IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.8600 of 2009

N.Varadharajan ...Petitioner

Vs

1.The State of Tamil Nadu,
Represented by The Secretary
Finance Department
Secretariat,
Chennai.

2.The Director,
Local Fund Auditing,
Kuralagam, 4th Floor,
Chennai-600 108. ...Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of certiorari, to call for the records leading to pass the impugned order of the 2nd respondent dated 25.08.2008 in Na.Ka.En.Pa & Ni II (8)/870 of 2002 and quash the same.

For Petitioner : Mrs.R.Ramya
for
Mr.T.V.Krishnamachari

For Respondents : Mrs. Thangavadhana Balakrishnan
Additional Government Pleader

ORDER

The petitioner has prayed for issuance of writ of certiorari to quash the impugned order of the 2nd respondent dated 25.08.2008 in Na.Ka.En.Pa & Ni II (8)/870 of 2002.

2.The writ petitioner has claimed that he has petitioner joined as Assistant Inspector in Local Fund Auditing Department on 25.06.1983 and thereafter, he was promoted to the post of Deputy Inspector with effect from 16.09.1998. From 02.03.2005 onwards, he has been functioning as Inspector in the Local Fund Auditing Department, Trichy.

3.The petitioner would further submit that, for the post of Assistant Inspector and Deputy Inspector, along with him one Thiru.Panner Selvam, who was working as Inspector and junior to him, was in the seniority list for the year 1997 and 1998. He would further submit that the said Thiru.Panner Selvam was promoted as Deputy Inspector on 01.07.1998 and he was getting 5% personal pay. Even though, the petitioner being the senior to the said Panner Selvam, due to the official duties and also the petitionerhas taken leave, he was able to join duty as Deputy Inspector only on 16.09.1998 i.e. after 01.09.2008. Since he joined the service only on 16.09.1998 after the relevant date of 01.09.1998, the petitioner was not given 5% personal pay and the said Panner Selvam was given 5% personal pay more than the petitioner and thus there is a pay anomaly between the petitioner and the said Panner Selvam, who is junior to the petitioner, but receiving more pay than what the petitioner is receiving. To support the same, the petitioner made a representation on 18.11.1999 which was rejected by the 2nd respondent herein by order dated 25.08.2008 informed that the said Panner Selvam has already passed SAS Departmental test on 18.05.1995 and he has already got relevant entries in pay as per Fundamental Rule 22(Aa)(2) and as held that, it is not possible to remove the pay anomaly. Aggrieved by the said reply by the 2nd respondent, the present writ petition has been filed by the petitioner.

4.The counter affidavit has been filed by the 2nd respondent and the learned Government Pleader would content that, the petitioner himself has admitted that, the said Panner Selvam took charge before the crucial date i.e. 01.09.2008 and the petitioner has taken charge on 16.09.1998. The said Panner Selvam was promoted as Deputy Inspector vide RC No.A7/15276/97-1, on 30.03.1998 and joined duty on 01.07.1998 which is prior to 01.09.1998 and as per the G.O.(Ms).No.497 Finance Department dated 15.09.1998, 5% personal pay has been paid only to those Government Servants who have received their pay in the revised scale of pay of Rs.5500-175-9000 as on 01.09.1998 and accordingly the said Paneer Selvam was sanctioned 5% personal pay. However the petitioner is not entitled for such 5% increase in his pay, for the reason that the petitioner joined as a Deputy Inspector only on 16.09.1998, that is after the cut off date of 01.09.1998. As per the rule in the new pay scales introduced, the Government has not given any scope for rectification of pay anomaly by giving 5% personal pay to those Government Servants, who joined duty in the post carrying the pay scales which are eligible for 5% personal pay after 01.09.1998. Since on the cut off date, the petitioner was not holding the special post he was not considered for the payment of 5% personal pay. The learned Government Pleader would further submit that the petitioner has no rights for claiming 5%

personal pay and prayed for dismissal of the writ petition.

5.Heard, both the learned counsel for the petitioner and the respondents and perused the available materials on records.

6.The particulars regarding the petitioner and his junior PaneerSelvam are as follows:

S.No.	Description	Regarding N.Varadarajan	Regarding N.Panner Selvam
1.	Date of Joining as Assistant Inspector	25.06.1983	23.06.1983
2.	Date of Regularization of the post of Assistant Inspector	25.06.1983	23.06.1983
3.	Seniority No. for the post of Assistant Inspector	1093	1097
4.	Assistant Inspector Selection status	25.06.1993	23.06.1993
5.	Serial No. in selection list for the post of Assistant Inspector during the year 1997-98	34	40
6.	Date of passing in SAS Exam	16.11.1996	17.05.1995
7.	Date of Joining as Sub-Inspector	16.09.1998	01.07.1998
8.	Deputy-Inspector selection status	25.06.2003	23.06.2003

7.On going through the tabular column, it is clear that the petitioner has passed the SAS exam held on 16.11.1996 whereas his junior Panner Selvam has passed the said SAS exam on 17.05.1995. It is not disputed that the Government through its order in G.O.(Ms).No.497 Finance Department dated 15.09.1998 sanctioned 5% personal pay only to those Government Servants who have received their pay scale of Rs.5500-175-9000 as on 01.09.1998.

8.It could be seen from the above tabular column that the said Panner Selvam was promoted as Deputy Inspector and joined duty on 01.07.1998, which is prior to the cut of date of 01.09.1998 entitling the Government Servants to receive 5%

personal pay. Undoubtedly the petitioner has joined duty in the post of Deputy Inspector on 16.09.1998, that is after the cut off date i.e., only on 01.09.1998. Since the Government order has not specified any relaxation or rectification for such events, the respondents have rightly passed the order, which is impugned in the writ petition and the said order has been passed in consonance with G.O.(Ms).No.497 Finance Department dated 15.09.1998 and it could not be interfered with.

9.The petitioner being finding fault with the Government order for not providing any rectification of pay anomaly in the event of such Government Servant, who is joining the said post after the cut off date of 01.09.1998, but has not chosen to challenge the said Government order, cannot seek rectification of pay anomaly on the basis of the said Government order. The petitioner has joined the post of Deputy Inspector on 01.09.1998 but challenged the said pay anomaly only in the year 2009 by filing this writ petition. Under these circumstances, it is clear that the petitioner, who has joined the duty beyond the cut off date cannot compare himself with the other person and claim personal pay on par with the Government Servant who has joined the said post prior to the cut off date.

10.Accordingly, the Writ Petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji/nsd

To
1. The Secretary,
The State of Tamil Nadu,
Finance Department Secretariat,
Chennai.

2.The Director,
Local Fund Auditing,
Kuralagam, 4th Floor,
Chennai-600 108.

+1cc to Mr.T.V.Krishnamachari, Advocate, S.R.No. 76239
+1cc to the Government Pleader, S.R.No. 76817

W.P.No.8600 of 2009

SAI(CO)
GN(22/02/2019)