, Finance (Pay Cell) Department dated 24.8.1992.

8. It is the submission of the learned Government Advocate that if the fixation is done as above, the petitioner having drawn the Basic Pay of Rs.1800/- would be entitled to a Personal Pay of Rs.90/- alone. However, erroneously, the Personal Pay has been calculated on the Basic Pay and Personal Pay, viz., Rs.1800 + Rs.10 (PP), which has resulted in Rs.91/- being fixed as Personal Pay to the petitioner as on 1.8.1992, which is erroneous.

9. It is the further submission of the learned Government Advocate that the erroneous fixation had a cascading effect in arriving at the last pay drawn at Rs.9700/- due to the erroneous fixation of 5% personal pay as on 1.8.1992, which otherwise would have fixed the pay of the petitioner at Rs.2,000/-, but the wrong working out of the 5% personal pay had resulted in fixing the pay at Rs.2050/-, which has since been pointed out and corrected by the 2nd respondent vide its impugned order, which does not require any interference.

10. Learned counsel appearing for the 2nd respondent submitted that the petitioner had opted to have his pay fixed in the higher post after receiving the annual increment in the lower post and, thereby, the next increment of the petitioner in the lower post fell on 1.10.1992, though the petitioner was promoted to the post of Extension Officer on 30.01.1992. The pay of the erstwhile post of Resident Welfare Officer Grade-I and Extension Officer was one and the same, viz., Rs.1,400-40-1600-50-2300-60-2600).

11. It is the further submission of the learned counsel that the case of the petitioner stands squarely settled by Rule 8 and 9 r/w FR 22-B and if such a fixation is adopted, the petitioner, as on 30.01.1992 would have drawn a pay of Rs.1800 + 10 (PP) in the lower post of RWO Gr.-I and on 1.8.1992, he would have been entitled for the benefit under G.O. No.164 dated 24.8.1992 and thus, his pay would have to be fixed at Rs.1800 + 10 (PP) + 91 (5% PP). Thereafter, on 01.10.1992, which is the date of next increment in the lower post, the petitioner would be entitled to fixation of Rs.1850 + 10 + 91 (and increment at Rs.50 in the time scale of Rs.1400-40-1600-50-2300-60-2600). Therefore, on 1.10.1992, the pay of the petitioner would be Rs.1900 + 10 + 91, which is allowing one notional increment as per Rule 9 of FR 22-B, while fixing the pay of the petitioner in the promoted post of Extension Officer.

12. It is the further submission of the learned counsel that the pay of the petitioner fixed as above would be Rs.2001/- (1900 + 10 + 91) and as there is no stage of Rs.2001/- in the scale of pay of Rs.1400-40-1600-50-2300-60-2600, the pay of the petitioner would have to be fixed to the nearest hundreds, which would be Rs.2000/- and not Rs.2050/- as had been fixed.

13. It is the further submission of the learned counsel that after arriving the pay, the 1st respondent had fixed the same at Rs.2001/- in the same methodology as aforesaid and his pay was fixed at Rs.2050/-. However, the said fixation is not in order for the reason that the term "pay shall be fixed at the stage next above the pay notionally arrived" as found in the mail FR 22-B, but which is conspicuously

absent in Rulings 8 and 9, which Rulings alone will apply to the case of the petitioner, as his case is one of promotion from Selection Grade lower post to Ordinary Grade higher post, both of which carry identical scale of pay.

14. It is the further submission of the learned counsel that for fixing the pay of an employee at the next higher stage to the notional pay arrived at by giving one increment in the lower post under FR 22-B is admissible only in two situations, viz.,

i) Where promotions to the higher post carrying higher scale of pay than the lower post; or

ii) Where the individual who was promoted from the Selection Grade Lower Post to the Higher Post carrying identical scale of pay, but opted to get his pay fixed under FR 22-B with reference to the notional pay in the ordinary grade of the lower post on the date of promotion/appointment to the higher post with 5% increase of pay with reference to such notional pay, as per first part of Ruling 8 below FR 22-B.

15. Learned counsel appearing for the 2nd respondent submitted that the petitioner's case does not fall under any of the above two categories and, therefore the action of the 1st respondent in denying the pensionary benefits to the petitioner as proposed by the 1st respondent on the fixation of pay of Rs.2050/- is perfectly justified and does not warrant any interference.

16. It is the further submission of the learned counsel that the final authority to assess and fix the pensionary benefits vests with the 2nd respondent and, therefore, a duty is cast upon the 2nd respondent to exercise the requisite checks such as determination of proper pay fixation, verification of qualifying service, adherence to GOs/circulars, etc. and on the basis of the Tamil Nadu (Pension) Rules, the 2nd respondent has very right to raise objection whenever erroneous fixation is made and correct the same and in the present case the very same procedure was adopted in fixation of pension and the pension has been rightly fixed which does not warrant any interference at the hands of this Court.

17. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

18. The crux of the issue revolves around the interpretation of FR 22-B and Rulings 8 and 9 therewith. FR 22-B, for better appreciation, is quoted hereunder:-

"FR 22-B: Notwithstanding anything contained in these rules, where a Government servant holding a post in a substantive or officiating capacity, is promoted or appointed in a substantive or officiating capacity, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment, at the stage at which such pay has

accrued. If the monetary benefit after such fixation falls short of five per cent of the pay drawn in the lower post, his pay in higher post shall be so fixed, allowing a minimum increase of five per cent of the pay drawn in the lower post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post is a stage in the time-scale of pay of the higher post, the pay shall be fixed at such stage in the time-scale of pay of the higher post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post exceeds the amount arrived at for fixation of pay in the higher post under this rule but where there is no corresponding stage in the time-scale of pay of the higher post, the pay shall be fixed at the next higher stage in the time-scale of pay of the higher post."

19. Rulings 8 and 9 under FR 22-B, which is the basis on which the fixation has been made and the same being material, are quoted hereunder :-

"Ruling 8 :-

"When the Government servant is promoted/appointed to a higher post from Selection Grade of the lower post carrying identical scale of pay as the ordinary grade of such higher post, the pay of the Government servant shall be fixed either under rule 22-B with reference to the notional pay in the ordinary grade of the lower post on the date of promotion/appointment to the higher post with 5% increase of pay with reference to such notional pay or at the stage in the ordinary grade of the higher post after adding one notional increment to the pay drawn in the Selection Grade scale of the lower post at his option. The option shall be exercised within one month from the date of promotion/appointment, and, if no option is exercised within the period the pay of the Government servant shall be fixed at the stage in the ordinary grade of the higher post equal to the pay after adding one notional increment to the pay drawn in the Selection Grade scale of the lower post.

Ruling 9 :-

The Government servants promoted/appointed to higher posts from Selection Grade or Special Grade of the lower posts carrying identical scale of pay as the ordinary grade of higher posts or from Special Temporary posts on their regular promotion to such posts on identical time scale of pay and opting fixation to draw pay at the stage in the ordinary grade of the higher post after adding one notional increment to the pay drawn in the Selection Grade/Special Grade scale of the lower post/Special Temporary post, as the case may be shall exercise further option for fixation of pay initially at the same stage in the higher post on the date of promotion/appointment to the higher post, and then re-fixation of pay after adding one notional increment to the pay drawn on the date of accrual of next increment in the Selection Grade/Special Grade of the lower post/Special Temporary post. The next increment in the higher post shall be allowed on completion of one year of qualifying service with effect from the date of

refixation of pay.”

20. A careful perusal of Ruling 9 reveals that Government servants, who are promoted/appointed to higher posts from Selection Grade or Special Grade of lower posts carrying identical scale of pay as the ordinary grade of higher 12 posts, on their regular promotion on identical time scale of pay, and who opt for fixation to draw pay at the stage in the ordinary grade of the higher post after adding one notional increment to the pay drawn in the Selection Grade/Special Grade scale of lower post, shall exercise further option for fixation of pay initially at the same stage in the higher post on the date of promotion/appointment to the higher post and then re-fixation of pay after adding one notional increment to the pay drawn on the date of accrual of next increment in the Selection Grade/Special Grade of the lower post.

21. Reading Ruling 9 has to be read harmoniously with FR 22-B, which would lead to the only interpretation which is logically and legally permissible is that the Government servant, upon exercise of option for fixing his pay from his previous post to the promotional post would be guided by Ruling 9 of FR 22-B and Ruling 9 cannot stand alone, but it has to lean on FR 22-B and the increment that is entitled for the Government servant would be fixed at the lower or higher post on the basis of the exercise of option by the Government servant along with one notional increment, which would be available to the Government servant upon the exercise of such option.

22. In the present case, the petitioner was promoted on 30.01.1992 on which date he was eligible for notional increment but the petitioner had deferred fixation of his increment in the earlier post, which is a lower selection grade/special grade post by exercising his option and on the basis the said option exercised by the petitioner, the annual increment was sanctioned to the petitioner in the lower post of RWO Grade-I on 1.10.1992, though notional increment for promotion was given earlier.

23. Once the petitioner has exercised his option to draw the increment in the lower selection grade/special grade and, thereafter, to fix his pay in the higher ordinary grade on promotion by adding one notional increment, necessarily, the petitioner is bound by the said fixation. Further, as evidenced from the fixation referred by the 2nd respondent, which has since been accepted by the 1st respondent, the pay of the petitioner as on 30.01.1992 was Rs.1800 + 10 (PP) as on 30.01.1992 in the scale of pay of Rs.1400-40-1600-50-2300-60-2600 in the post of Rural Welfare Officer Grade-I and on 1.8.1992, as per G.O. No.164 dated 24.08.1992, the petitioner was entitled for 5% PP, which resulted in the petitioner drawing the pay of Rs.1800 + 10 (PP) + 91 (5% PP). Further, as per the exercise of option by the petitioner, his next increment fell due on 01.10.1992 on which date, the petitioner was granted one increment and his pay was fixed at Rs.1850 + 10 + 91, with increment of Rs.50/- in the scale of pay of Rs.1400-40-1600-50-2300-60-2600 and, thereafter, giving the notional increment to the higher ordinary post of Extension Officer, the pay of the

petitioner was fixed at Rs.1900 + 10 + 91 as on 1.10.1992, as per FR 22-B. Therefore, the total pay drawn by the petitioner as on 1.10.1992 was Rs.2001/- and, therefore, the basic pay of the petitioner ought to have been fixed as Rs.2000/- by bringing it to the nearest tens; rather, erroneously, the initial recommendation of the 1st respondent had fixed the pay at Rs.2050, which is on the basis of wrong interpretation of FR 22-B and Ruling 9.

24. Learned counsel for the petitioner, in the course of his submissions, relied on the decision of the Division Bench of this Court in *Sankarasubbu – Vs – The Registrar General & Anr.* (CDJ 2008 MHC 141), and submitted that if the proviso is inconsistent with the main provision, the main provision has to survive. The relevant portion of the said order is quoted hereunder :-

“12. From the Fundamental Rules, it would be evident that the said Rules originally came into force with effect from 1st January, 1922 (pre-independence period), but it now having taken a shape of a statutory Rule, so far as rulings are concerned, they are mainly explanation of a particular Fundamental Rule and cannot over-ride or supersede the statutory Fundamental Rules. Therefore, if there is any conflict between any Ruling of the Government and the Fundamental Rules, the Fundamental Rules will prevail over the Ruling of the Government, being merely an explanation of the Rule.”

25. This Court is in agreement with the time-tested proposition of law, which has been stated by the Division Bench and is bound to follow the same. Therefore, what is relevant to be noted is the fact whether there is inconsistency between the Ruling and the Fundamental Rule, in which case, the Fundamental Rule will prevail. In the present case, the pay of both the lower post in the selection grade/special grade as also the higher post in the ordinary grade carries the same scale of pay and in such a backdrop, as mandated under FR 22-B, the petitioner has been provided with a notional increment and fixed in the stage in the time scale of pay of the higher post, which is not lower in pay as received by the petitioner in the lower post in the selection grade/special grade. Similar is the provision in Ruling 9 and there is no conflict between FR 22-B and Ruling 9 insofar as fixation of pay in the time scale of pay is concerned.

26. Therefore, as laid down in the aforesaid decision, only if there is conflict between the Fundamental Rules and the Rulings, the Fundamental Rules will prevail. However, in the present case, there is no conflict between the FR 22-B and Ruling 9 and what is explained in Ruling 9 is an extended version of FR 22-B. Therefore, reading FR 22-B and Ruling 9 harmoniously, the conclusion arrived at by the 2nd respondent cannot be faulted with.

27. The aforesaid fact of wrong fixation was noted by the 2nd respondent, while finalising the pay of the petitioner for the purpose of fixation of pension and other benefits and the impugned order had come to be passed referring the erroneous fixation to the 1st respondent for correction, which course of action is just and proper and does not require any interference at the hands of this Court

as it is in terms with FR 22-B and Ruling 9.

28. For the reasons aforesaid, no interference is warranted with the order impugned herein and, accordingly, this writ petition is dismissed. There shall be no order as to costs.