

In the High Court of Judicature at Madras

Dated : 04.7.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.23893 of 2012

G.MariappanPetitioner

Vs

1.The Member Secretary, Tamil Nadu
State Legal Services Authority,
High Court Buildings, Chennai-104

2.The Chairman/Principal District
Judge, District Legal Services
Authority, District Court Buildings,
Erode.

....Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the letter of the first respondent dated 24.1.2011 made in TNSLSA No. 6858/E/2008, quash the same and consequently direct the first and second respondents herein to reckon the date of regularization i.e. 12.5.1989 as the date for movement of selection grade from ordinary grade of the petitioner herein.

For Petitioner : Sri.M.Baskaran

For Respondents : Sri.Vijay Narayan, SC for
Ms.Lilly Victoria

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

This writ petition is instituted calling in question the correctness and sustainability of the guidelines framed and communicated on 24.1.2011 by the Tamil Nadu State Legal Services Authority in the matter of granting selection grade scale of pay

for such of those employees, who have completed 10 years of service.

2. The writ petitioner was initially selected by the Tamil Nadu State Legal Aid and Advice Board on 10.4.1989 as an Apprentice Assistant on a consolidated salary of Rs.575/- per month. Accordingly, the writ petitioner was sent up for receiving one year training as per proceedings dated 10.4.1989. He joined duty on 17.4.1989 as a trainee. The Board, by its proceedings dated 10.5.1989, appointed the writ petitioner as Junior Administrative Assistant at Palladam Legal Aid Centre in the then Coimbatore District and presently Tirupur District.

3. It is true that when a note was put up to declare the writ petitioner to have satisfactorily completed the period of probation of one year on the afternoon of 11.5.1990, the said note was approved by the Chairman of the Board. It is also true that an endorsement was made in the service register of the individual i.e. his services stood regularized with effect from 12.5.1989 - the date, on which, he joined the services and his probation was also declared to have been satisfactorily completed by 12.5.1990.

4. Though the counter affidavit has not adverted to this particular fact, which resulted in a show cause notice drawn by us by our order dated 23.6.2017, Sri.Vijay Narayan, learned Senior Counsel appearing on behalf of the respondents would submit that by sheer error and inadvertence, no reference has been made to the endorsement found in the service register of the individual that his services stood regularized with effect from 12.5.1989 and that his probation was also completed with effect from 12.5.1990. He would further submit that it was an unintended error that had occasioned, because the Secretary of the State Legal Services Authority did not have the benefit of the entire paper book filed in the writ petition with him and also the original record, which was not made available immediately, as the same was kept at the District Legal Services Authority of the concerned District. The error committed in not adverting to those entries was regretted. Hence, we have accepted the explanation and thereby drop all further action pursuant to the notice drawn by us on 23.6.2017.

5. The whole question as to whether the two guidelines, circulated by the State Legal Services Authority through the impugned communication dated 24.1.2011, are sustainable or not, depends upon the construction, which has to be placed appropriately on those two guidelines. The clarifications, it appears, are based, in turn, on the clarifications furnished by the State Government on 14.9.1992. Therefore, the two guidelines framed in the impugned memo are extracted as follows :

"(1) The staff members, who were on time scale of pay on 27.6.1989, 10 years/20 years may be calculated w.e.f. 27.6.1989 for selection grade/ special grade.

(2) The staff members who were appointed on or after 27.6.1989 on consolidated pay and subsequently allowed time scale of pay, the period of 10 years/20 years may be calculated from the date of fixing the time scale only."

6. The learned counsel for the petitioner would submit that the writ petitioner was appointed prior to 27.6.1989 that was on 12.5.1989. Therefore, it is the first guideline, which will work in his case for assigning him the selection grade pay, upon completion of 10 years with effect from that date namely 12.5.1999.

7. Whereas according to the respondents, though he was appointed prior to 27.6.1989, he was only appointed on consolidated pay basis and he was allowed the time scale of pay only with effect from 12.5.1990. Hence, guideline No.1 does not apply. Therefore, for sanction of selection grade scale of pay, the relevant date would become 12.5.2000.

8. Though there was a little ambiguity in the guidelines framed, but however, we will first deal with the issue relating to fixing this date i.e 27.6.1989 in the guidelines. The State Government, based on the recommendations of the Fifth Pay Commission, dispensed with the scheme of selection grade/special grade, senior grade and advancement to special temporary post and passed orders to that effect through their G.O.Ms.No.666 Finance (Pay Commission) Department dated 27.6.1989. However, there were certain contingent circumstances, coming in the way in working out the orders of the Government, which were brought to the notice of the Government.

9. As a result, upon reconsideration, the State Government passed orders again through G.O.Ms.No.304 Finance (Pay Commission) Department dated 28.3.1990 partly modifying the orders passed through their G.O.Ms.No.666 dated 27.6.1989, directing the scheme of selection grade and special grade to be allowed to all the employees eligible for movement to selection grade and special grade as indicated in Annexure I to the said G.O.Ms.No.304 dated 28.3.1990, replacing the existing Appendix VII to G.O.Ms.No.666 dated 27.6.1989.

10. In paragraph 8 of the said G.O.Ms.No.304 dated 28.3.1990, the Government made it clear that for those, who have already moved to the selection grade/special grade prior to 27.6.1989, the orders will be effective from 1.6.1988. In case of others, the orders shall take effect from 27.6.1989 - the

date, on which, orders in G.O.Ms.No.666 are issued. Therefore, it is more than clear that the date - 27.6.1989 is not artificially picked up. But, it is the same date, on which, G.O.Ms.No.666 dated 27.6.1989 has been issued pursuant to the recommendations of the Fifth Pay Commission being accepted by the State Government.

11. Still, more clarifications were sought for. Consequently, once again, the State Government applied its mind and furnished the necessary clarifications through their letter No.49470/Pay Commission/90-1 dated 14.9.1990 of Finance (Pay Commission) Department, Government of Tamil Nadu. It is these clarifications from the Finance Department dated 14.9.1990, which were adverted to in the impugned guidelines. When those clarifications of the State Government dated 14.9.1990 were placed for consideration of the Executive Chairman of the State Legal Services Authority, the learned Chairman directed the two guidelines to be framed and while doing so, the learned Chairman had taken the same date i.e 27.6.1989, as suggested by the State Government to be the effective date.

12. Therefore, the two guidelines, if we may observe, are in consonance with the policy decisions announced by the State Government, contained in their G.O.Ms.No.666 dated 27.6.1989 and G.O.Ms.No.304 dated 28.3.1990 and the subsequent clarifications dated 14.9.1990. However, there was a slight ambiguity as pointed out by the learned counsel for the petitioner in between the two guidelines. The first guideline would set out that the staff members, who are on time scale of pay on 27.6.1989, 10 years/20 years may be calculated with effect from 27.6.1989 for selection grade/special grade scale of pay. Thus far there is no difficulty. But, the second guideline would set out that the staff members, who are appointed on or after 27.6.1989 on consolidated pay and subsequently allowed time scale of pay, the period of 10 years/20 years may be calculated from the date of fixing the time scale of pay.

13. The ambiguity lies here. Guideline No.2, when it uses the expression 'who were appointed on or after 27.6.1989 on consolidated pay', clearly it has not dealt with those, who have been appointed prior to 27.6.1989 on consolidated pay basis. Like in the instant case, the writ petitioner was appointed on consolidated pay basis on 12.5.1989. So, strictly construing guideline No.2, the case of the petitioner does not fall in the second guideline's sweep either because he was not appointed on such consolidated pay basis on or after 27.6.1989, but came to be appointed as such prior to 27.6.1989.

14. Therefore, this is a case where the claims of the writ petitioner cannot be strictly construed to have fallen by the

sweep of the second guideline. By parity of reasoning, this case does not fall even in the first guideline. The reason being that since he was not in the time scale of pay as on 27.6.1989, he was only on consolidated pay basis working as on 27.6.1989. Therefore, there was some play in the joints that must be left in giving effect to the manifest intention between these two guidelines. No employee should be made to suffer for no fault of his.

15. We feel it shall be more appropriate to consider that the second guideline shall be modified by adding the following words :

“appointed before or on or after
27.6.1989 on consolidated pay”
for those, which merely mentioned as on or after 27.6.1989, otherwise such of those candidates like the writ petitioner, who are appointed prior to 27.6.1989 on consolidated pay basis, will be completely left out from getting the benefit of the selection grade/special grade pay even after completion of 10 years or 20 years of service. Therefore, we construe that the intention of the guideline being to grant the pay benefit to those, who have completed 10 years or 20 years of stagnation in the same cadre, which is the primary purpose, for which, the State Government has formulated its scheme under G.O.Ms.No.666 dated 27.6.1989 and with a view to advance the said cause, we read the modification suggested by us earlier into the second guideline. Consequently, we hold that the case of the writ petitioner gets covered by the sweep of the second guideline rather than by the first guideline. We do not otherwise find the guidelines to be irrational or arbitrary either.

16. For the aforesaid reasons, there is no merit in this writ petition and it accordingly stands disposed of in this order. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

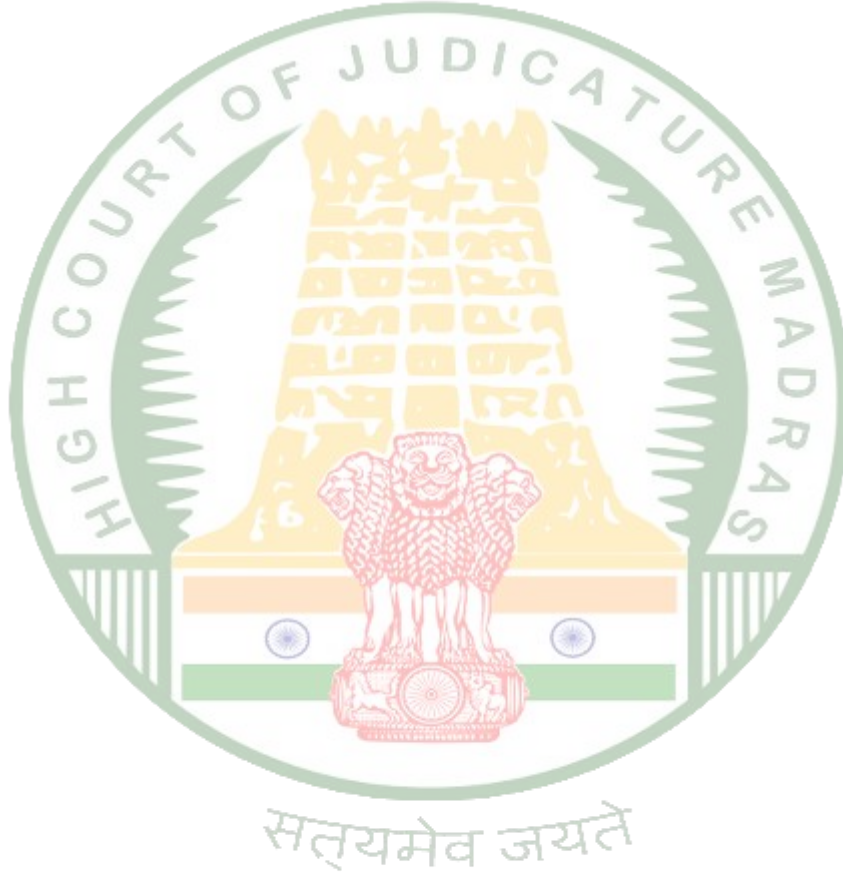
1.The Member Secretary,
Tamil Nadu State Legal Services Authority,
High Court Buildings, Chennai-104

2.The Chairman/Principal District Judge,
District Legal Services Authority,
District Court Buildings, Erode.

+1cc to Mr.M.Baskaran, Advocate SR.No.46320

WP.No.23893 of 2012

NRJK (CO)
GN (21/06/2017)



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