

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.03.2016

DATE OF DECISION: 18.03.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.971 of 2014
and
M.P.Nos.1 and 2 of 2014

1. The Secretary to Government,
represented to State of Tamil Nadu,
Personnel and Administrative Reforms
(U-Special) Department,
Secretariat, Chennai-600 009.
 2. The Secretary to Government,
representing to State of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat, Chennai-600 009.
 3. The Secretary to Government,
representing to State of Tamil Nadu,
Finance Department,
Secretariat, Chennai-600 009. ... Appellants
- Vs.
- S.Saraswathy ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
challenging the order dated 08.04.2014 passed in W.P. No.25556
of 2013.

W.P. No.25556 of 2013 : Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorarified
Mandamus, calling for the records relating to the orders passed
by the 1st respondent in G.O.Ms. No. 112 P & AR (U-Special)
Department dated 13.7.2012 and quash the same in so far as the
direction issued for up-gradation/stepping up of pay on par with
juniors in One Unit as stated in para 6 of the Order as well as
para 14 of the order fixing the cut off dated for payment of

benefits are concerned and consequently direct the respondents 1 and 3 to pass orders for the post/pay parity of seniors in One Unit recruited and appointed as Typist/Personal Clerk to the Tamilnadu Secretariat Services before 28.1.1994 and promoted as Assistant Section Officer from the combined seniority list of Assistant Section Officer Panel on par with their Juniors in Finance Department by way of amending para 6 of G.O.Ms.No.112 Personal and Administrative Reforms (U.Special) Department, dated 13.07.2012, with payment of arrears of salary from 30.10.2009 within a stipulated time.

For Appellants : Mrs.A.Srijayanthi,
Special Government Pleader

For Respondent : Mr.Vijay Narayan, Senior Counsel
for Mr.G.Sankaran

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant intra-court appeal is filed by the respondents in the writ petition/State against the order dated 8th April, 2014 passed by the learned Single Judge in W.P.No.25556 of 2013.

2. The writ petition was preferred by the respondent herein, seeking to quash the G.O.Ms.No.112, Personnel and Administrative Reforms Department dated 13th July, 2012 passed by the first appellant herein, whereunder a direction was issued for upgradation / stepping up of pay on par with juniors in one unit as stated in para 6 of the order as well as para 14 of the order fixing cut off date for payment of benefits. A consequential direction was also sought to the appellants 1 and 3 herein to pass orders for the post / pay parity of seniors in one unit recruited and appointed as Typist / Personal Clerk to the Tamil Nadu Secretariat Services before 28th January, 1994 and promoted as Assistant Section Officer from the combined seniority list of Assistant Section Officer panel on par with their juniors in Finance Department by way of amending para 6 of G.O.Ms.No.112 with arrears of salary from 30th October, 2009.

3. The respondent herein / writ petitioner was appointed as Typist in Tamil Nadu Ministerial Service on 1st September, 1977. Subsequently, she got promotions and presently holding the post of Under Secretary from 9th January, 2013. Originally, all departments in the Secretariat service, including the Law and Finance Department, constituted one unit. Thereafter, Law and Finance departments were separated from the said one unit system. The appointment to the entry level post of Junior

Assistant (now Assistant), Assistant (now Assistant Section Officer), Typist / Personal Clerks were made from the common list of candidates selected by the Tamil Nadu Public Service Commission till 1995. By G.O.Ms.No.30, Personnel and Administrative Reforms Department dated 28th January, 1994, the Government amended the special rules for Tamil Nadu Secretariat Service, notifying that the Finance and Law Departments are separate units from the level of Section Officer. With regard to promotion and other service conditions, the Finance Department is treated as separate unit and that the Assistants, Assistant Section Officers, Typist / Personal clerk allotted in the Finance Department were able to get promotion to the higher post early.

4. Thereafter, the Government issued G.O.Ms.No.338, P&AR Department dated 8th November, 1995, whereunder promotions were given to some persons, who have earlier filed original application in O.A.No.166 of 1990 before the Administrative Tribunal, which was ordered on 16th April, 1993, directing parity with juniors originally appointed through common source of selection. Subsequently, the Government issued another G.O.Ms.No.126, P&AR Department, dated 29th May, 1998, directing upgradation / stepping up of pay for the seniors in one unit recruited to Tamil Nadu Secretariat service on or before 28th January, 1994 on par with the junior in the Finance Department with effect from the date of the issuance of the G.O. Thereafter, in view of the pay anomaly, another G.O.Ms.No.171, P&AR Department, dated 28th September, 2006 was issued giving pay parity and upgradation on par with their juniors with effect from 29th May, 1998.

5. Again, some juniors working in the Finance department appointed prior to 28th January, 1994 got promoted to higher post with higher scale of pay overtaking their seniors in one unit. It appears that the anomaly between employees persisted and as such, one more G.O.Ms.No.154, dated 30th October, 2009 was issued in the following terms :

"5.The Government after careful consideration direct that the post / pay of seniors in One Unit, who have been recruited to the Tamil Nadu Secretariat Service before 28.01.1994 and promoted as Assistant Section Officers from the category of Assistant (formerly Junior Assistant) only and who are in service on the date of issue of this order shall be upgraded / stepped up on par with their juniors in Finance Unit with effect from the date of issue of this orders as "another one time affair", subject to the terms and conditions prescribed in the

Government Order first read above. Similarly, the post/pay of the seniors in Finance Unit as on the date of order shall be upgraded / stepped up on par with their juniors in One Unit. The issue of rectification of pay anomaly in respect of Typist / Personal Clerk promotees shall be taken up separately."

It was also observed that upgradation/ stepping up of pay was purely a person oriented upgradation and no new post shall be created for this purpose.

6. Subsequently, one more G.O.Ms.No.112, dated 13th July, 2012 was issued in the following terms :

"6.The Government after careful consideration direct that the post / pay of seniors in One Unit, who have been recruited and appointed as Typists/ 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. In the said G.O., upgradation / stepping up of pay was granted in one unit only, not at par with the juniors in the Finance unit, as granted earlier. The petitioner, feeling aggrieved, filed the writ petition, questioning the rationality and legality of the G.O.Ms.No.112, dated 13th July, 2012 and seeking upgradation / stepping up of pay of Typists / Personal Clerks appointed to the Tamil Nadu Secretariat service before 28th January, 1994 and promoted as Assistant Section Officers from the combined seniority list of Assistant Section Officers panel on par with the juniors in the Finance Department.

8. The learned Single Judge, considering the issue at length, rejected the contentions of the appellants herein / State and quashed para 6 of G.O.Ms.No.112 dated 30th July, 2012 with further direction to give the benefit as available under G.O.Ms.No.154, dated 30th October, 2009 to the respondent herein / writ petitioner. Being dissatisfied, the State Appellants have come up with the instant appeal.

9. Mrs.A.Srijayanthi, learned Special Government Pleader, appearing for the appellants would contend that G.O.Ms.No.154, dated 30th October, 2009 has specified benefit of upgradation / stepping up of pay in respect of those Assistant Section Officers, who were from the category of Assistant (formerly Junior Assistant) and who were in service on the date of issuance of the Order, but the benefit was not given to employees, who were promoted as Assistant Section Officers from the post of Typists/ Personal Clerks. The decision of the Government was deliberate and comes within the ambit of policy decision. Thus, the same could not have been altered by the impugned order. It is also contended that the benefit was granted as a one time affair and as such, no other employee can claim parity, as a matter of right.

10. On the other hand, Mr.Vijay Narayan, learned Senior Counsel, assisted by Mr.G.Sankaran, learned Advocate, appearing for the respondent herein / writ petitioner would contend that there is not rationale to differentiate between promotees from the category of Assistants and from the other category of Typists / Personal Clerks. On promotion, they became a part of the common cadre and as such, difference in pay scale on the basis of feeder category is unreasonable and unsustainable in the eye of law.

11. It is further contended by the learned Senior counsel that in the earlier G.Os., pay parity and upgradation / stepping up of pay of the employees working in one department, irrespective of source of promotion in the concerned department, was granted on par with the juniors working in the Finance department. Thus, the contrary stand without any reasonable nexus ought not to have been taken. The learned Senior Counsel would also contend that if the policy decision is irrational, illogical and unconstitutional, the Court is competent to intervene and settle the same.

12. Heard the learned Special Government Pleader for the State, learned Senior Counsel for the respondent herein and perused the pleadings and documents appended thereto.

13. Indisputably, the Junior Assistant (now Assistant), Assistant (now Assistant Section Officer) and Typists / Personal Clerks were selected through common list of candidates prepared by the Tamil Nadu Public Service Commission till 1994. The Finance and Law units were separated subsequently and also an amendment was made in the Tamil Nadu Secretariat Service Rules. The persons, who came up from the common source of selection and from the common list, irrespective of their posts either in one

unit or in the Finance unit, were granted benefit of upgradation / stepping up of pay on par with the juniors in the Finance department as promotion in the Finance department was more expeditious and earlier.

14. The State, realizing the anomaly and also the prevailing sense of frustration in the employees working in different departments under one unit, appointed through common list, issued G.O.Ms.No.126 dated 29th May, 1998, directing upgradation / stepping up of pay of employees working in one unit, who were recruited to the Tamil Nadu Secretariat Service on or before 28th January, 1994, on par with juniors in the Finance department. The anomaly could not be completely cured, and as such, one more G.O.Ms.No.171, dated 28th September, 2006 was issued granting similar relief with effect from 29th May, 1998. However, the said anomaly still continued.

15. In yet another G.O.Ms.No.154, dated 30th October, 2009, the same benefit was granted. However, the Government, for the first time, treated the officers promoted from the post of Assistants (formerly Junior Assistants) separately from the persons promoted from the post of Typists / Personal Clerks. It was further observed that "the issue of rectification of pay anomaly in respect of Typist / Personal Clerk promotees shall be taken up separately." On perusal of the said G.O., it is eloquent that the intention of the Government was clear to grant upgradation / stepping up of pay in respect of Typist / Personal Clerk promotees also, but however, by a separate G.O.

16. To the utter surprise to the officers promoted from the feeder cadre of Typists / Personal Clerks, the impugned G.O.Ms.No.112, dated 13th July, 2012 was passed, granting upgradation / stepping up of pay on par with juniors working in one unit alone. The Government has failed to indicate any rationality or reasonableness sought to be distinguished from one feeder cadre to other feeder cadre, when in the earlier G.O., all employees, whether Assistant or Typists / Personal Clerks, who were appointed through common source before 1994 were treated at par for the purpose of upgradation / stepping up of pay. Thus, the contention of the learned Special Government Pleader that it is the Government policy, is based on no sound principle, being arbitrary, discriminatory and irrational, and as such, the contention deserves to be rejected.

17. As aforesaid, the purported policy decision is absolutely unreasonable, arbitrary and based on no rationality. In examining the scope of interference in the policy of the Government, the Supreme Court in M.P. Oil Extraction and another

Vs. State of M.P. and others¹, observed as under :

"41. x x x x x x x Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. x x x x x x x"

18. The said ratio was referred to with approval subsequently in G.Sundarrajan Vs. Union of India and others².

19. The reliance of the State Counsel on the earlier decision of this Court in The Secretary to Government, Finance (OP-I) Department, Fort St. George, Chennai and another Vs. A.Velusamy [W.A.No.2 of 2014, etc batch cases, dated 13th October, 2015], is not relevant to the facts of this case, as the persons promoted from the post of Typists / Personal Clerks were informed under G.O.Ms.No.154 dated 30th October, 2009 that a separate G.O will be issued for rectification of pay anomaly in respect of Typist / Personal clerk promotees. Thus, purported separate or different G.O came to be issued in the year 2012 by G.O.Ms.No.112 dated 13th July, 2012. Thereafter, the instant writ petition is filed and as such, it cannot be held that the petition suffers from laches and ought to have been dismissed. In the case of A.Velusamy (supra), the petitioner was claiming benefit from 1998 by way of filing writ petitions only in the year 2009 and 2010, as observed in para 21, as under :

"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

1 (1997) 7 SCC 592

2 (2013) 6 SCC 620

retrospective effect. [See : Govt. of W.B. Vs. Tarun K. Roy³; U.P. Jal Nigam Vs. Jaswant Singh⁴; and New Delhi Municipal Council Vs. Pan Singh⁵].”

20. The learned Single Judge has rightly examined the entire issue from all angles and allowed the writ petition. We do not find any error, infirmity or illegality in the impugned order of the learned Single Judge, warranting interference.

21. Resultantly, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary to Government,
State of Tamil Nadu,
Personnel and Administrative Reforms
(U-Special) Department,
Secretariat, Chennai-600 009.
2. The Secretary to Government,
State of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat, Chennai-600 009.
3. The Secretary to Government,
State of Tamil Nadu, सत्यमेव जयते
Finance Department,
Secretariat, Chennai-600 009.

+2cc's to Mr.G.Sankaran, Advocate, S.R.No.17902

W.A. No.971 of 2014

KSJ(CO)
CA(22/03/2016)

3 (2004) 1 SCC 347

4 (2006) 11 SCC 464

5 (2007) 9 SCC 278