IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2015

DATE OF DECISION : 13.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

W.A.Nos.2, 20, 21, 23, 26, 29, 34, 55, 129,
173 and 1757 of 2014,
1734, 1985, 2177, 2184, 2185, 2214, 2215, 2267,
2311 and 2339 of 2013 and 11 and 30 of 2015
and
Connected miscellaneous petitions

1.The Secretary to Government,
Finance (OP-I) Department,
Fort St. George, Chennai-9.

2.The Principal Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St. George,
Chennai-9. .. Appellants in
WA.Nos.2, 129, 173, 1757 of 2014,
2215, 2339 of 2013, 11 and 30 of 2015/
Respondents in WP's

1.The Secretary to Government,
Finance (OP-I) Department,
Fort St. George, Chennai-9.

2.The Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St. George,
Chennai-9. .. Appellants in
WA.Nos.20, 21, 23, 26, 29, 34, 55 of 2014,
1734, 1985, 2177, 2184, 2185, 2214, 2267 of 2013/
Respondents in WP's

1.The Secretary to Government,
State of Tamilnadu
Secretariat
Finance Department,
Fort St. George, Chennai-9.

2.The Chief Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St. George,
Chennai-9.

3.The Joint Secretary to Government,
Finance[OPI] Department,
Secretariat, Chennai. ...Appellants in WA.2311 of 2013/
Respondents in WP.

Vs.

A.Velusamy	...Respondent in WA.NO.2 of 2014
G.Nirmala	...Respondent in WA.NO.20 of 2014
G.Lakshminath S/o.Late Venkatakrishniah	...Respondent in WA.NO.21 of 2014
M.Gunalan	...Respondent in WA.NO.23 of 2014
C.Bhackia Lekshmi	...Respondent in WA.NO.26 of 2014
R.Tamilmoney	...Respondent in WA.NO.29 of 2014
G.Tamilselvi	...Respondent in WA.NO.34 of 2014
K.Gomathi	...Respondent in WA.NO.55 of 2014
V.Santhanalakshmi	...Respondent in WA.NO.129 of 2014
G.Narendrakumar	...Respondent in WA.NO.173 of 2014
P.Usha Rani	...Respondent in WA.NO.1757 of 2014
J.Vilasiny	...Respondent in WA.NO.1734 of 2013
S.Meena	...Respondent in WA.NO.1985 of 2013
S.Ramaiyan	...Respondent in WA.NO.2177 of 2013
R.Ramamurthy	...Respondent in WA.NO.2184 of 2013
R.Rajadurai	...Respondent in WA.NO.2185 of 2013
T.Sreemathi	...Respondent in WA.NO.2214 of 2013
P.Nalini	...Respondent in WA.NO.2215 of 2013
P.Dhansekaran	...Respondent in WA.NO.2267 of 2013
P.Lilly Joy wife of Mathias	...Respondent in WA.NO.2311 of 2013
S.Mangayarkarasi W/o.K.Selvamani	...Respondent in WA.NO.2339 of 2013
I.Michael Mary	...Respondent in WA.NO.11 of 2015
G.Sumathi	...Respondent in WA.NO.30 of 2015

This Writ Appeal is preferred under Clause 15 of Letters Patent against the order dated 31.8.2012 passed in W.P.6792 of 2009, 6569/09, 6062, 12462, 6568, 6567, 6275, 6794, 22783, 6404, 7573, 6400, 22533, 6562, 6566, 6561, 7574, of 2009 24338/10, 21556, 6063, 7572, 6402 of 2009 and dated 5.9.2012 in W.P.24494 of 2010

1).Writs petitions filed Under Article 226 of the constitution of India praying for a [or] Writ of Mandamus directing the 1st respondent to implement the G.O.Ms.No.170, Finance[OPI] Department dated 16.05.2007 in proper manner and refix the pay of the petitioner on par with the petitioners junior with effect from 29.05.1998 and sanction the arrears of pay and allowance to the petitioner and grant all consequential monetary benefits with interest within a reasonable time frame. [WP.6792/09, 12462/09, 6568/09, 6275, 6794, 6404, 7573, 7574, 6063, 7572 of 2009]

2).Writ of declaration declaring that the Government Order issued by the 2nd respondent in G.O.(Ms).No.112, personnel & Administrative Reform(U-Special) Department dated 13.07.2012 is rull and void insofar as denying the arrears of salary with effect from 29.05.1998 consequent upon the stepping up of pay of seniors on par with their Juniors is concerned and further direct the 1st respondent to implement the G.O.Ms.No.170, Finance[OPI] Department dated 16.05.2007 in proper manner and refix the pay of the petitioner on par with the petitioners junior with effect from 29.05.1998 and sanction the arrears of pay and allowances to the petitioner and grant all consequential monetary benefits with interest within a reasonable time.[WP.6569/09, 6062, 6567, 6400, 6562, 6566, 6561, 6402 of 2009]

3).Writ of Mandamus directing the 1st respondent to implement the G.O.Ms.No.170, Finance[OPI] Department dated 16.05.2007 in proper manner and refix the pay of the petitioner on par with the petitioners junior with effect from 29.05.1998 and revise the pensionary benefits and sanction the arrears of pay and allowances to the petitioner and grant all consequential monetary benefits with interest within a reasonable time frame. [WP.24494/2010, 22783/09, 22533 of 2009, 24338/2010]

4).Writ of certiorarified Mandamus calling for the records relating to the impugned order of the 3rd respondent dated 26.03.2009 in Letter No.74003/OPI/2009 and quash the same and consequently, direct the respondents to apply G.O.Ms.No.170, Finance[OPI] Department dated 16.05.2007 to the petitioner and implement the same in proper manner and fix the pay of the petitioner by stepping up pay and upgradation.[WP.21556/2009]

For Appellants : Mr.P.H.Arvind Pandian,

Additional Advocate General
Assisted by Mr.N.sakthivel, GA and
Mr.C.V.Shylendra Babu,GA
in all W.As.

For Respondents : Mr.K.Venkataramani, SC
for Mr.M.Muthappan
in W.A.Nos.2, 20, 21, 26, 34 of 2014
1985, 2177, 2184, 2267, 2339 of 2013,
11 and 30 of 2015
No appearance in
W.A.Nos.23, 29, 55, 129, 173,
1757 of 2014,
1734, 2185, 2214, 2215 and 2311 of 2013

COMMON JUDGMENT

SATISH K. AGNIHOTRI, J.

This batch of appeals, arising from the orders dated 31st August, 2012 and 5th September, 2012 passed separately by the learned Single Judge, involving common dispute and also common question of law, are being taken up together and disposed of by this common order. The respondents in W.A.Nos.23, 29, 55, 129, 173 and 1757 of 2014, 1734, 2185, 2214, 2215 and 2311 of 2013 herein have not chosen to appear even after service of notice.

2 The writ petitioners, who are respondents herein, were appointed through common selection process on the post of Assistants, Assistant Section Officer, Typists / Personal Clerks, on the basis of allotment made by the Tamil Nadu Public Service Commission. However, vide G.O.Ms.No.1290, Public (Services) Department dated 5th June, 1970, the Finance and Law Departments were excluded and the remainder service was termed as One Unit. But, no statutory amendment could be effected to the Special Rules for the Tamil Nadu Secretariat Service till 1994. For want of amendment in the statutory rules, the entry level post in the cadre of Assistant, Assistant Section Officer, Typist/Personal Clerks continued to be filled up from the common source. The allotments were made to different departments, according to the writ petitioners, without there being consent or choice. The employees, who were allotted to Finance Department, had better service avenues for promotion and they were granted promotions and were given financial benefits of higher pay prior to other employees, who were senior at the entry level.

3 The said mechanism created an anomaly. On the basis of representations made by the employees associations, the State/appellant issued G.O.Ms.No.126, Personnel and Administrative Reforms (U.Spl) Department dated 29th May, 1998, whereunder the State Appellant provided for stepping up of pay of

seniors in one unit, who were recruited to the services on or before 28th January, 1994 on par with the juniors in the Finance unit by upgrading the posts held by them to the scale of pay applicable to the juniors with immediate effect. It was also stipulated that stepping up of pay by upgrading the post was purely person oriented upgradation and no new posts would be created for the said purpose. The upgradation sanctioned was directed to be lapsed in the event of retirement of the individuals concerned. In respect of typists / Personal clerks / Personal Assistants in one unit, who have not relinquished their right for promotion as Assistant Section Officer and were still awaiting their turn for promotion as Assistant Section Officer, they were upgraded to Assistant Section Officer's scale on par with their immediate junior in the Finance unit, who got his promotion as Assistant Section Officer earlier.

4 However, the upgradation was subject to certain conditions as under :

"(1)The upgradation ordered will involve only stepping up of pay of the senior on par with his junior in the upgraded scale of pay.

(2)It does not entitle him to any claim for arrears of pay.

(3)On upgradation, the senior will not vacate his post and will continue to perform the duties attached to the existing post till he gets his normal promotion in his turn to the next higher category.

(4)The seniors in one unit are eligible to the attendant benefits attahced to the upgraded scale of pay that may be given to them only in the event of their normal promotion to a post carrying such scale and they are not eligible for the same on their upgradation to these posts;

(5)The solution ordered in this Government Order, is a one time affair, and any subsequent movement upward or downward, either in the Finance Unit or in the One Unit after the date of issue of this order, will not come under the purview of the upgradation / stepping-up of the pay now ordered.

(6)In respect of persons falling under the following categories, the question of upgradation will be considered separately on a case-to-case basis.

(i)Suffered punishment at any stage;

(ii)Overlooked for promotion at any stage;

(iii) Who are currently undergoing punishment;

(iv) Against whom charges under rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules or enquiry by Tribunal for Disciplinary Proceedings are pending or charge sheet filed before any criminal court;

(v) Who are currently on or had at any earlier occasion gone on leave on loss of pay without Medical Certificate which will not count for increment.

(vi) Who are not on "other duty" outside the regular line and whose service rights have not been terminated"

5 The said order became effective from the date of issue of order, i.e., 29th May, 1998. This upgradation created again an imbalance and an anomaly among the employees, who were promoted as Assistant Section Officers from the post of Assistants and the others, who were promoted from the post of Typists/ Personal Clerks / Personal Assistants in the combined seniority list. Thus, a committee was constituted under the Chairmanship of the Chief Secretary, comprising the Finance Secretary and Secretary to Personnel and Administrative Reforms Department. The Committee made recommendation to sort out the differences.

6 The State Appellant again came up with one Government Order in G.O.Ms.No.171, P&AR Department dated 28th September 2006, whereunder accepting the recommendations, the Assistant Section Officers promoted from the post of Assistant (formerly Junior Assistants), who were seniors to the Assistant Section Officers promoted from the post of Typist / Personal Clerk, in the combined seniority list of Assistant Section Officers, were given the pay parity and upgradation on par with their juniors, by applying the same yardstick as per G.O.Ms.No.126, P&AR Department dated 29th May, 1998 and also it was directed to give the benefits from the said date as granted to others. An identical G.O was issued by the Finance Department on 16th May, 2007, which is the subject matter of consideration in this batch of appeals, whereunder a list of Assistant promotee Assistant Section Officers, who have been recruited to the Secretariat Service on or before 28th January, 1994 and who were in service as on 29th May, 1998, was prepared, sanctioning compliance of the orders issued in G.O.Ms.No.171, P&AR Department dated 28th September, 2006.

7 G.O.Ms.No.171, P&AR Department, dated 28th September, 2006 came up for consideration in W.P.No.865 of 2009. During the pendency of the said writ petition, the State came up with another Government Order, being G.O.Ms.No.112, P&AR Department dated 13th July, 2012, wherein and whereunder, it was held as under:

"6.The Government after careful consideration direct that the post / pay of seniors in One unit, who have been recruited and appointed as Typist / Personal Clerks to the Tamil Nadu Secretariat Service before 28.01.1994 and promoted as Assistant Section Officers from the combined seniority list of Assistant Section Officers panel and who are in service on the date of issue of this order be upgraded / stepped up on par with their junior in one unit and the beneficiary of the Government Order fourth read above subject to the terms and conditions prescribed in the Government Order fourth read above. Similarly, the post / pay of the seniors in Finance Unit as on the date of issue of orders be upgraded / stepped up on par with their junior in Finance Unit and the beneficiary of the Government Order third and fifth read above.

7.The Government also direct that :-

(i)the upgradation / stepping up of pay on par with their juniors in the Unit concerned and the beneficiary of the Government Order from third to fifth read above is purely person-oriented upgradation and no new posts shall be created for this purpose;

(ii)the upgradation sanctioned for the seniors will lapse in the event of retirement of the individuals concerned or their promotion to the higher post in their normal turn and other contingencies such as voluntary retirement, resignation, death, etc.,

(iii)The upgradation ordered above is subject to the following terms and conditions prescribed in the Government Order first read above:-

1.the upgradation ordered will involve only stepping up of pay of the senior on par with his/her junior in the upgraded scale of pay

2.it does not entitle him to any claim of arrears of pay;

3.on upgrdation, the senior shall not vacate his post and shall continue to perform the duties attached to the existing post till he/she gets his normal promotion in his/her turn to the next higher post;

4.the attendant benefits attached to the upgraded posts will be given to them <u>only in the event of their normal promotion to a post carrying</u> such scale and they are not eligible for the same on their upgrdation to these posts;

8.In respect of persons falling under the following categories, the upgradation of their post and stepping of pay will be considered separately on a case-to case basis:-

(i)those who suffered punishment at any stage;

(ii)those who have been overlooked for promotion at any stage;

(iii)those who are currently undergoing punishment;

(iv)those against whom charges under rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules or enquiry by Tribunal for Disciplinary Proceedings are pending or charge sheet filed in any criminal case;

(v)those who are currently on or had at any earlier occasion gone on <u>leave on loss of pay without Medical Certificate</u> which will not count for increment;

(vi)Those who are now on "other duty" outside the regular line and whose service rights have not been terminated;

9.In order to differentiate and identify the ordinary posts from these upgraded posts which are purely person-oriented and to draw the pay of the seniors in the upgraded scales, they shall be re-designated with the suffix as follows:-

Sl.No.	Post	Scale of Pay (Rs.)
1.	Joint Secretary to Government (U.G./Additional Secretary)	37400-67000+ G.P.9500
2	Deputy Secretary to Government (U.G./Joint Secretary)	37400-67000+ G.P.8800
3.	Under Secretary to Government (U.G./Joint Secretary)	37400-67000+ G.P.8800
4.	Under Secretary to Government (U.G./Deputy Secretary)	15600-39100-G.P.7600
5.	Section Officer (U.G./Deputy Secretary)	15600-39100+ G.P.7600
6.	Section Officer (U.G./Under Secretary)	15600-39100+G.P.6600
7.	Assistant Section Officer (U.G./Section Officer)	15600-39100+ G.P.5400

10.In order to enable the departments of Secretariat to identify the immediate juniors in One Unit and the pay drawn by them as on the date of issue of order, the details of t he seniors and their juniors in One Unit along with details of pay drawn by them are being compiled and will be communicated to the departments of Secretariat separately for taking further action. In respect of officers in the cadre of Deputy Secretaries and above, the orders of stepping up of t he pay of the seniors and the juniors in One Unit shall be issued by the Public (Special A) department separately.

11.The One Unit departments shall furnish the details regarding the pay drawn by the juniors in various categories of posts as on date and the due dates of their next increment to upgrade the post / stepping up of the pay of the seniors concerned as ordered in para 6 above.

12.The Finance department shall also identify the names of the seniors and juniors for upgradation/stepping up of pay of seniors on par with their juniors, in Finance Unit in consultation with Personnel and Administrative Reforms (U-Spl.) department and issue suitable orders for upgrading the post/pay of the seniors concerned in Finance Unit.

13.Necessary additional funds towards upgradation and stepping up of pay ordered above will be provided in the Revised Estimate /Final Modified Appropriation 2012-2013 under the respective service head of accounts of the Departments of Secretariat. Pending provision of such funds, Section Officer (Bills) of departments of Secretariat concerned are authorized to draw and disburse the amount.

14.The above orders shall take effect from the date of issue of this order.

15.This order issues with the concurrence of the Finance department vide its U.O.No.492/FS/P/2012, dated 10.07.2012."

8 The learned Single Judge, considering the subsequent G.O., dated 13th July, 2012 directed the State respondent to issue a fresh order after deleting some portions of the G.O.Ms.No.112, P&AR Department, dated 13th July, 2012, granting refixation of pay of the petitioner on par with his juniors with effect from 29th May, 1998 with all consequential benefits. Feeling aggrieved, the State preferred an appeal, being W.A.No.914 of 2013. A Division Bench of this court, having examined the issue at length, allowed

the appeal and held as under :

> "16.The Hon'ble Supreme Court of India in the above cited decision also makes it clear that benefits could be given only to a person who fulfills the conditions and the petitioner did not fulfill the conditions enumerated in G.O.Ms.No.112 dated 13.07.2012. G.O.Ms.No.112 dated 13.07.2012 came into being after filing of the writ petition and though the said Government Order was not put to challenge, the learned Judge has moulded the relief and directed the second respondent to issue fresh order after deleting paras 6 to 7 of the said Government Order. In the considered opinion of this Court, such direction is unsustainable on facts as well as in law for the reason that admittedly the petitioner was not in service at the time of issuance of the said Government Order and therefore, he is not entitled to derive any benefits out of the same. The said Government Order also makes it clear that the benefits is to be made available only to the existing employees.
>
> 17.Hence, for the reasons assigned above, the impugned order passed in the writ petition is liable to be set aside.
>
> 18.In the result, the Writ Appeal is allowed and the order dated 31.08.2012 made in W.P.No.865 of 2009 is set aside. Consequently, the writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."

The identical issue is under consideration in this batch of appeals.

9 The writ petitioners have mainly sought for implementation of G.O.Ms.No.170, dated 16th May, 2007 and to refix their pay on par with their juniors, with arrears of pay and allowances and further all consequential monetary benefits with interest. The instant writ petitions were filed in the year 2009 and 2010. During the pendency of the said writ petitions, G.O.Ms.No.112, P&AR Department, dated 13th July, 2012 came to be notified by the State appellant. Therefore, some of the writ petitioners in W.P.Nos.6569, 6062, 6567, 6400, 6562, 6566, 6561 and 6402 of 2009 have sought amendment to the effect of declaring G.O.Ms.No.112, P&AR Department, dated 13th July 2012 as null and void. The writ petitioner in W.P.No.21556 of 2009 has sought to quash the order dated 26th March, 2009 passed by the Joint Secretary to Government, Finance Department and to implement G.O.Ms.No.170, Finance Department, dated 16th May, 2007.

10 The learned Single Judge directed the State appellant

to delete certain paragraphs of G.O.Ms.No.112, P&AR Department dated 13th July, 2012 and further directed to refix the petitioners' pay on par with their juniors with effect from 29th May, 1998, which was also the subject matter before a Co-ordinate Division Bench of this court and the same was set aside, as aforestated.

11 The question that arises for consideration before us is whether the petitioners in this batch of writ petitions, which were filed in 2009 and 2010, are entitled to refixtion of pay and the consequential benefits with effect from 29th May, 1998.

12 The writ petitioners did not seek implementation of the G.O.Ms.No.170, Finance Department dated 16th May, 2007 till filing of the instant petitions. According to the petitioners, anomaly continued and several representations were made, which ended in no response. After a period of about two years, the instant petitions came to be filed, seeking for implementation of G.O.Ms.No.170, Finance Department dated 16th May, 2007. As aforestated, in the meantime, the G.O.Ms.No.112, P&AR Department dated 13th July, 2012 was issued, which was also sought to be quashed on the issue of effective date. In effect, the petitioners have acquiesced the position and now, the petitioners are seeking to claim benefits, as aforestated, with effect from 29th May, 1998.

13 G.O.Ms.No.126, P&AR Department, dated 29th May, 1998 came up for consideration in *State of Tamil Nadu Vs. Seshachalam*[1] before the Supreme Court. It is beneficial to refer to certain observations made by the Supreme Court in respect of applicability of the said G.O and also the consequential benefits to the persons as on that date, as under :

> "**15.** It is one thing to say that the State had come up with a policy decision which is beneficial to all the employees irrespective of the fact as to whether they had reached the age of superannuation or not, the only criterion being that they were recruited to the Tamil Nadu Secretariat Service on or before 28-1-1994 but it is another thing to say that the claim petitions filed by the respondents were based on the success of their colleagues before the Administrative Tribunal in the year 1994. The employees working in the Finance Department had been promoted long back. We have noticed hereinbefore that some of them retired as Additional Secretaries whereas the respondents retired as merely

1 (2007) 10 SCC 137

Assistants. Presumably, promotions to the employees of the Finance Department were given systematically over a long period of time but no such grievance was made nor was any application filed before the appropriate forum. Such grievance, in our opinion, should have been raised or proper application before the Tribunal should have been filed long long back. It was in the aforementioned situation, the Tribunal was of the opinion that their applications were barred by limitation. Assuming that the cause of action for filing such applications arose in view of the observations made by the Tribunal in its order dated 16-4-1993 passed in Original Application No. 166 of 1990, but then in terms of the Act and the Rules, the respondents were required to file a proper application within a period of one year only. It is borne out from the records that, in fact, 62 such applications were already pending when GOMs No. 126 was issued.

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21. Interpretation of GOMs No. 126 would, no doubt, depend upon the backdrop of the events in which it was made but it is trite that the intention of the maker of the policy must be drawn from the language used therein. For the said purpose, the entire document should be read in its entirety. Original Application No. 166 of 1990 was filed by two serving employees. The State could in obedience to the Tribunal's order create two supplementary posts and promote them thereto so as to treat them on a par with their juniors working in the Finance Department. The notification envisages a personal pay by way of stepping up of pay. It was given the prospective effect. No arrear of pay was to be paid. The upgradation sanctioned was to lapse in the event of retirement of the individuals or their promotion to the upgraded post. The said upgradation was to be subject to the terms and conditions contained in Clause 12 of the said order, a reading whereof would clearly, in our opinion, lead to only one conclusion that it was meant to be applied to the existing employees. By reason thereof, on upgradation, the seniors were required to continue to perform the duties attached to the existing post till they get their normal promotion to the next higher category. Upgradation of their posts was further dependant on the fact as to whether they had been promoted in their normal course only. It was meant to be a one-time affair. In respect of some categories of employees, the question of upgradation was deferred as specified in Para 12(6).

22. It would, in our opinion, therefore, be incorrect to construe that the notification applied to all who had been recruited to the Tamil Nadu Secretariat Service on or before 28-1-1994. Additional benefits have been accorded by reason of the said notification. A person who fulfils the conditions, thus, would be entitled to the benefits provided for therein. Those who had not fulfilled the same could not claim any benefit thereunder. For the said purpose, the Court, in our view, should not give a strained or extended meaning thereto. While construing such a notification, the financial impact thereof is also required to be taken into consideration. (See *State of A.P.* v. *A.P. Pensioners' Assn.*[13] and *Union of India* v. *Manik Lal Banerjee*[14].) "

14 Shri K.Venkataramani, learned Senior Counsel appearing for the writ petitioners would submit that anomaly continued as pay fixation was fixed on the basis of feeder category. The persons, who were promoted from Assistants directly to the post of Assistant Section Officers, were better placed than, who were promoted from the post of Typist/Personal Clerks/Personal Assistants. Thus, the pay scale be refixed with effect from 29th May, 1998 and the consequential benefits be granted with arrears to the petitioners.

15 The learned Senior Counsel would further urge that fixation of date in G.O.Ms.No.112, P&AR Department dated 13th July, 2012 is discriminatory. Similarly situated persons were given benefits with effect from 29th May, 1998 under G.O.Ms.No.126, P&AR Department dated 29th May, 1998. The writ petitioners could not agitate the issue immediately as they were making representations to the authorities. The anomaly still continues at different stages. Thus, a direction be issued to refix the seniority of all writ petitioners with consequential benefits with effect from 29th May, 1998.

16 On the other hand, Shri P.H.Arvind Pandian, learned Additional Advocate General, appearing for the appellant State would contend that G.O.Ms.No.126, P&AR Department dated 29th May, 1998 contemplates one time stepping up, which has been upheld by the Supreme Court in *State of Tamil Nadu Vs. Seshachalam* (supra). The subsequent dissimilarities were on account of promotion from different feeder cadres. Even qualification for the entry level post of Typist / Personal Clerks/ Personal Assistants to the

Secretariat service is S.S.L.C. Pass and Higher Grade Typewriting certificate, when for the post of Assistant, the qualification was graduation. Both posts are feeder cadres for promotion to the post of Assistant Section Officer on the ration of 4:1. The petitioners have never questioned the criteria for promotion and as such, their pay scale was rightly not fixed on the basis of seniority list in the Assistant Section Officer post.

17 It is further contended that an identical issue came up for consideration in W.A.No.914 of 2013, wherein, the Division Bench, allowing the writ appeal filed by the State held that the benefits could be given only to a person who fulfills the conditions under the said G.O.Ms.No.112, P&AR Department dated 13th July, 2012 and were in service at the time of issuance of the notification.

18 It is further contended that fixing of cut off date is a policy decision. The same cannot be altered unless employees establish that the cut off date fixed was arbitrary, discriminatory and malafide. He refers and relies on a decision of the Supreme Court in *V.T.Khanzode and others Vs. Reserve Bank of India and another*[2].

19 Heard the learned counsels appearing for the parties, perused the pleadings and documents appended thereto.

20 In the case on hand before us, the writ petitioners / respondents herein have, as aforestated, filed writ petitions subsequently claiming relief with retrospective effect. During the pendency of the writ petitions, the State appellant had come up with a policy to implement the same with effect from 13th July, 2012. The petitioners have not produced any material to establish that the cut-off date fixed by the State was discriminatory and arbitrary and as such, the court should refrain from interfering with the policy decision.

21 In the case on hand, the laches and delay are the important factors in exercise of discretionary relief under Article 226 of the Constitution of India. A person is required to be vigilant of his right and if he acquiesces with the situation, he cannot claim parity on the same ground after a long laches and delay. In the case on hand, the writ petitioners are claiming refixation of salary with effect from 29th May,1998 with consequential benefits and arrears. The instant petitions were filed in the year 2009-2010. Thus, they are not entitled to same relief with retrospective effect. [See : *Govt. of W.B. Vs. Tarun K. Roy*[3]; *U.P. Jal Nigam Vs. Jaswant Singh*[4]; and *New Delhi*

2 (1982) 2 SCC 7
3 (2004) 1 SCC 347
4 (2006) 11 SCC 464

Municipal Council Vs. Pan Singh[5]].

22 Even otherwise, the effective date for enforcement of G.O.Ms.No.112 dated 13th July, 2012 was under consideration in W.A.No.914 of 2013, which was upheld. The learned Senior counsel appearing for the writ petitioners/ respondents herein has not produced any material to take a contrary view as the writ petitioner therein as well as the writ petitioners herein are similarly situated. Only those persons, who satisfy the conditions enumerated in G.O.Ms.No.112, P&AR Department dated 13th July, 2012 and who has not superannuated on the date of issuance of the said G.O., are entitled to benefits.

23 Resultantly, all the writ appeals are allowed, setting aside the impugned orders dated 31st August, 2012 and 5th September, 2012 passed by the learned Single Judge separately. Consequently, those writ petitions are dismissed. No costs. The connected miscellaneous petitions are closed.

vvk

Sd/-
Assistant Registrar[CS IV]

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Finance (OP-I) Department,
Fort St. George, Chennai-9.

2.The Principal Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St. George,
Chennai-9.

3.The Secretary to Government,
Personnel & Administrative Reforms Department,
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4.The Chief Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St. George,
Chennai-9.

5.The Joint Secretary to Government,
Finance[OPI] Department,
Secretariat, Chennai.

5 (2007) 9 SCC 278

+ 23cc to M/s.M.Muthappan, Advocate Sr 56540 (22/1/16)

judgment in
W.A.Nos.2, 20, 21, 23, 26, 29,
34, 55, 129, 173 and
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RSI (CO)
kk 18/1