

In the High Court of Judicature at Madras

Dated: 31.03.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.342 of 2015 and M.P.No.1 of 2015

1. The Secretary to Government,
Public (MV) Department,
Secretariat, Chennai - 600 009
2. The Pay and Accounts Officer,
Secretariat, Chennai - 600 009 ..Appellants/ Respondents

Vs.

T.Babu
Son of Thirunavukkarasu,
Selection Grade Driver,
Public (MV) Department,
Secretariat, Chennai - 9 ..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal against the order of this Court dated 16.10.2012 made in W.P.No. 28136 of 2012.

Writ petitions filed under ARTICL 226 of the Constitution of India, praying for the issuance of a writ of mandamus directing the respondents to implement the ordinary grade and selection grade and special grade scale of pay as indicated in Schedule-II of the Tamil Nadu Revised Scales of Pay Rules 1998 at Rs.4000-5000 Rs.5000-8000 and Rs.5500-9000 respectively to the petitioner from 1.1.1996 with all consequential monetary benefits and pay all arrears within a stipulated time period.

For Appellants : Mr.N.Sakthivel
Government Advocate

For Respondent : Mr.V.Lakshminarayanan
for Mrs.T.A.C.Jenitha

JUDGMENT

[Judgment of the Court was delivered by
M.VENUGOPAL, J.]

The Appellants / Respondents have preferred the instant Writ Appeal as against the order dated 16.10.2012 in W.P.No.28136 of 2012 passed by the Writ Court.

2.The Writ Court while passing the impugned order on 16.10.2012 in W.P.No.28136 of 2012 (filed by the Respondent/Petitioner) had resultantly allowed the Writ Petition by directing the Appellants/Respondents to refix the pay of the Respondent/Petitioner in Selection Grade and Special Grade Scales of Pay adopting in the scale of Rs.5000-150-8000 and Rs.5500-175-9000 as the case may be as per G.O.Ms.No.162 dated 13.04.1998, with all consequential benefits.

3.The Learned Government Advocate for the Appellants/Respondents submits that the Respondent/Petitioner has no right to claim Higher Selection Grade/Special Grade Scales of Pay when there is sanction of Selection/Special Grade uniformly adopted to all the categories, who are placed in similar scales of pay.

4.It is represented on behalf of the Appellants/Respondents that if the Respondent/Petitioner is allowed the fixation of pay in the Higher Selection Grade/Special Grade, similarly placed individuals in the categories of employees such as Junior Assistant, Typist, Telephone Operator, etc., would also claim fixation of pay on par with Driver.

5.Advancing his arguments, the Learned Government Advocate for the Appellants takes a plea that the Writ Court had not seen that the suo motu extension of higher scale would extend an unnecessary burden on the Government exchequers. Expatiating his contention, the Learned Government Advocate for the Appellants forcefully contends that the Writ Court had not even waited for a counter affidavit to be filed by the Appellants and had passed the impugned order in the Writ Petition to revise the scale of pay of the Respondent/Petitioner.

6.It is to be noted that the Respondent/Petitioner in W.P.No.28136 of 2012 has prayed for passing of an order by this Court in directing the Appellants/Respondents to implement the Ordinary and Selection Grade scale of pay as indicated in Schedule-II in the Tamil Nadu Revised Scales of Pay Rules 1998 at Rs.4000-5000, Rs.5000-8000 respectively to him from 01.01.1996 with all consequential monetary benefits and to pay all arrears within a stipulated time period.

7.The case of the Respondent/Petitioner is that he was appointed as an Office Assistant cum Driver on 10.02.1990. Later, he was appointed as a regular Driver in Public (Motor Vehicles-I) Department on 20.07.1993. Further, as on 12.08.2003, he had completed ten years of service and from the date of his appointment, he has been rendering an unblemished service. According to the Respondent/Petitioner, the Appellants/Respondents had originally fixed a scale of pay in the Ordinary Grade at Rs.3200-85-4900 and after completion of ten years of satisfactory service in the post of Driver on 12.08.2003, he was awarded with the Scale of pay in the Selection Grade at Rs.4000-100-6000 by means of an order dated 17.08.2004. More over, he had rendered 19

years of service in the post of Driver as on date without any promotional avenue or any other service benefits.

8.It is the version of the Respondent/Petitioner that based on the recommendations of the Official Committee 1998, orders were issued in G.O.Ms.No.162, Finance (Pc) Department dated 13.04.1998, most of the Departments had extended the benefits of Selection Grade Scale of Pay at Rs.5000-8000 and Special Grade Scale of Pay at Rs.5000- 9000 to most of the Drivers working in different Government Departments and Undertakings, who have no promotional avenue and issued orders to that effect. Since he had put in more than ten years of service as on the year 2003, he is eligible for the Selection Grade. However, he was not paid with the selection grade scale of pay on the basis of G.O.Ms.No.162 Finance (Pc) Department dated 13.04.1998, though several request and representations were made to the Appellants in this regard.

9.The primordial stand taken by the Respondent /Petitioner in the Writ Affidavit is that in respect of drivers working in certain Government Departments and Undertakings, the ordinary grade of scale of pay was fixed at Rs.4000-100-6000 in which scale, the selection grade pay would be Rs.5000 - 8000 and special grade pay would be Rs.5500 - 9000. Added further, there cannot be any discrimination of two scales of selection or special grade pay between the category of drivers employed in various Departments and common categories of Government. Further more, as per the recommendations of VI th pay Commission, scale of pay of the Drivers in the ordinary grade is Rs.4000 - 6000, selection grade at Rs.5000-8000 and special grade at Rs.5500-9000. While that being so, it is the plea of the Respondent/Petitioner that conferring the same benefit to the persons, who are similarly employed and discharging similar functions in other Departments, amounts to discrimination and violation of Article 14 of the Constitution of India.

10.The categorical stand of the Respondent/Petitioner is that as per revised pay Rules, the fixation, for the Selection Grade should be done at Rs.5000-8000 and Special Grade at Rs.5500-9000. That apart most of the Departments had followed G.O.Ms.No.162, Finance(Pc) Department dated 13.04.1998 and enhanced the scale of pay selection grade drivers and special grade drivers. However, in Public (MV) Department in Secretariat, the aforesaid Government Order was not implemented to the drivers, even after repeated request and demands made by the drivers.

11.For a better and fuller appreciation of the subject matter in issue, it is worthwhile for this Court to extract Paragraph No.4 of the G.O.Ms.No.162, Finance (PC) Department dated 13.04.1998, which reads as under:-

SELECTION GRADE AND SPECIAL GRADE SCALES OF PAY:

"4. The Selection Grade and Special Grade will be the corresponding revised scales based on the existing pay scales of these grades. The appropriate revised scales of pay for Selection Grade/Special Grade are indicated in

Schedule-II to the Tamilnadu Revised Scales of Pay Rules, 1998. Provided further, Selection Grade and Special Grade scales shall be regulated as below:-

(i) For posts, having no promotional avenue, the Selection Grade and Special Grade shall be allowed as indicated in Schedule-II.

(ii) For posts having promotional posts, if the Selection Grade scale of pay indicated in the said Schedule is higher than the pay scale of promotional post, the Selection Grade scale should be limited to the pay scale of the first level promotion post. Similarly, if the Special Grade scale is higher than the pay scale of second level promotion post, the Special Grade scale shall be limited to the pay scale of second level promotion post only.

The existing procedure for movement to Selection Grade/Special Grade and fixation of pay in these grades shall continue to be adopted in future in the revised scales also".

12. At this stage, this Court very pertinently points out that when Driver in other Departments are drawing the benefits in regard to the ordinary grade scale of pay which was fixed at Rs.4000-100-6000, in which scale, the selection grade pay would be Rs.5000-8000 and special grade pay would be Rs.5500-9000, certainly there cannot be any discrimination on two scales of Selection or Special Grade Pay between the category of Drivers employed in various Departments and Common Categories of the Government.

13. In this connection, this Court relevantly points out that similarly placed drivers filed W.P.No.4288 of 2008 etc., batch cases and this Court allowed the Writ Petitions by granting them necessary reliefs. In reality, the Government projected Writ Appeal Nos.383 to 391 of 2009 and W.P.No.893 of 2009 before this Court and on 01.09.2009, the Division Bench of this Court passed a common Judgment by observing the following in Paragraph No.15, which runs as under and consequently dismissed the appeals.

"15. In that view of the matter, the authorities are bound to implement the Selection Grade and Special Grade scale of pay as indicated in Schedule-1L of the Tamilnadu. Advised Scales of Pay Rules 1998 and they cannot refuse to extend the benefit uniformly to all the drivers who have no promotional avenues. We find no illegality or infirmity in the order of the learned single Judge warranting interference of this Court....."

14. It cannot be lost sight that similarly situated drivers projected W.P.(MD) Nos.10594, 10596 and 10597 of 2010 and in the said Writ Petitions, reliefs were granted to the petitioners therein. Even the three Writ Appeals preferred by the Government before the Madurai Bench of this Court was dismissed on 14.02.2011. Later, similarly placed individuals filed W.P.No.27313 of 2010 and a similar relief was granted.

15. At this juncture, this Court aptly refers to the Division Bench Judgment of this Court in W.A.No.526 of 2013 dated 26.03.2013 between the Secretary to Government, Special Implementation Department, Secretariat, Chennai - 9 and seven others v. M.A.Abdul Samad and eight others (filed against the order dated 17.09.2012 passed in W.P.No.23193 of 2012) in Paragraph Nos.2 to 4, it is observed and held as under:-

"2. This writ appeal is preferred against the order made in W.P.No.23193 of 2012 dated 17.09.2012, wherein the learned single Judge allowed the writ petition filed by the respondents herein with the prayer seeking direction to implement the ordinary grade, selection grade and special grade as indicated in Schedule-II of the Tamil Nadu Revised Scales of Pay Rules, 1998 was granted.

3. The learned single judge, in his order followed the earlier Division Bench Judgment made in W.A.No.383 to 391 of 2009 dated 01.09.2009. One of such similar order was taken on appeal to the Hon'ble Supreme Court in SLP(C) CC.No.14715 of 2012 and the same was dismissed on 10.09.2012.

4. As the issue having been settled by the earlier Division Bench Orders, we are unable to see any reason to interfere in the order of the learned single Judge dated 17.09.2012. Consequently, the writ appeal is dismissed. No costs. Connected M.P.No.1 of 2013 is also dismissed."

16. In fact, the Petition(s) for Special Leave to Appeal (Civil)...../2013 CC14007/2013 between Secretary to Government, Special Implementation Department and Others v. M.A.Abdul Samad and others with I.A.1 (Arising out of Judgment and Order dated 26.03.2013 in W.A.No.526 of 2013 of this Court) was dismissed by the Hon'ble Supreme Court on 21.08.2013, after condoning the delay. Also it is brought to the notice of this Court that Petition(s) for Special Leave to Appeal (C) No(s). 35969 of 2009 (Arising out of Impugned Final Judgment and Order dated 01.09.2009 in W.A.No.383 of 2009 passed by this Court) was dismissed by the Hon'ble Supreme Court on 25.02.2015. Besides these, this Court in W.A.Nos.1478 and 1479 of 2013 between the Secretary to Government, Public (M.V) Department, Secretariat, Chennai - 600 009 and Another v. P.Lakshmiganthan and 30 others etc., on 17.01.2015 (Arising out of the order dated 17.09.2012 in W.P.No.22629 and 22640 of 2012) in Paragraph Nos. 3 to 5 it is observed as follows:-

.....3. It is seen from the order of the learned Single Judge that the five writ petitions were filed viz., W.P.Nos.22640, 20543, 23193, 22629 and 22631 of 2012 and a common order was passed by this Court on 17.09.2012, giving direction to extend the benefit of G.O.Ms.No.162, Finance (Pay Cell), dated 13.04.1998.

4. A Writ Appeal was filed against one writ petition viz., W.P.No.23193 of 2012 dated 17.09.2012 in W.A.No.526 of 2013 and the said Appeal was dismissed by the First Bench of this Court by order dated 26.03.2013, wherein one of us (NPVJ) was a member. A review application filed for revising the said Judgment of the Division Bench pronounced in W.A.No.526 of 2013 also came to be dismissed in the SR stage in Rev.Application Sr.No.24899 of 2014 and M.P.No.1 of 2014 in Rev.Application Sr.No.24899 of 2014 by an order dated 14.08.2014, in which one of us (NPVJ) was a member. The said order was also implemented by the Government by issuing G.O.Ms.No.257, Finance (CMPC) Department, dated 21.10.2014.

5. In view of the said decisions, the writ appeals preferred by the Government are dismissed by applying the said Judgments, the appellants are directed to implement the order of the learned Single Judge made in W.P.Nos.22629 and 22640 of 2012 dated 17.09.2012, within a period of three months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed."

17. On a careful consideration of the contentions advanced on behalf of the Appellants/Respondents and also taking note of the fact that the Hon'ble Supreme Court had dismissed the Special Leave Petitions as cited supra, this Court comes to a resultant conclusion that the view taken by the Writ Court in W.P.No.28136 of 2012 dated 16.10.2012 does not suffer from any flaw in the Eye of Law. Consequently, the Writ Appeal fails.

In the result, the Writ Appeal is dismissed, leaving the parties to bear their own cost. Resultantly, the order of the Writ Court dated 16.10.2012 in W.P.No.28136 of 2012 is confirmed by this Court for the reasons assigned in this Appeal. Consequently, Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Secretary to Government,
Public (MV) Department,
Secretariat, Chennai - 600 009

2. The Pay and Accounts Officer,
Secretariat, Chennai - 600 009

+2 cc's to M/s.T.A.C.Jenitha, Advocate,SR.18070

+1 cc to Government Pleader,SR.18345.

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W.A.No.342 of 2015 and
M.P.No.1 of 2015



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