

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1832 of 2018

1. The Principal Secretary to Government,
Rural Development and Panchayat
Raj (E7) Department, Secretariat, Chennai-600 009.
2. The Commissioner of Rural Development &
Panchayat Raj, Pungal Buildings, Saidapet,
Chennai- 600 015.
3. The Collector,
The Nilgris District,
Udhagamandalam. Appellants/Respondents

vs.

B.Suresh Respondent/Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order made in W.P.No.11858 of 2010, dated 12.01.2017.

W.P.No.11858 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India. to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent herein in Letter No.5999/E7/2009-7 Rural Development and Panchayat Raj (E7) Department dt.10.3.2010 and quash the same and consequently direct the respondents herein to regularize the petitioner period of temporary services as Steno-Typise from 27.9.14989 FN to 23.8.1994 AN as duty for all service benefits and direct the respondents herein to issue orders retrospectively regularizing his service from 27.9.1989 with all consequential benefits.

For Appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondent : Mr.Ravi Shanmugam

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J.)

Challenge in the instant writ appeal is to the order of the writ court dated 12.01.2017 made in W.P.No.11858 of 2010, by which, the writ court, while quashing the impugned order, dated 10.03.2010, allowed the writ petition filed by the respondent and issued directions to regularise the services of the respondent from the date of initial appointment.

2. Short facts leading to the filing of the writ appeals are that the respondent was temporarily appointed under Rule 10(a) (i) of the General Rules, as Steno Typist, on 27.9.1989, in the office of Deputy Registrar, Public Distribution System, Udgamandalam, through employment exchange. He joined the service on 27.09.1989 and working continuously, without any break or adverse remarks. Subsequently, he participated in the competitive examination conducted by TNPSC for the post of Steno Typist and was selected. He was appointed as Steno Typist on 24.8.1994, the date on which he joined service, as Steno Typist on permanent basis.

3. The respondent was relieved from the erstwhile office on 23.8.1994, ie., previous day of appointment, and on the very next day, without any break, he joined service as Steno Typist, on permanent basis. On 12.10.1994, the respondent has sent a representation to the appellants to regularise his period of service from 27.9.1989 to 23.8.1994, by counting the said period, for the purpose of all service benefits including seniority, pay fixation, increment etc. Though his request was rejected by the Additional Collector, Nilgiris District, he again sent a representation on 03.07.1995, to the Commissioner of Rural Development & Panchayat Raj, Chennai, second appellant herein, for the very same relief. In the mean time, his probation was declared as satisfactory, in November' 1996. The second request was rejected on 13.1.1997.

4. Challenging the said order, the respondent preferred O.A.No.3522/1998, before the Tamil Nadu Administrative Tribunal and the same was transferred to this Court and re-numbered as W.P.No.35908 of 2006. In the said writ petition, this Court, by order, dated 29.9.2009, directed the appellants to pass appropriate orders on the representation of the respondent, within a time limit.

5. Pursuant to the said orders of this Court, the Principal Secretary to Government, Rural Development and Panchayat Raj (E7) Department, Chennai, first appellant, vide Letter No.5999/E7/2009-7, Rural Development and Panchayat Raj (E7) Department, dated 10.3.2010, passed orders, rejecting the

request of the respondent, stating that both G.O.Ms.No.85, P & AR Department, dated 20.2.1990 as well as the Government letter of P & AR department, dated 05.2.1996 are not be applicable to the case of the respondent.

6. Aggrieved by the same, the respondent has filed W.P.No.11858 of 2010, challenging the order passed by the Principal Secretary to Government, Rural Development and Panchayat Raj (E7) Department, Chennai, first appellant, in Letter No.5999/E7/2009-7, Rural Development and Panchayat Raj (E7) Department, dated 10.3.2010 and consequently, sought for a direction to the appellants to regularize the services of the respondent, ie., period of temporary services as Steno-Typist from 27.9.1989 FN to 23.8.1994 AN, as duty for all service benefits and direct the appellants to issue orders retrospectively, regularizing his services from 27.9.1989, with all consequential benefits. After hearing both the parties, on 12.01.2017, the writ court passed an order in W.P.No.11858 of 2010, as follows:

"16. The very short issue to be decided in this writ petition is as to whether the plea of the petitioner to regularise his services rendered earlier on temporary basis from 27.9.1989 to 23.8.1994 for regularization as a continuous duty period for the purpose of all his service benefits, is to be accepted or not.

17. The admitted facts are that the petitioner was originally appointed under 10 (a) (1) of the General rules of the Tamil Nadu State and Subordinate Services and joined in service as Steno Typist on 27.9.1989. He was continuously working till 23.8.1994 in the said position though temporarily and on that day, he got relieved and joined for the same post, namely, steno typist in the respondent Department on the next date i.e. on 24.8.1994 since he had been selected by the Service Commission and appointed permanently. There is no break in service for these years, namely, about 5 years of the temporary services rendered by the petitioner and his service records shows that in all these years, he had been continuously working and his Earned Leave also was permitted for surrender.

18. On his regular selection as had been appointed as Steno Typist, as stated supra, he had joined in the respondent department on 24.8.1994 and subsequently, his probation also was declared successfully. At the time of relieving from the temporary service on 23.8.1994, the petitioner was drawing a monthly salary of Rs.1470/- however, on his permanent appointment his salary was Rs.1200/-. Though

the petitioner had been subsequently appointed and his service also got regularised, his pay is prejudicially affected as has been fixed lower pay than what he was drawing at the time of relieving from his temporary service. Therefore, he had made a request to the respondent and the said request was rejected. Ultimately, he had approached the Tamil Nadu Administrative Tribunal and the said case was transferred to this court and by order dated 29.9.2009, the request of the petitioner was directed to be considered by the respondents. Pursuant to the said direction of this Court, the present impugned order dated 10.3.2010 was passed. As has been pointed out by the learned counsel for the petitioner, the first respondent had given two reasons for rejecting the request of the petitioner. Firstly, the respondent has stated that G.O. Ms.No. 85 dated 20.2.1990 was the one time relaxation given to those who had been selected by the Service Commission between 1983 and 1986 and therefore, the same shall not be made applicable to the petitioner. Secondly, the Government letter dated 5.2.1996 was to regularise the irregular appointments made before 5.2.1996 with retrospective effect and therefore, the said letter also would not be made applicable to the case of the petitioner.

19. Insofar as the first reason is concerned, the said G.O. Ms. No. 85, no doubt had given relaxation of the relevant rules for those who had been subsequently selected in permanent post by Service Commission between the year 1985 and 1986. Though such relaxation had been given for a set of people, who had been selected between the years 1983 and 1986, there is no acceptable reason given by the respondent not to give extension of such relief to those who had subsequently been selected by the Service Commission and in this regard, the Division Bench of this Court in the said Judgment made in W.A. No. 928 of 2009 dated 30.8.2010 has passed the following order in paragraphs 7,8 and 9 which is extracted hereunder:

"7. The learned Judge negatived the claim of the appellant based on F.R. 22-B. The proviso to F.R. 22-B reads as follows:-

"Provided that if a Government servant has previously held substantively or officiated in -

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post on an identical time-scale or a temporary post on an identical time-scale, such post being same time-scale as a permanent post then

the initial pay shall not be less than the pay other than special pay, personal pay or emoluments classed as pay by Government under rule 9(21)(a)(iii) which he drew on the last such occasion and he shall count the period during which he drew that pay on such last occasion and any previous occasions, for increment in the stage of time-scale equivalent to that pay."

8. It is also pertinent to note that F.R. 22-B has been relaxed by virtue of G.O. Ms. No. 85, Personnel & Administrative Reforms Department dated 20.02.1990 wherein the Government had passed orders that those members who were appointed in the Tamil Nadu Ministerial Service in the same cadre shall be fixed in the pay last drawn by them in the post prior to their appointment in relaxation of FR 22-B.

9. A reading of the above exception to F.R. 22-B would make it abundantly clear that the appellant is entitled for fixation of the pay last drawn by her in the Judicial Department. As rightly submitted by the learned counsel for the appellant, when the appellant's Earned Leave in Judicial Department was taken into account in Transport Department, it is to be assumed that her previous service is not erased off fully. In such case, her last drawn pay in the Judicial Department should have been taken into account with effect from 07.9.1994. The respondents have committed error in rejecting the claim of the appellant. Therefore, we are of the view that the learned Judge has not considered the claim of the appellant in its proper perspective which needs to be interfered with."

20. If the said Judgment of this court referred to above is applied to the facts of the present case as in the case of the petitioner also there was no break in service between temporary service and permanent service as he was relieved from the temporary service on 28.3.1994 afternoon and joined in the regular service on the next day i.e., 24.8.1994 and in this case also, the Earned Leave surrender was permitted to the petitioner, it can be safely concluded that the import of the said order in the writ appeal will have coverage on the facts of the present case also.

21. That apart, insofar as the second reason is concerned, the Government letter dated 5.2.1996 would not be made applicable to the case of the petitioner and in that view of the matter, the request of the petitioner had to be rejected is concerned that reason of the first respondent is totally unjustifiable on the face of it, because Government letter dated

5.2.1996 reflected the Government's decision to regularise the irregular appointment made before 5.2.1992. Whatever be the irregular appointment made by various departments and various authorities of the State Government prior to 5.2.1992 were directed to be regularised. In fact, the said Government letter was issued pursuant to the directives of the Tamil Nadu State Administrative Tribunal as well as the Hon'ble Supreme Court of India in several cases. When a blanket permission was given to regularization of services which were made irregularly prior to 5.2.1992, the reasoning now given by the first respondent that such benefit cannot be extended to the petitioner blindly, is totally unacceptable for the reason that the petitioner also was temporarily appointed in the year 1989 i.e., well prior to 05.2.1992. When the very irregular appointments themselves made prior to 05.2.1992 had been directed to be regularised by virtue of the policy decision reflected in the Government letter, why the first respondent has refused to extend such a benefit to the petitioner, who had been appointed before 1992 i.e., 27.9.1989 under 10 (a) (1) of the General Rules of Tamil Nadu State and Subordinate Services and subsequently, had been permanently selected and appointed from 24.8.1994. In fact the benefits sought to be extended through the said Government letter is for those, who had been temporarily appointed or irregularly appointed who have never been permanently appointed by selection made by the Service Commission. When that being so, the petitioner, though was initially appointed temporarily has been subsequently appointed on permanent basis through the selection by Service Commission, is in far better footing than those who had been given such a benefit under Government letter and therefore, the denial of such benefit to the petitioner only for the said temporary period of service from 27.9.1989 and 23.8.1994, is totally unlawful and unjustifiable and therefore, this reason adduced by the first respondent in the impugned order is liable to be interfered with.

22. In this regard, the learned Special Government Pleader would rely upon the Judgment reported in 2006 (6) SCC 558 (stated supra) and according to him, if the services of the petitioner is regularised retrospectively from the date of his original appointment made, temporarily, i.e., from 27.9.1989, that will give undue benefit and advantage to the petitioner by which he would be placed above number of his seniors, who had been subsequently

appointed on permanent basis and their probation would have been declared so well before the probation of the petitioner. Therefore, only in that context, the Hon'ble Apex Court in the Judgment cited supra has given the finding that the giving retrospective regularization to the promotees from the date of the initial appointment of such promotees as the starting point of their seniority, who had been subsequently, appointed on permanent basis as their probation also would have been declared so, well before the probation of the petitioner, may not be justifiable. Therefore, only in that circumstances, the Hon'ble Apex Court in the Judgment cited supra has given a finding that the retrospective regularization of the promotees from the date of initial appointment of such promotees as the starting point of their seniority could be erroneous and contrary to the well established principles relating to regularization and seniority. Therefore, the Hon'ble Apex Court in fact disapproved such course of action adopted by the Government. As such the retrospective regularization giving undue benefit of seniority for those who had been given such benefit would be de hors of the Rule and therefore, such benefit has been negated by the said decision of the Hon'ble Apex Court.

23. In this regard, this Court is of the considered view that the submission of the learned Special Government Pleader by relying upon the said Judgment of the Hon'ble Apex Court for justifying the denial of seniority to the petitioner from the date of his original appointment on temporary basis, would have some force.

24. In the result, this writ petition is decided with the following orders:

(i) The impugned order is liable to be quashed, accordingly is quashed;

(ii) The petitioner shall be entitled to seek regularization of his services as a continuous duty from 27.9.1989 to 23.8.1994 and consequently, the petitioner shall be eligible to claim salary benefits and other financial benefits including increment and fixation of pay;

(iii) However, the petitioner by virtue of such regularization of his service from 27.9.1989 shall not be entitled to claim seniority than any other person, who had been selected and appointed permanently prior to the appointment of the petitioner on permanent basis i.e., on 24.8.1994. In other words, no senior than the petitioner considering his permanent date of joining service i.e., 24.8.1994 shall be put on

disadvantageous position pertaining to their seniority because of the regularization given to the petitioner's services from 27.9.1989;

(iv) For all other service benefits other than the seniority under clause 3 of the direction above, the petitioner shall be entitled to and accordingly, his pay benefits and other financial benefits shall be calculated and if any difference of pay is noticed the same shall also be calculated and the arrears shall be given to the petitioner.

(v) The above directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.

25. Resultantly, the writ petition is allowed to the extent indicated above. No costs."

7. Being aggrieved by the abovesaid order, the appellants have filed the present writ appeals, on the following grounds:-

"(i) Reason for the continuous service of 4 years by the respondent in Registration Department, (Public Distribution System) was that no candidate was posted to Registration Department (Public Distribution System) from TNPSC in the years 1989 to 1994. Had the vacancies have been reported to the TNPSC in time, there is every possibility in filling up of the regular vacancies.

(ii) Similarly, such prolonged continuance in the temporary post of Steno-Typist was not assured to the seniors of respondent, who were sponsored Steno-Typist from Employment Exchange to different departments. When regular Steno-Typist is appointed, they would be ousted from service and surrender back to local Employment Exchange. When temporary candidate is sought from the Employment Exchange in different departments, they would gain their priority over the Stenographers who were waiting for the jobs. Therefore the pay protection is seized, as and when the temporary service concludes. Such being the position, if the pay protection is given to the respondent only because of the reason that he was allowed to work in the department for 4 years, it is against the 'Principles of Natural Justice', because such protection was not possible to his seniors in the Employment Exchange, who were subsequently got through TNPSC and appointed to different departments, since the service condition in each department unit in the district level varies.

(iii) Writ Court has failed to note the

provisions of F.R.27(2) of Tamilnadu Government Servants and that the respondent was allowed for the 3 stage advancement at the initial regular appointment. If the respondent is given pay protection and 3 stage hike at the first appointment, such similarly placed candidates in other departments, who are seniors to him, would claim for the similar hike in one stroke, which would pave the way to administrative mishap, besides heavy financial burden to the Government.

(iv) Writ Court has further failed to note that if the orders issued in para No.3 in W.P.No.11858 of 2010, dated 12.01.2017, is in proper perspective of the Judgement of the Hon'ble Apex court reported in (2006) 6 SCC 558 [K.Madalaimuthu and another vs. State of Tamil Nadu and others], then judgement in Para 24(i) and (ii) are contrary. While the retrospective seniority is disallowed, the entitlement for pay protection for the temporary service is also seized.

(v) Though service right is protected in para 24(iii), it is only for the senior persons, who were appointed in his batch or the employees already working in the department. But the pay protection of senior person as per Employment Exchange, would defeat the procedure of giving equal opportunity to Government servants.

(vi) Writ Court has failed to note that the respondent was appointed by the Deputy Registrar (Public Distribution System) initially on 27.09.1989, under 10(a)(i) of General Rules duly sponsored by local employment exchange. As the posts of Steno-Typist Grade III is falling under the preview of Tamil Nadu Public Service Commission, any appointment to that post should be filled in by Tamil Nadu Public Service Commission, through the successful candidates, from the competitive examinations conducted by Tamil Nadu Public Service Commission. When there is a circumstance to fill the vacancy temporarily until a regular candidate is sponsored by Tamil Nadu Public Service Commission, the post can be filled up by temporary candidates under Rule 10(a)(i) purely on temporary basis. As and when the post is filled up by a regular candidate by Tamil Nadu Public Service Commission, the services of such temporary employee shall be ousted and surrendered to the local employment exchange so that they can be sponsored to any other needy departments on

temporary basis.

(vii) The respondent is a temporary candidate sponsored by Local Employment Exchange worked in the office of the Deputy Registrar (Public Distribution System). His services were utilized in the office of Deputy Registrar (Public Distribution System) as temporary service. The respondent was subsequently selected by Tamil Nadu Public Service Commission through the competitive examination and he was appointed by Tamil Nadu Public Service Commission in Rural Development Department and he joined duty on the forenoon of 24.08.1994. His services were only temporary service from 27.09.1989 to 23.08.1994. He was not successful in the competitive examinations conducted by the Tamil Nadu Public Service Commission in the time span from 27.09.1989 to 23.08.1994. Had he been selected by the Tamil Nadu Public Service Commission in the earlier years before 23.08.1994, he would have appointed in the new department earlier. Tamil Nadu Public Service Commission has not filled up the post of Steno-Typist Grade III in the office of Deputy Registrar (Public Distribution System) due to the administrative reasons, such as no vacancy was reported by the Office or no sufficient candidates are available with Tamil Nadu Public Service Commission for filling the vacancy in the Public Distribution System. Therefore he was allowed to work in the office of the Deputy Registrar (Public Distribution System), by gaining the annual increments. Had any candidate filled in the time span from 27.09.1989 to 23.08.1994, the respondent would have ousted from service and surrendered to local employment exchange. Other candidates, who are senior as per employment seniority, happened to ousted earlier in other departments and they were surrendered back to concerned local employment exchange. Therefore, the continuous service rendered by the respondent cannot alone be considered for retaining the increment gained in the temporary service when he was appointed to a regular post. If the respondent is allowed to gain the increments to retain his last pay in the newly appointed post, is liable for 3 stage advancement on the date of his appointment. This would certainly defeat the "Recruitment Notification" of The Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission has also communicated the seniority list as per the marks

secured by the respondent and also by adopting reservation policies. The persons who appointed in the same batch, who is senior to the respondent may also claim for 3 stage advancement. Such temporary candidates in different departments would claim similar increase in pay to them and it may cause severe financial burden to the Government besides administrative discrepancies. This may trigger more number of cases before the court of law claiming for temporary service to the regular service since there is more number of candidates in every department worked as temporary service. It is submitted that the respondent has given appeal petition to the Government on 05.05.1997 and the Government have carefully examined each and every aspect of the case and recorded the reasons in written for rejection of the request of the petitioner. The said order is a speaking order in which the service condition of the petitioner (herein respondent) is clearly discussed.

(viii) The respondent cannot seek 3 stage advancement at the time of his regular appointment in the regular post only for the reason that he had allowed to continue in temporary service in the office of the Deputy Registrar (Public Distribution System), because no regular candidate was made available to that office. This may be attributed to the reason that the vacancy position from the office of the Deputy Registrar (Public Distribution System) has not been reported to Tamil Nadu Public Service Commission in time. Such defects cannot claim any right over such administrative lapses for gaining his increment in the temporary post."

8. Respondent herein has filed a detailed counter affidavit and contended that the Government have issued instructions in U.O. Note No.16076/S/95-9 P & A R (S) Department, dated 05.02.1996, to all the Departments to regularize all irregular appointments made before 05.02.1992. He was appointed under rule 10(a)(i) on 27.09.1989 FN., which falls before 05.02.1992 and therefore, as per the Government instructions, his period of service, from 27.09.1989 to the date of his regular appointment, has to be regularized.

9. The respondent has further submitted that by G.O.Ms.No.85, Personnel and Administrative Reforms Department, dated 20.02.1990, the Government have passed orders, relaxing the rules to enable the Typists/Personal Clerks and Junior

Assistants of Tamil Nadu Ministerial Service, recruited through competitive examination held by the Tamil Nadu Public Service Commission during 1983 - 1986, by extending the benefit of G.O.Ms.No.399, Personnel and Administrative Reforms Department, dated 12.07.1988. According to him, facts of his case are identical, and the above Government guidelines would apply to the facts of his case.

10. The respondent has further submitted that Fundamental Rule 22 would apply to the facts of his case, when he was earlier appointed as Steno Typist under rule 10(a)(i) and later, selected by the Tamil Nadu Public Service Commission as Steno Typist to the same post. As per Rule 23(a) of the Tamil Nadu State and Subordinate Service Rules, when a person is appointed temporarily under rule 10(a) in a vacancy of a direct recruitment and is subsequently appointed in accordance with Rules, he shall commence probation from the date of first temporary appointment. Even G.O.Ms.No.429, Personnel and Administrative Reforms Department, dated 17.04.1986, has been ignored by the appellants.

11. The respondent has further contended that even the appellants have admitted in the reply affidavit that those who failed in special qualifying examination alone can be extended the benefit of Government Orders and the appointing authority has commenced his probation only from 23.08.1994. He also submitted that the Government instructions have been issued to regularize the irregular appointments made before 05.02.1992, with retrospective effect.

12. On the averment that if pay protection is given, persons senior to him, will also claim similar relief, which would cost heavy financial burden to the Government, the respondent has contended that he was continuously in employment from 27.09.1989 to 23.08.1994 and therefore, no such a claim would arise. When the Government have issued G.O.Ms.No.71, Personnel and Administrative Reforms Department, dated 07.04.2000 and G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 12.09.2009 regularising the services of Typists/Steno Typists, who qualified in the examination and to count their temporary services, he cannot be discriminated, as he is similarly and better placed. Even as per Fundamental Rule 22 and Rule 23(a) of the Tamil Nadu State and Subordinate Service Rules, he is entitled to count his temporary service from 27.09.1989 FN to 23.08.1994 AN, with all service benefits.

Heard the learned counsel appearing for the parties and perused the materials available on record.

13. Before going into the merits of the case, let us consider, what Fundamental Rule 22-B states,

"22-B. Notwithstanding anything contained in these rules, where a Government servant holding a post in a substantive or officiating capacity, is promoted or appointed in a substantive or officiating capacity, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the timescale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment, at the stage at which such pay has accrued. If the monetary benefit after such fixation falls short of five per cent of the pay drawn in the lower post, his pay in higher post shall be so fixed, allowing a minimum increase of five per cent of the pay drawn in the lower post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post is a stage in the time-scale of pay of the higher post, the pay shall be fixed at such stage in the time-scale of pay of the higher post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post exceeds the amount arrived at for fixation of pay in the higher post under this rule but where there is no corresponding stage in the time-scale of pay of the higher post, the pay shall be fixed at the next higher stage in the time-scale of pay of the higher post.

[G.O. Ms. No. 778, Personnel and Administrative Reforms (FR.III), dated 8th August 1986-with effect from 1st October 1984.]

Provided that no fixation of pay under this rule shall be made in the case of a Government servant, who has opted for fixation of pay under rule 22(1) (a) (i) or under rule 22(1) (b) (i) read with rule 22(1) (a) (i), within 15 days from the date of receipt of the orders of promotion:

Provided further that the provisions of rule 22 (1) (b) (i) shall not be applicable to a case where the initial pay has been fixed under this rule F.R.22-B:

Provided also that where a Government servant, who had not drawn stagnation allowance, before his promotion or appointment to a higher post, is drawing pay at the maximum of the time-scale of pay applicable to the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment

above the maximum of the lower post equivalent to the amount of the last increment in that scale.

[G.O.Ms. No. 975, Finance (FR.I), dated 10th July 1974.]

Provided also that where a Government servant is promoted or appointed to a higher post, the maximum of the scale of pay up to which stagnation increment is admissible and where the pay plus notional increment in the lower post exceeds the maximum of the time-scale of pay of the higher post, pay shall be fixed at a stage that is admissible under this rule and the other provisions thereunder, by increasing the maximum of the time scale of pay of the higher post by stages equivalent to the amount of last increment:

Provided also that where the pay so arrived at under this rule exceeds the maximum limit upto which stagnation increment is admissible, pay shall be fixed at the stage in the time-scale 36 of pay of the higher post next below such maximum limit upto which the stagnation increment is admissible and the difference between the stage at which pay is fixed and the maximum limit upto which stagnation increment is admissible, shall be allowed as 'personal pay.' The 'personal pay' shall be treated as pay for all purposes and shall be allowed to continue till the incumbent vacates the post:

Provided also that where the maximum of the scale of pay of the higher post exceeds the maximum limit upto which stagnation increment is admissible, pay shall be fixed under this rule not exceeding the maximum of the time scale of pay of the higher post:

[G.O. Ms. No. 476, Personnel and Administrative Reforms (FR.Special) Department, dated 19th November 1990-with effect from 1st October 1978.]

Provided also that where a Government servant gets promotion or appointment to a higher post even before reaching the maximum of the time-scale of pay of the lower post and if the fixation arrived at under this rule (including five per cent benefit) exceeds the maximum of the time-scale of pay of the higher post, then, subject to the provisions contained in the fifth and sixth provisos above, pay shall be fixed by increasing the maximum of the time-scale of pay of the higher post by stages equivalent to the amount of last stage in that post:

[G.O. Ms. No. 292, Personnel and Administrative Reforms (FR.IV) Department, dated the 15th December 1998 - with effect from 1st June 1988.]

Provided also that where a Government servant is promoted or appointed to a higher post involving the

assumption of duties and responsibilities of greater importance than those attaching to the post held by him, option shall be given:

(i) for fixation of pay under this rule on the date of promotion or appointment, taking into account, the pay in the lower post immediately prior to promotion or appointment to the higher post without any further review on accrual of increment in the time-scale of pay of the lower post,

Or

(ii) for fixation of pay on the date of promotion or appointment to the higher post in the manner as provided in rule 22 (1) (a) (i) or rule 22 (1) (b) (i) and for re-fixation of pay under this rule on the date of accrual of next increment in the time-scale of pay of the lower post. Such option shall be exercised within a period of one month from the date of promotion or appointment. The option once exercised shall be final. If no such option is exercised within the said period of one month, the pay shall be fixed in the manner as provided in clause (i) above. If the pay is fixed in the manner as provided in clause (ii) above, next increment shall be allowed on completion of the required qualifying period of one year with effect from the date of re-fixation of pay.

[G.O. Ms. No. 830, Personnel and Administrative Reforms (F.R.III), dated 2nd September 1983 - With effect from 1st May 1981.]

Provided that if a Government servant has previously held substantively or officiated in-

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post on an identical time-scale or a temporary post on an identical time-scale, such post being on the same time-scale as a permanent post then the initial pay shall not be less than the pay other than special pay, personal pay or emoluments classed as pay by Government under rule 9 (21) (a) (iii) which he drew on the last such occasion and he shall count the period during which he drew that pay on such last occasion and any previous occasions, for increment in the stage of the time-scale equivalent to that pay.

If, however, the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of those increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the

purposes of the proviso to be, the pay which he last drew in the temporary post.

(G.O. Ms. No. 1744, Finance, dated 21st November 1969.)

Explanation 1:- Where a Government servant is appointed or promoted to a higher post in his regular line while he is holding an intermediary post outside his regular line, the presumptive pay of the Government servant in the lower post which he would have drawn in his regular line but for his appointment on deputation or transfer of service to an intermediary post outside his regular line alone shall be taken into account for the purpose of fixation of his pay under this rule.

[G.O.Ms.No.434, Finance (F.R.I.), dated 2nd May 1975.]

Explanation 2:- Where a Government servant is appointed or promoted to a higher post in his regular line while he is holding an intermediary post outside his regular line and on which he is having a lien or service rights shall be allowed initial fixation of pay under Fundamental Rule 22 (a) or (b) according as the higher post carries duties and responsibilities higher than those attached to the intermediary post outside the regular line. For this purpose, his pay in the post outside the regular line shall be taken only where he has a lien or service rights in that post. Where a Government servant does not have lien or service rights in intermediary posts outside the regular line, his initial pay fixation shall be governed by F.R. 22-B as in Explanation-1.

[G.O. Ms. No. 956, Personnel and Administrative Reforms (F.R.I.), dated 30th August 1976 - with effect from 2nd May 1975.]

Explanation 3:- Omitted.

[G.O. Ms. No. 778, Personnel and Administrative Reforms (F.R.III) Department, dated 8th August 1986- with effect from 1st October 1984.]

Explanation 4:- Cases where the period of absence is treated as "non-duty" under rule 18, the sixth proviso to this rule shall not apply and the period of service prior to such "non-duty" shall not count for increment.

[G.O. Ms. No. 764, Personnel and Administrative Reforms (FR. III) Department, dated 31st July 1985- with effect from 31st July 1985.]

14. Fundamental Rule 22-B speaks about pay fixation on promotion. The Government have issued G.O.Ms.No.85, Personnel and Administrative Reforms Department, dated 20.02.1990, relaxing the Rules to enable the Typists/Personal Clerks and

Junior Assistants of Tamil Nadu Ministerial Service, recruited to the same post in Tamil Nadu Ministerial Service, through the competitive examination held by the Tamil Nadu Public Service Commission during 1983 and 1986. The said Government Order is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

FUNDAMENTAL RULES - Pay - Typists, Personal Clerks and Junior Assistants appointed in Tamil Nadu Ministerial Service through Tamil Nadu Public Service Commission during 1993 and 1986 - Fixation of pay in relaxation of Ruling (6) under Fundamental Rule 22-B Orders - Issued.

PERSONNEL & ADMINISTRATIVE REFORMS (FR.I) DEPARTMENT

G.O.Ms.No.85

Dated: 20.02.1990

READ:

G.O.Ms.No.399, Personnel and Administrative Reforms, dated 12.07.1988.

ORDER:

In the Government Order read above, the Government have, as a special case, ordered for relaxation of Ruling (6) under Fundamental Rule 22-B in favour of those who were members of Tamil Nadu Ministerial Service and have been appointed to Tamil Nadu Secretariat Service in the same post they held prior i.e. as Typist/Personal Clerks/Assistants respectively through the recruitments made by Tamil Nadu Public Service Commission during the years 1983 and 1986 to enable them to draw the pay last drawn in the, same post at Tamil Nadu Ministerial Service. As the said orders are not applicable to those who have been appointed to Tamil Nadu Ministerial Service by Tamil Nadu Public Service Commission recruitments during the same years viz. 1983 and 1986, it has been represented for the extension of the said concession to those recruited for Tamil Nadu Ministerial Service also.

2. The Government, after a detailed examination, have decided to extend the relaxation ordered in the G.O. read above to those who were members of Tamil Nadu Ministerial Service and have been selected and appointed to Tamil Nadu Ministerial Service in the same category they held earlier viz. Typists/Personal Clerks/Junior Assistants through the Tamil Nadu Public Service Commission recruitment for the years 1983 and 1986. The Government, therefore, direct that the pay

of such of those who held the post of Typists/Personal Clerks/Junior Assistants of Tamil Nadu Ministerial Service and have been selected and appointed to the same category through the recruitments of Tamil Nadu Public Service Commission during the years 1983 and 1986 shall be the pay last drawn by them in the same post prior to their appointment.

3. In exercise of the powers conferred by Rules 5-A of Fundamental Rules, the Governor of Tamil Nadu hereby relaxes the provision in Ruling (6) under Fundamental Rule 22-B, so as to enable the Typists/Personal Clerks and Junior Assistants of Tamil Nadu Ministerial Service recruited to the same post in Tamil Nadu Ministerial Service through the competitive examinations held by the Tamil Nadu Public Service Commission during 1983 and 1986 alone, for fixation of their pay at the same stage at which pay was drawn by them immediately prior to their appointment through the Tamil Nadu Public Service Commission. They shall be eligible to draw the next increment only after completion of one year of service from the date of appointment by the Tamil Nadu Public Service Commission.

4. This order issues with the concurrence of Finance Department - Vide its U.O.No.15284/Pub.I/90, dated 15.2.90.

(BY ORDER OF THE GOVERNOR)

S.Sivasubramanian,
Secretary to Government.

15. Reading of G.O.Ms.No.85, would show that the Government have considered the case of fixation of pay of those, working in Tamil Nadu Ministerial Service and subsequently, recruited in the same post in Tamil Nadu Secretariat Service, through TNPSC, so as to enable them to draw the last drawn pay in the same post, held in Tamil Nadu Ministerial Service.

16. By relaxing Ruling 6 under the Fundamental Rules 22-B, the Government have issued orders in G.O.Ms.No.85, let us now consider Ruling 6 under Fundamental Rule 22-B, as follows:

"In the case a Government servant already in service in a post is appointed to another post through the Tamil Nadu Public Service Commission by direct recruitment, or when the mode of his appointment to the new post is by direct recruitment, the Government servant concerned should be allowed to draw the minimum of the time scale of pay or as provided in the service rules relating to such appointments and

fixation of pay under Fundamental Rule 22 or 22-B is not admissible."

17. Though the appellants have contended that G.O.Ms.No.85, was issued only for the abovesaid persons, who were recruited between 1983 and 1986, alone as a one time measure and therefore, the said G.O.Ms.No.85, is not applicable to the respondent, it has to be noted that the respondent is similarly placed as that of the others considered in G.O.Ms.No.85. At this juncture, this Court deems it fit to consider few decisions, as to whether, similarly placed persons are to be treated alike or not,

(i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court in paragraph 8 held thus,

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

(ii) In State of Karnataka v. N.Parameshwarappa reported in 2003 (12) SCC 192, the Hon'ble Supreme Court, at paragraph 8, held thus:

"8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the

applicability of the government order dated 30-3-1990, as raised in the proceedings."

(iii) In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

(iv) The Hon'ble Supreme Court in State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others reported in 2015 (1) SCC 347, wherein, the Hon'ble Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

18. G.O.Ms.No.71, Personnel and Administrative Reforms Department, dated 07.04.2000, by which, Special Qualifying Service Rules have been issued under Article 309 of the Constitution of India and the same is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

PUBLIC SERVICES - SPECIAL QUALIFYING EXAMINATION, 1995
- Personnel qualified in the examination - Conditions
of service - Special Rules - Issued.

PERSONNEL & ADMINISTRATIVE REFORMS (P) DEPARTMENT

G.O.Ms.No.71

Dated: 7.4.2000

Read:-

1. G.O.Ms.No.433, Personnel and Administrative Reforms
(PC) Department Dated 14.12.1993.

2. G.O.Ms.No.25, Personnel and Administrative Reforms
(PC) Department Dated 30.1.94.

3. Government Lr. No.66543/P/97-1 Personnel and
Administrative Reforms Department dated 13.1.98.

4. From the Secretary, Tamil Nadu Public Service
Commission Lr.No.2558/PSD-C1/96, dated 15.7.98 and
12.1.2000.

ORDER:

In the Government Orders read above, the Government have ordered for conducting a Special Qualifying Examination by the Tamil Nadu Public Service Commission for bringing the temporary employees in the common categories of Junior Assistant/Typist and Steno-Typist into regular service. Accordingly, the Tamil Nadu Public Service Commission had conducted the Special Qualifying Examination (SSLC Standard) on 24.6.95 and allotted the successful candidates to the various departments for appointment.

2. The Government have examined the question of framing special rules governing the service conditions of such persons who were appointed through Special Qualifying Examination, 1995.

3. The following Notification will be published in the Tamil Nadu Government Gazette:

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following rules.

2. The rules hereby made shall be deemed to have come into force on the 24th June 1995.

RULES

1. Short title and application:- (1) These rules may be called the Tamil Nadu Special Qualifying Examination Rules, 2000.

(2) They shall apply to all candidates appointed through Special Qualifying Examination in 1995.

2. Definitions:- In these rules, unless the context otherwise requires,-

(a) "candidates appointed through Special Qualifying Examination in 1995" means Typist appointed to the Tamil Nadu Secretariat Service or Junior Assistant, Typist or Steno-Typist appointed to the Tamil Nadu Ministerial Service or to the Tamil Nadu Judicial Ministerial Service, as the case may be, through the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission in 1995;

(b) "General Rules" means the General Rules in Part II of the Tamil Nadu State and Subordinate Services rules; and

(c) "Special Rules" means the Special Rules for the Tamil Nadu Secretariat Service, the Tamil Nadu Ministerial Service or the Tamil Nadu-Judicial Ministerial Service, as the case may be.

3. Special Provisions:- If any of the provisions of

these rules are repugnant to the corresponding provisions of the General Rules, Special Rules, Fundamental Rules, Tamil Nadu Leave Rules, 1933 of the Tamil Nadu Travelling Allowances Rules, the candidates appointed through the Special Qualifying Examination in 1995 shall, notwithstanding such repugnancy, be governed by these rules.

4. Qualifications:- (a) Age: The age qualifications prescribed in the Special Rules shall not apply, 0 the candidates appointed through the Special Qualifying Examination in 1995.

(b) Educational Qualification:- The candidates appointed through the Special Qualifying Examination in 1995 shall possess the educational qualifications prescribed in the Special Rules concerned.

(c) Technical Qualifications:- The candidates appointed through the Special Qualifying Examination in 1995 shall possess the technical qualifications prescribed in the Special Rules concerned.

Provided that a candidate appointed through the Special Qualifying Examination in 1995 and he does not possess the Technical qualifications prescribed in the Special Rules concerned shall acquire the technical qualifications prescribed in the Special Rules concerned within a period of two years from the date of issue of these rules, failing which, his services shall be terminated following the procedure laid down in General Rules for the Tamil Nadu State and Subordinate Services and the Special Rules concerned.

5. Commencement of Probation:- (1) A candidate who has been allotted through the Special Qualifying Examination in 1995 and appointed to the post of Typist in the Tamil Nadu Secretariat Service or Junior Assistant, Typist or Steno-Typist in the Tamil Nadu Ministerial Service or Tamil Nadu Judicial Ministerial Service shall commence his probation with effect from the 24th June 1995, if he was working temporarily in the said service on the said date:

Provided that if such candidate was not working in the said service on the said date, he shall commence his probation with effect from the date on which he was appointed temporarily in the said service subsequent to 24th June 1995 or with effect from the date of joining duty in the said service on allotment by the Tamil Nadu Public Service Commission.

(2) If any candidate has been allotted to a department other than the department in which he was previously working temporarily or to the same department and joined therein, but has commenced his probation from a date earlier than the date of joining

duty on allotment by the Tamil Nadu Public Service Commission as provided in sub-rule (1), such candidate shall not acquire any preferential right in the department in which he was previously working temporarily.

(3) The provisions contained in the above sub-rules (1) and (2) shall also be applicable to the candidate who has been allotted through Special Qualifying Examination in 1995 and appointed to the post of Typist in the Tamil Nadu Secretariat Service, or Junior Assistant, Typist or Steno-Typist in the Tamil Nadu Ministerial Service or in the Tamil Nadu Judicial Ministerial Service, even if he was not temporarily working in the said category service, provided the post held by a candidate before and after allotment by Tamil Nadu Public Service Commission carries identical scale of pay.

(4) In cases wherein a candidate is appointed to a post which carries higher scale of pay after allotment by Tamil Nadu Public Service Commission, he shall commence his probation only on the date of joining after allotment by the Tamil Nadu Public Service Commission in the said post.

(6) Probation:- (1) Every person who has been appointed through the Special Qualifying Examination in 1995, shall, from the date on which he commences probation as provided in sub-rules (1) (3) and (4) of rule 5, be on probation for a total period of two years on duty within a continuous period of three years.

(2) The past services rendered by the candidates in any category/service after the date of commencement of probation as provided in rule 5 shall count for probation in the category/service to which he was appointed after allotment by the Tamil Nadu Public Service Commission.

7. Seniority:- The seniority of a person appointed through the Special Qualifying Examination in 1995 irrespective of the date of commencement of probation shall be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission. The candidates appointed through Special Qualifying Examination in 1995 shall take seniority below the candidates selected from the Main list, Reserve list and beyond the Reserve list of candidates drawn for the posts of Junior Assistant and Typist and the Reserve list of Steno-Typist drawn separately for this post on the results of the Group IV Services regular competitive examinations conducted by the Tamil Nadu Public Service Commission in 1994.

(8) Fixation of Pay:- (1) Every person appointed to the post of Junior , Assistant, Typist or Steno-Typist, as the case may be, shall continue to draw the same pay drawn by him prior to. the date of his commencement of probation if he had been allotted to the same category in the same department where he had been previously working temporarily. The pay of a person allotted to the same category in a different department shall be fixed at the same stage in the time scale of pay applicable to tire post prior to such allotment.

(2) The pay last drawn prior to the commencement of probation allowed in sub-rule (1) shall also be made applicable to the person who was appointed in a different category/service after allotment by the Tamil Nadu Public Service Commission, provided the post he holds before and after allotment by the Tamil Nadu Public Service Commission carries identical scale of pay. However special pay allowed to the post of Typist shall not be taken into account for las, pay drawn in case he is appointed as untor Assistant on allotment by the Tamil Nadu Public Service Commission.

(3) In case where a person is appointed to a post which prior higher scale of pay after allotment by Tamil Nadu Public Service Commission, he shall draw the minimum scale of pay applicable to the said post;

Provided that the above fixation shall no, be applicable to a person who was ousted from such temporary appointment in a service for want of vacancy and was appointed in any department on allotment by the Tamil Nadu Public Service Commission. In such cases, the pay shall be fixed at the minimum of the time scale of pay applicable to the post to which he is appointed.

(4) The unavoidable breaks in services of a candidates appointed temporarily to the post of Junior Assistant, Typist or Steno-Typist, as the case may be, caused while on joining duty in a different department on allotment by the Tamil Nadu Public Service Commission shall be condoned.

(5) (i) The temporary services of Junior Assistant, Typist or Steno-Typist, as the case may be, prior to the date of commencement of probation shall count for increment in the time scale of pay, provided such services were continuous.

(ii) The provision contained in clause (i) shall also be applicable to a person who was appointed to a different category/service after allotment by the Tamil Nadu Public Service Commission.

9. Test or Training:- (1) Wherever Test or Training is

prescribed as a qualification for declaration of completion of probation in a service, the candidate shall pass such test or undergo such training within two years from the date of issue of these Rules, failing which, his increments shall be stopped without cumulative effect. However if he fails to pass such test or undergo such training within four years from the date of issue of these Rules, his services shall be terminated following the procedure laid down in the General Rules for the Tamil Nadu State and Subordinate Services and the Special Rules concerned.

(2) If any candidate who has been appointed through the Special Qualifying Examination in 1995 does not possess an adequate knowledge of Tamil, he shall pass the second class Language Test in Tamil conducted by the Tamil Nadu Public Service Commission within two years from the date of issue of these Rules. If he fails to pass the said language Test within the said period of two years, his services shall be terminated following the procedure laid down in the General Rules for the Tamil Nadu State and Subordinate Services and the Special Rules concerned.

10. Earned Leave:- The candidate who has been appointed through the Special Qualifying Examination in 1995 shall earn the leave as provided in G.O.Ms.No.157, Personnel and Administrative Reforms (FR-III) Department dated 24.6.1994.

(BY ORDER OF THE GOVERNOR)

A.P.MUTHUSWAMY
CHIEF SECRETARY TO GOVERNMENT

19. Reading of G.O.Ms.No.71, would show that the Government, while issuing the abovesaid orders, protected the pay of those, who had subsequently applied through a special qualifying examination. Clause 8 of the said Government Order clearly states that every person appointed to the post of Junior, Assistant, Typist or Steno-Typist, as the case may be, shall continue to draw the same pay drawn by him prior to the date of his commencement of probation, if he had been allotted to the same category in the same department, where he had been previously working temporarily. Though in the reported judgment, they were appointed in the same department, when G.O.Ms.No.71, has been issued as Special Qualifying Examination Rules, 2000, applicable to those recruited in 1995, by TNPSC, there is no reason, as to why, the same yardstick should not be followed in the case of the respondent, whose services are continuous, without break.

20. As regards probation and seniority, Clauses (5) to (7) would cover the case of the respondent herein and that the Writ Court in W.P.No.11858 of 2010, dated 12.01.2017, has rejected the case of the respondent to count his temporary service for seniority, against which, no appeal has been filed.

21. Government in G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 12.09.2009, have regularized the services of Typists/Steno Typists, who have not qualified in the examination, to count their temporary services and the said Government Order is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

PUBLIC SERVICES - SPECIAL QUALIFYING EXAMINATION conducted by Tamil Nadu Public Service Commission in 1995 for temporary Government Servants in common categories of Junior Assistants/Typists and Steno-Typists - Writ Petitions filed by unqualified candidates who are still continuing in service based on interim orders passed by High Court, Madras - Orders of High Court, Madras for regularization of their services - Implementation of Court orders - Orders - Issued.

PERSONNEL & ADMINISTRATIVE REFORMS (P) DEPARTMENT

G.O.Ms.No.124 Dated: 12.09.2009
Read:-

1. G.O.Ms.No.433, Personnel and Administrative Reforms (PC) Department, Dated 14.12.1993.
2. G.O.Ms.No.71, Personnel and Administrative Reforms (PC) Department, Dated 07.04.2000.
3. Orders of State Administrative Tribunal, dated 11.07.2002 in O.A.Nos.423 to 427/1997 and 1112/1997.
4. Orders of High Court, Madras, dated 28.01.2008, in W.P.No.15135 of 2008.
5. Orders of High Court, Madras, dated 31.03.2008, in W.P.No.27193 of 2008.
6. Orders of High Court, Madras, dated 10.06.2008, in W.P.Nos.15177/2001, 6331/04, 6332/2004, 6333/2004, 6334/2004, 6335/2004, 6336/2004, 23887/2004, 12031/2004 and 30832/2006.
7. Orders of High Court, Madras, dated 25.08.2008, in

W.P.No.18339 of 2008.

8. Orders of High Court, Madras, dated 19.01.2009, in W.P.No.23195 of 2008.

ORDER:

In the Government Order 1st read above, orders were issued for conducting a Special Qualifying Examination for all the temporary Junior Assistants/Typists and Steno-typists who were recruited through Employment Exchanges to the posts which are under the purview of Tamil Nadu Public Services Commission since 1986 and subsequently ousted from service and those, who were appointed on or before 15.05.1991 and continued in service irrespective of the length of service put in by them. Accordingly, a Special Qualifying Examination was conducted by the Tamil Nadu Public Service Commission in the year 1995. In the Government Order 2nd read above, orders were issued framing Special Rules for those qualified in the above mentioned Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission in 1995. Consequently, the services of all the temporary Junior Assistants/Typists and Steno-Typists who were qualified in the above examination were regularised.

2. In the meantime, some of the temporary Junior Assistants/Typists and Steno-Typists who were not qualified in the abovesaid Special Qualifying Examination filed original applications in the Tamil Nadu Administrative Tribunal and subsequently Writ Petitions in the High Court, Madras and obtained interim orders from the Hon'ble Court and are continuing in service till date. In the orders of Tamil Nadu Administrative Tribunal 3rd read above, the Hon'ble Tribunal have directed that the service of the petitioners shall be regularised with effect from the date of their initial appointment and that they will be eligible for service benefits only. Moreover, in the order of High Court, Madras, 6th read above, the Hon'ble Court have observed as follows:

"In the light of the above legal pronouncements and also in view of the policy decision taken by the State in G.O.Ms.No.22, Personnel & Administrative Reforms Department, dated 28.02.2006 and considering the fact that the State itself had implemented the earlier orders of the Tribunal in identical situations and also the fact that under Rule 48, they have necessary power to grant relaxation and further the fact that the individuals have entered service on

being sponsored by Employment Exchange and have put in more than two decades of service, we feel that it is a fit case that the order of the Tribunal challenged in W.P. No. 6331 to 6336 of 2004 must be affirmed though not for the reasons indicated therein. Accordingly, W.P. Nos. 6331 to 6336 of 2004 will stand dismissed. The other writ petitions being W.P. No. 15177 of 2001 and W.P. Nos. 12031 and 23887 of 2004 will stand allowed. The State Government is directed to implement the order of the Tribunal within a period of eight weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Connected Miscellaneous Petitions are closed."

3. In all the other orders of High Court, Madras 4th to 8th read above, the High Court, Madras have passed orders in favour of the applicants, directing the respondents to regularise the services of the temporary Junior Assistants / Typists and Steno-typists as the case may be, from the date of their initial appointment.

4. The Government after detailed examination, have decided to implement the orders of the High Court, Madras, referred to at 4th, 5th, 6th, 7th and 8th read above in the connected Writ Petitions. Government accordingly, direct the respondents (viz) the Secretaries to Government of the Departments of Secretariat / Heads of Department / District Collectors as the case may be to implement the orders of High Court (ie.,) to regularise the services of Typists / Steno-typists / Junior Assistants who were appointed temporarily and who were appointed temporarily and who had failed in the Special Qualifying Examination conducted for them in the year 1995 from the date of their initial appointment with service benefits only.

5. The Government also direct that the services of similarly placed temporary Typist / Steno-typists / Junior Assistant who have failed in the Special Qualifying Examination 1995 and who have obtained orders favourable to them from the High Court of Madras shall also be regularised by the authorities concerned with effect from the date of their initial appointment with service benefits only.

(BY ORDER OF THE GOVERNOR)

K.N.VENKATARAMANAN
SECRETARY TO GOVERNMENT."

22. G.O.Ms.No.124, has been issued by the Government, regularising the services of those, who have been ousted from service and subsequently, reappointed on or before 15.05.1991.

In the Special Qualifying Examination conducted in 1995, some of them were successful and their services were regularised. Some of them did not. They moved the Tamil Nadu State Administrative Tribunal, Madras and obtained interim orders. Ultimately, the Tribunal, by its order, in O.A.Nos.423 to 427 and 1112 of 1997, dated 11.07.2002, directed the services of the petitioners therein to be regularised, from the date of their initial appointment and that they would be entitled to service benefits only.

23. There were other similar orders. It could be seen from G.O.Ms.No.124, while implementing the orders of the Tribunal, the Government have considered G.O.Ms.No.71 and extended the benefit of regularising the services to unsuccessful persons also.

24. In W.A.No.928 of 2009, dated 30.08.2010 [G.D.Rajeswari v. The Commissioner, Transport Department, Chennai], the appellant therein, who served in Judicial Department as Steno - Typist for a period of eight years, on getting selected in the Tamil Nadu Public Service Commission Group IV Examination, joined in Transport Department. Though the appellant therein was granted the benefit of Earned Leave accumulation after getting relieved from the Judicial Department, she was denied pay fixation by order dated 20.8.1996, passed by the Transport Commissioner, Chepauk, Chennai. Challenging the same, she filed O.A.No.6021 of 1997, before the Tamil Nadu Administrative Tribunal and on abolition of the Tribunal, the same was transferred to this Court and re-numbered as W.P.No.26605 of 2006. Writ Court dismissed the writ petition, holding that the appellant is not eligible for her past services to be counted for pay fixation. Aggrieved by the said order, she has preferred an appeal. Considering the facts and circumstances of the case, a Hon'ble Division Bench of this Court, held as follows:

"6. The fact remains that the appellant was appointed as Steno - Typist in the Tamil Nadu Judicial Ministerial Service with effect from 19.01.1987 and she was regularised in the post. While in service, she had applied for the post of Steno-typist by appearing in Group IV Examination. It is not in dispute that she was relieved from the Judicial Department with effect from 06.9.1994 afternoon and she joined in Transport Department on 07.9.1994 and hence, it cannot be said that she resigned her service in the Judicial Department. It is to be noted that both the posts carry same scale of pay. The appellant had applied for the post through proper channel and that too, after getting No Objection Certificate from the Judicial Ministerial Service. Further, in the relieving order dated 05.9.1994 issued by the Chief Judicial Magistrate, Vellore, reference has been cited only as

application of the appellant and nowhere in the records, it is mentioned as resignation by the appellant. Therefore, it is clear that she was appointed to an identical post with identical scale of pay and as such, it cannot be said that she resigned her earlier service so as to disentitle the benefits of past service rendered by her.

7. The learned Judge negatived the claim of the appellant based on F.R. 22-B. The proviso to F.R. 22-B reads as follows:-

"Provided that if a Government servant has previously held substantively or officiated in -

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post on an identical time-scale or a temporary post on an identical timescale, such post being same time-scale as a permanent post then the initial pay shall not be less than the pay other than special pay, personal pay or emoluments classed as pay by Government under rule 9(21)(a)(iii) which he drew on the last such occasion and he shall count the period during which he drew that pay on such last occasion and any previous occasions, for increment in the stage of time-scale equivalent to that pay."

8. It is also pertinent to note that F.R. 22-B has been relaxed by virtue of G.O. Ms. No. 85, Personnel & Administrative Reforms Department dated 20.02.1990 wherein the Government had passed orders that those members who were appointed in the Tamil Nadu Ministerial Service in the same cadre shall be fixed in the pay last drawn by them in the post prior to their appointment in relaxation of FR 22-B.

9. A reading of the above exception to F.R. 22-B would make it abundantly clear that the appellant is entitled for fixation of the pay last drawn by her in the Judicial Department. As rightly submitted by the learned counsel for the appellant, when the appellant's Earned Leave in Judicial Department was taken into account in Transport Department, it is to be assumed that her previous service is not erased off fully. In such case, her last drawn pay in the Judicial Department should have been taken into account with effect from 07.9.1994. The respondents have committed error in rejecting the claim of the appellant. Therefore, we are of the view that the learned Judge has not considered the claim of the appellant in its proper perspective which needs to be interfered with.

10. Considering the above stated facts and

circumstances of the case, we set aside the order dated 20.8.1996. The respondents are directed to reconsider the claim of the appellant and pass appropriate orders taking into consideration her past services in the Judicial Department and also in the light of the exception to F.R. 22-B and G.O. Ms. No. 85 Personnel and Administrative Reforms Department dated 20.02.1990.

11. The Writ Appeal is disposed of accordingly."

25. Government in G.O.Ms.No.639, Home (Transport.IV) Department, dated 30.08.2014, have implemented the orders in W.A.No.938 of 2009, dated 30.08.2010 and the said Government Order is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Establishment - Transport Department -
Tmt.G.D.Rajeswari, Steno-typist Grade.II, Office of
the Transport Commissioner, Chennai - Implementation
of the Orders of Hon'ble High Court of Madras in
W.A.No. 928/2009 dated 30.8.2010 - Orders - Issued.

HOME (TRANSPORT.IV) DEPARTMENT

G.O. (Ms.) No.639

Dated: 30.08.2014

ஐய, ஆவணி 14.

திருவள்ளூர் ஆண்டு - 2045

Read:-

1) Orders of High Court of Madras in W.P.
No.26605/2006, dated 17.03.2009

2) Orders of Hon'ble High Court of Madras in
W.A.No.928/2009, dated 30.8.2010

3) From the Transport Commissioner, Chennai.5
letter R.NO.38153/R2/2009, dated 07.02.2011.

4) Government letter No.77805/Tr.IV/2011-8, dated
12.06.2014

5) Contempt Petition filed by Tmt.G.D. Rajeswari
in C.P.No.2089/2014, dated 18-6-2014.

6) Contempt Notice of High Court of Madras in
C.P.No. 2089/2014, dated 23.07.2014 and 31.07.2014.

ORDER:

Tmt.G.D.Rajeswari, Steno Typist had filed O.A.No.6021/97 against the order of the Transport Commissioner, Chennai in Memo.No.89874/R2/94, dated 20.08.1996 before the Tamilnadu Administrative Tribunal, Madras for not having sanctioned the last pay drawn in Judicial Department. Consequent on the abolition of Tamil Nadu Administrative Tribunal, the matter was transferred to the Hon'ble High Court of Madras in its order first read above have dismissed the W.P.No.26605/2006 dated 17.03.2009 on the ground that the petitioner is not eligible for her previous services to be counted for pay fixation.

2) The Hon'ble High Court of Madras in its order second read above have directed the second respondent (ie., the Secretary to Government, Home Department) to reconsider the claim of the applicant and pass appropriate orders taking into consideration her previous services in the Judicial Department and also in the light of the exception to FR 22-B and and G.O.Ms.No.85, Personnel and Administrative Reforms Department, dated 20.02.1990.

3) The Transport Commissioner, Chennai has sent proposal in his letter third read above have requested the Government to issue orders to relax FR. 22-B as per G.O.(Ms.) No. 85, Personnel and Administrative Reforms Department, dated 20.02.1990 for considering the petitioner's previous service in the Judicial Department for pay protection with consequential benefits.

4) The Government in their order fourth read above have rejected the request of Tmt.G.D.Rajeswari, Steno-typist, Office of the Transport Commissioner for relaxing the Fundamental Rule 22-B for the past services rendered by her in Judicial Department taking into account for the purpose of fixation of pay, leave, increment etc. as not feasible of compliance and requested the Transport Commissioner to inform the above fact to the individual.

5) Aggrieved by this, in the reference fifth read above Tmt.G.D.Rajeswari, Steno-typist Grade.II, Office of the Transport Commissioner, Chennai has filed Contempt Petition No. 2089/2014 in Writ Appeal No.928/2009 dated 30.08.2010. In the reference sixth read above, the High Court of Madras has sent the Contempt Notice to this department for non implementing the order of Division Bench in Writ Appeal No. 928/2009, dated 30.08.2010.

6) The Government after careful examination in

the light of the orders of the Division Bench of the Honourable High Court of Madras in Writ Appeal No.928/2009, dated 30-08-2010, have decided to implement the orders of the Division Bench in Writ Appeal No.928/2009, dated 30.8.2010, taking into consideration of her past services rendered in the Judicial Department in the light of the exception to Fundamental Rule 22-B and G.O.(Ms.) No. 85, Personnel and Administrative Reforms Department, dated 20.02.1990, subject to outcome of the Special Leave Petition to be filled before the Supreme Court of India.

(BY ORDER OF THE GOVERNOR)

APURVA VARMA
PRINCIPAL SECRETARY TO GOVERNMENT."

26. Case of the respondent is not different from the order made in G.O.Ms.No.639. Respondent had served in the office of Deputy Registrar, Public Distribution System, Udgamandalam, temporarily from 27.09.1989 to 24.08.1994. Thereafter, he was successful in the examination conducted by TNPSC and without any break in service, appointed as Steno-Typist Grade-III, in Rural Development and Panchayat Raj Department, Government of Tamil Nadu. In the mean while, between 27.09.1989 and 24.08.1994, he was granted annual increments. But when the respondent was appointed, pursuant to TNPSC selection, he was denied all the service benefits, without taking into account, the past services and hence, he has filed W.P.No.11858 of 2010. Writ Court has considered the various Government Orders and on the facts and circumstances of the case, held that the respondent is entitled to only pay protection and not seniority. As observed in the foregoing paragraphs, the respondent has not filed any appeal against seniority, but the appellants were aggrieved over the pay protection.

27. Contention of the appellants that similar benefit would be claimed by others, cannot be a reason to wipe out the continuous service of the respondent, as steno-typist in Registration Department for the purpose of pay protection alone. Contention of the appellants that if pay protection is granted, then it would violate principles of natural justice, cannot be countenanced.

28. The reason that the Tamil Nadu Service Commission did not fill up the post of steno-typist Grade III, in the Office of the Deputy Registrar (Public Distribution System), due to the administrative reasons, such as, no vacancy was reported by the

Office of the Deputy Registrar (Public Distribution System), or no sufficient candidate was available with the Tamil Nadu Public Service Commission, cannot be put against the respondent, for denial of pay fixation.

29. By virtue of the delay caused by the Department or the Tamil Nadu Public Service Commission in notifying the vacancy, for appointment to the post of Steno-Typist Grade III, the respondent cannot be forced to give up all the increments earned annually and be placed at the minimum scale of pay applicable to the post of Steno-Typist, Grade III, when he was appointed through TNPSC.

30. Though the appellants have contended that had the respondent been successful in the competitive examination conducted earlier, he would have been selected during the period between 27.09.1989 and 23.08.1994, the appellants have not given the particulars of any such examination conducted by TNPSC, during the abovesaid period. That apart, the contention that he was unsuccessful in the competitive examination conducted earlier, is not substantiated.

31. In *State Bank of India and others v. K.P. Subbiah and others* reported in 2003 (11) SCC 646, at Paragraphs 15 to 23, explained the word "pay" and "pay scale" and how it is fixed and the same are extracted hereunder:

"15. In service jurisprudence the expressions "pay" and "pay scale" are conceptually different connotations. Pay is essentially a consideration for the services rendered by an employee and is the remuneration which is payable to him. Remuneration is the recurring payment for services rendered during the tenure of employment. Pay and salary are necessarily not interchangeable concepts. Their meanings vary depending upon the provisions providing for them.

16. As per Concise Oxford Dictionary, 8th Edn. (1990), the word "pay" in its ordinary significance in relation to service means "to give what is due for services done". However, in the service jurisprudence, the expression "pay" has technical connotation of its own. Fundamental Rule 9(21) throws some light on this aspect. The definition itself is as follows:

"9. (21)(a) Pay means the amount drawn monthly by a government servant as—

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a

cadre, and

(ii) overseas pay, special pay and personal pay, and

(iii) any other emoluments which may be specially classed as pay by the President."

17. There are different types of pay like substantive pay, special pay, additional pay, personal pay and presumptive pay.

18. Public services comprise different grades and, therefore, different pay scales are provided for different grades. The pay of an employee is in that background fixed with reference to a pay scale. This is necessary to be done because the pay of an employee does not remain static.

19. It has to be noted that an employee starts with a particular pay which is commonly known as initial pay and the periodical increases obtained by him are commonly known as increments. When the highest point is reached, the employee concerned becomes entitled to what is known as ceiling pay. It is, therefore, a graded upward revision.

20. The fixation of pay scales is essentially a function of the executive. They are closely interlinked with evaluation of duties and responsibilities attached to the posts and the pay scales are normally linked with conclusions arrived at by expert bodies like the Pay Commission.

21. The degrees of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the tasks, hazard attendant on work and fatigue involved are some of the relevant factors which go into the process of fixing the pay scale. (See Delhi Veterinary Assn. v. Union of India [(1984) 3 SCC 1 : 1984 SCC (L&S) 329] .)

22. As noted above, a pay scale has different stages starting with initial pay and ending with ceiling pay. Each stage in the scale is commonly referred to as basic pay. The emoluments which an employee gets is not only the basic pay at a particular stage, but also the additional amounts to which he is entitled as allowances e.g. DA etc. Therefore, when a question of pay protection comes, the basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that the total emoluments are not reduced.

23. Ordinarily, a pay structure is evolved keeping in mind several factors, for example (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given

cadre, (iv) minimum educational/technical qualifications required, (v) avenue of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, and (x) the employer's capacity to pay etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause unavoidable ripples in other cadres as well. (See Secy., Finance Deptt. v. W.B. Registration Service Assn. [1993 Supp (1) SCC 153 : 1993 SCC (L&S) 157 : (1993) 24 ATC 403 : AIR 1992 SC 1203])"

32. In State of Punjab v. Jaswant Singh Kanwar reported in 2014 (13) SCC 622, at Paragraph 12, the Hon'ble Supreme Court explained what an increment means,

"13. "Increment" has a definite concept in service law jurisprudence. It is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. As noted by this Court in SBI v. Central Govt. Labour Court [(1972) 3 SCC 595], under the labour and industrial laws, an increment is when in a timescale of pay an employee advances from the lower point of scale to the higher by periodic additions. In other words, it is addition in the same scale and not to a higher scale. An increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary."

33. At this juncture, it is relevant to consider FR 24 and FR 26(a) of the Tamil Nadu Fundamental Rules. Rule 24 of the Tamil Nadu Fundamental Rule is extracted hereunder:

"An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by Government or by any authority to whom Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments."

34. Tamil Nadu Fundamental Rule 26, prescribes the following conditions on which service counts for increments in a time-scale:-

(a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that the increments of all Government servants shall be so advanced as to fall due on the commencement of the quarter concerned, that is advanced to 1st January for all those drawing increments between 2nd January and 31st March, or 1st April, 1st July or 1st October, as the case may be:

Provided further that for the purpose of arriving at the date of next increment in that timescale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date arrived at after advancing the date of increment to the first of the quarter.

In cases where the punishment of stoppage of increment has been imposed with cumulative effect, the benefit of advancing the date of increment to the first of the quarter shall stand withdrawn permanently and that all future increments shall be given effect to only from the date of actual accrual.

The amendment hereby made shall be deemed to have come into force on 1st January 1974.

35. It is not the case of the appellants that persons appointed under emergency provisions, ie., under Rule 10(a)(i) of then Tamil Nadu State and Subordinate Service Rules, 1955, are not eligible for increment, if they are fully qualified to hold the post. In fact, the respondent has earned three annual increments as Steno-Typists, Grade III in Registration Department.

36. A Full Bench of the Andhra Pradesh High Court in Principal Accountant General v. C.Subba Rao reported in 2005 (2) ALD 1 = 2005 (2) ALT 25, dealing with the Central Fundamental Rules, at Paragraphs 11 and 16, held as follows:

"11. The Government service is not a contract. It is a status recognised by Constitution of India and governed by the Rules made by the President under the proviso to Article 309 of the Constitution of India. These have force of law. Under these Service Rules, consideration for service rendered by a Government servant is the remuneration payable to him commonly known as 'pay' during the tenure of employment. Again, the Rules or administrative instructions govern the pay paid to a Government servant periodically; once in a calendar month. The pay of a Government servant may consists of substantial pay, special pay, additional pay, personal pay, and presumptive pay. The pay of a Government servant does not remain static and Government periodically gives an increase in pay after completion of one year of service, which in service parlance referred to as "increment". The increments as

we presently see are generally given annually in a routine manner to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency in which event after certain period of service the Government servant could not be given any increment on the ground of "efficiency bar". The grant of increment depends on and is linked to the efficiency of a Government servant to be of utility in the continued service.

.....

16. As per F.R. 17, extracted hereinabove, a Government servant shall begin to draw the pay and allowances attached to his post with effect from the date when he assumes the duties of that post until he ceases to discharge those duties. "Pay" as defined in F.R.9(21)(a) means, the amount drawn monthly by a Government servant which also includes the increment given at an anterior date. Therefore, after retirement, a person will not be entitled to any pay including the increment that may be due from the posterior date. F.R.22 regulates the initial pay of a Government servant who is appointed to a post in time-scale and F.R.24 and F.R.26 regulate the sanction of increment to a Government servant, who is on duty. A reading of various Fundamental Rules extracted hereinabove would show that a person appointed as a Government servant is entitled to pay in time-scale of pay. He is also entitled to draw the increment as per time-scale of pay as a matter of course as long as such Government servant discharges duties of the post and such Government servant shall not be entitled to draw the pay and allowances attached to the post as soon as he ceases to discharge those duties. In other words, as per F.R. 17 read with F.Rs.24 and 26 annual increment is given to a Government servant to enable him to discharge duty and draw pay and allowances attached to the post. If such Government servant ceases to discharge duties by any reason say, by reason of attainment of age of superannuation, such Government servant will not be entitled to draw pay and allowances. As a necessary corollary, such employee would not be entitled to any increment if it falls due after the date of retirement, be it on the next day of retirement or sometime thereafter."

Principles laid down in the above judgment, can be made applicable to the case on hand.

37. In the light of the above decisions, as to what pay, pay scale and increment means, the respondent, who has earned three annual increments in the post of Steno-typist, Grade III,

in Registration Department, cannot be placed in the minimum scale of pay in the same post, after induction into Rural Development and Panchayat Raj Department, Government of Tamil Nadu, after qualifying in the Tamil Nadu Public Service Commission, more so, when his services are without any break.

38. In the light of the above discussion and decisions, pay protection granted by the writ Court, cannot be said to be erroneous, warranting interference.

39. In the result, the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

skm/dm

To

1. The Principal Secretary to Government,
Rural Development and Panchayat
Raj (E7) Department, Secretariat, Chennai-600 009.
2. The Commissioner of Rural Development &
Panchayat Raj, Pangal Buildings, Saidapet,
Chennai- 600 015.
3. The Collector,
The Nilgris District,
Udhagamandalam.

+lcc to Mr.Ravi Shanmugam, Advocate, S.R.No.82783
+lcc to the Government Pleader, S.R.No.83723

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W.A.No.1832 of 2018

BS(CO)
CS/08/01/2019