

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.03.2017

Coram

The Hon'ble Mr.JUSTICE NOOTY.RAMAMOHANA RAO
and
The Honourable Mr.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.6754 of 2015

Y.Immanuel

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. By Secretary to Government,
Home (Courts-V) Department,
Fort St. George, Chennai - 600 009
 2. The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Finance Department, Fort St. George,
Chennai - 600 009
 3. The Registrar General,
High Court of Judicature,
Madras 600 104
 4. The Assistant Registrar,
Administration - I, High Court
of Judicature, Madras 600 104
- Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents, especially the proceedings of the fourth respondent relating to his proceedings made in R.O.C.No.8055/2014-Estt.IV, dated 20.01.2015, quash the same as null and void, illegal and invalid, and consequently, to direct the respondents to disburse the 5% personal pay entitled to by the petitioner from August 1992 in accordance with G.O.Ms.No.664, Finance (Pay-Cell) Department, dated 24.08.1992, in the light of the order passed in W.P.No.12737 of 1994, dated 23.05.1995 and the implementation of the said order, by issuing G.O.Ms.No.1193, Home (Courts-V) Department, dated 07.08.1995, and also in the light of allowing 5% personal pay to Steno-typists, who were in position as on 01.08.1992 & 01.09.1998 by issuing G.O.Ms.No.143 Finance (Pay-Cell) Department, dated 03.06.2014.

For Petitioner : Mr. A.Amal Raj
For Respondents: Mrs. A.Srijayanthi, Spl.G.P.,
for R-1 & R-2,
Mr. S.Haja Mohideen Gisthi, for R-3 & R-4.

O R D E R

(Order of the Court was made by Nooty.Ramamohana Rao, J.,)

This writ petition is instituted by an erstwhile Assistant Section Officer of the High Court, for securing payment of 5% personal pay from August 1992, in terms and in accordance with the policy decision announced by the State Government contained in their G.O.Ms.No.664, Finance, (Pay-Cell) Department, dated 24th August 1992.

2. The writ petitioner came to be appointed initially as Reader / Examiner, on 06.03.1980. Upon completion of ten years of service in the same grade, his case would have been considered for selection grade scale of pay, with effect from 06.03.1990. But, however, he was extended the selection grade pay in the scale of Rs.950-20-1150-25-1500/-, on and from 16th February 1993. The writ petitioner was promoted as Assistant, on 19.12.1994. He was further promoted as Assistant Section Officer with effect from 20.11.2004.

3. A recommendation was made by the Chief Justice of the High Court, for granting the same scale of pay as that of the Junior Assistants to those who are working as Readers / Examiners also. The State Government, through their communication, dated 7th June 1994, have declined to accept the recommendations made by the Chief Justice. Consequently, the writ petitioner and 32 others have moved W.P.No.12737 of 1994 for quashing the said communication dated 7th June 1994, rejecting the proposal of the Chief Justice to bring the parity in the scales of pay between the posts of Junior Assistants and Readers / Examiners. W.P.No.12737 of 1994 came to be considered by a learned Single Judge of this Court, who, by the order, dated 23rd May, 1995, had concluded that it is, but just to fix the scale of pay of Readers / Examiners, which are not in the selection grade on par with that of the Junior Assistants, who are also not in the selection grade, with effect from the date on which the fifth pay commission recommendations were accepted and implemented in respect of Junior Assistants, with effect from 01.06.1988. It is not in doubt that the State Government, through their orders contained in G.O.Ms.No.666 Finance (Pay Cell) Department, dated 27th June 1989 accepted the recommendations of the fifth Tamil Nadu Pay Commission and revised the scales of pay of employees working against various posts in the State service.

4. Thus, the direction issued by this Court in the order, dated 23rd May 1995 rendered in W.P.No.12737 of 1994 came to be implemented by the State Government through their G.O.Ms.No.1193, Home (Courts-V) Department, dated 07.08.1995, assigning the Readers / Examiners revised scale of pay of Rs.975-25-1150-30-1660/-, on par with that of the Junior Assistants with effect from 01.06.1988. Thus, parity has been completely restored with effect from the date on which the fifth pay commission scales of pay have been implemented by the State Government.

5. However, the State Government has been approached by the Record Clerks / Junior Assistants / Assistants and Superintendents with a grievance that the revised scales of pay of the fifth pay commission have not secured them any substantial relief, though they have been performing important and onerous duties and responsibilities. The grievances, thus, nurtured by these Record Clerks, Junior Assistants, Assistants and Superintendents, were referred by the State Government to an "Official Committee" on 31st October 1990. The request of the aforesaid mentioned categories of employees for a suitable upgradation / revision of the scales of pay assigned to them by the fifth pay commission has been considered but rejected and that recommendation of the 'Official Committee' has been accepted by the State Government, through their G.O.Ms.No.595, Finance (Pay Cell) Department, dated 01.08.1992. But, yet, those four categories of employees, namely, Record Clerks, Junior Assistants, Assistants and Superintendents have sought for some additional financial relief in the form of payment of personal pay. The request of these categories of employees appealed to the Government and orders have been passed through their G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24th August 1992. Paragraph 4 of the said Government Order brings out rationale behind sanctioning 5% additional pay, treating the same as 'personal pay' to those four categories of employees, in the following words:-

"4. At the same time the plea of these employees for Government to extend some sympathetic consideration has been taken note of. Government consider that these categories should be positively motivated in undertaking important items of work entrusted to them. Further job responsibilities of these categories require due recognition. Keeping in mind the importance of the job responsibilities attached to the categories in these scales of pay and the need to positively motivate these categories to undertake their responsibilities, Government have decided to grant a personal pay at five per cent of the basic pay to all categories of staff in the following scales of pay. Government accordingly

direct that five per cent of the basic pay computed as on 1.8.92 be granted as personal pay to the following:-

(i) All categories of staff in the pre revised scales of pay at Rs.475-775 moving over to the revised scale of pay of Rs.775-1030.

(ii) All categories of staff in the pre-revised scale of pay of Rs.610-1075 moving over to the revised scale of pay of Rs.950-1500 or Rs.975-1660.

(iii) All categories of staff in the pre-revised scale of pay of Rs.705-1230 moving over to the revised scale of pay of Rs.1200-2040, and

(iv) All categories of staff in the pre-revised scale of pay of Rs.905-1545 moving over to the revised scale of pay of Rs.1600-2660."

6. From the above passage, it becomes very clear that the Record Clerks / Junior Assistants, Assistants and Superintendents, who are in the fourth pay commission scales of pay did not get substantial hike or improvement in the fifth pay commission scales of pay. For instance, the fourth pay commission scale of pay for a Record Clerk was Rs.475-775/-, whereas the fifth pay commission scale of pay is Rs.775-1030/-. Thus, virtually such of those Record Clerks, who have already reached the maximum of fourth pay commission scale of pay, namely, Rs.775/- stage, would get hardly any benefit by way of increase in their salary and allowance, when the fifth pay commission scales of pay are implemented. At best, in terms of the fitment formula contained in Fundamental Rule 22, such a Senior Record Clerk may get jump of at best a couple of increments stage. Similarly, such of those Junior Assistants who were in the pay scale of Rs.610-1075/- in the fourth pay commission have not secured much of a hike as the corresponding scale of pay in the fifth pay commission commenced at Rs.950/- to go up to Rs.1500/-. Thus, such of those Junior Assistants, who have already reached the stage of Rs.950/- in the pre-revised scale of Rs.610-1075/- would hardly get any financial hike in the fifth pay commission revised scale pay of Rs.950-1500/-. The same is the case with regard to the post of Assistants, whose fourth commission scale of pay was Rs.705-1230/-, whereas, the fifth pay revised scale starts at Rs.1,200/- and goes up to Rs.2,040/-. In case of Superintendents, the pre-revised scale of Rs.905-1545 has been revised to that of Rs.1,600-2,660/-.

7. As a result of this, such of those Superintendents who have held the post for several years would hardly get any quantitative improvement in the new pay scale of Rs.1600-2660/-. It is for this reason, the State Government has obviously contemplated and provided a financial assistance of 5% hike in the form of personal pay to these four categories of employees.

8. Admittedly, the writ petitioner was not working as a Junior Assistant earlier. He was working as a Reader / Examiner. The scale of pay attached to that post by the fourth pay commission was Rs.555-970/-, whereas the pay scale of the Junior Assistant as per the fourth pay commission was Rs.610-1075/-. Interestingly, when the first pay commission recommended the pay scale of Rs.90-140/- to that of a Junior Assistant, it has only granted scale of pay of Rs.90-125/- to that of Readers / Examiners. Thus, maintaining two dis-similar scales of pay, one for Junior Assistants and a lesser one for the Readers / Examiners. The same is the case with regard to the third pay commission scales also, which recommended Rs.350-600/- to a Junior Assistant, while for Reader / Examiner, it was Rs.325-500/-. It was only the second pay commission, which had recommended the same scale of pay, namely Rs.200-300/- to both the categories of posts, namely, Junior Assistants on the one hand and Readers / Examiners on the other. Thus, all the pay commissions, except the second pay commission, recommended different scales of pay to the persons holding the post of Junior Assistants on the one hand and to those who are holding the post of Readers / Examiners on the other. The order of this Court, rendered in W.P.No.12737 of 1994, on 23rd May 1995, has once again given a parity that has been brought by assigning scale of pay of Rs.975-25-1150-30-1660/- in the fifth pay commission revised scales to the holders of the post of Readers / Examiners. सत्यमेव जयते

9. Since the 5% financial benefit as personal pay is granted by the State Government only to such of those employees who are working as Record Clerks, Junior Assistants, Assistants and Superintendents, as is clearly brought out in paragraph 4 of the order of the State Government contained in their G.O.Ms.No.664, Finance Department, dated 24th August 1992, the writ petitioner cannot claim such additional payment of 5% as personal pay.

10. There is also one another reason. As we have already

pointed out that the scale of pay assigned by the fourth pay commission to the post of Readers / Examiners was that of Rs.555-970/-, which is higher than the scale of pay of the Record Clerks being Rs.475-775/-, but is less than that of the pay of a Junior Assistant, which is Rs.660-1075/-. Hence, the question of making additional financial benefit to the person working as Readers / Examiners, as was provided for by the Government to those holding the post of Record Clerks, Junior Assistants, Assistants and Superintendents, as per G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24th August 1992, does not arise. The orders of the State Government contained in their G.O.Ms.No.664, dated 24th August 1992, are intended to relieve the grievance / hardship of the aforesaid mentioned four categories of employees initially by granting them this additional financial benefit in the form of personal pay.

11. When a similar grievance was entertained from similarly situated categories of employees, who have identical fourth pay commission scales of pay and for whom also the fifth pay commission has given equally identical revised scale of pay, requested the State Government, the State Government passed revised orders through their G.O.Ms.No.873, Finance (Pay Cell) Department, dated 27.12.1993, extending the benefit of payment of 5% personal pay, allowances to all those categories of employees who were in the fourth pay commission pay scale of Rs.475-775/- moving to Rs.775-1030/-, the fifth pay commission scale, similarly Rs.610-1075/- moving to Rs.950-1500/- or Rs.975-1660/-. Those Rs.705-1230/- moving over to Rs.1,200-2040 and Rs.905-1545 moving over to Rs.1,600-2660/-.

12. Since this writ petitioner worked only as a Reader / Examiner and was not in the fourth pay commission scale of pay of Rs.475-775/- or Rs.610-1075/- or Rs.705-1230 or Rs.905-1445, we are of the opinion that he is not entitled for payment of 5% personal pay, notwithstanding the fact that pursuant to the order rendered by this Court in W.P.No.12737 of 1994, dated 23.05.1995, the Government has passed orders through G.O.Ms.No.1193, Home (Courts V) Department, dated 07.08.1995 restoring them also the pay scale of Junior Assistants, namely Rs.975-1660/- with effect from 01.06.1988.

13. The parity thus restored is only for securing the same fifth pay commission revised scales of pay to Readers / Examiners as that of the Junior Assistants and the disparity existing between both the categories of posts in the fourth pay commission, having remained as it is, in our opinion, the

petitioner is not entitled for the benefit of payment of 5% personal pay. Hence, we have no hesitation to dismiss the writ petition. Accordingly, the writ petition is dismissed, but, however, without costs.

Sd/-
Assistant Registrar

//True Copy//

srk / kv Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Home (Courts-V) Department,
Fort St. George, Chennai - 600 009
2. The Secretary to Government,
Government of Tamil Nadu,
Finance Department, Fort St. George,
Chennai - 600 009
3. The Registrar General,
High Court of Judicature,
Madras 600 104
4. The Assistant Registrar,
Administration - I, High Court of Judicature,
Madras 600 104.

+1cc to M/s. A. Amal Raj, Advocate, S.R.No.15576
+1cc to M/s. S.Haja Mohideen Gisthi, Advocate, S.R.No.15370
+1cc to the Government Pleader, S.R.No.15493

NR(CO)
EU 12.4.17

WEB COPY

W.P.No.6754 of 2015