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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.03.2018

Pronounced on : 17.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12040 of 2014

P.Villayatham

... Petitioner

Vs.

1.Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai - 600 009.

2.Director of Employment and Training,
Guindy, Chennai - 600 032.

3.The Principal,
Govt. Industrial Training Institute,
Dindigul - 3.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Govt.Letter No.46824/T2/01-7 dated 24.12.2003 and Govt.Letter No.50474/T2/2003-3 dated 30.04.2004 and quash the same and consequently direct the respondents to fix the pay of the petitioner in the post of Junior Training Officer on par with his Junior with effect from 21.02.1992 till 07.05.1996 within a time frame.

For Petitioner : Mr.S.Ponraj

For Respondents : Mrs.S.Srimathy,
Special Government Pleader
for R1 to R3

**ORDER**

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The petitioner was initially appointed as Machine Operator in the General Purpose Engineering Workshop under the Department of Backward Classes. A policy decision was taken by the Government to transfer the administrative control of the General Purpose Engineering Workshop to the Directorate of Employment and Training. Accordingly, by order dated 13.07.1984, the second respondent took over the General Purpose Engineering Workshop together with the staff working therein. The petitioner was absorbed in the second respondent department as Workshop Assistant.

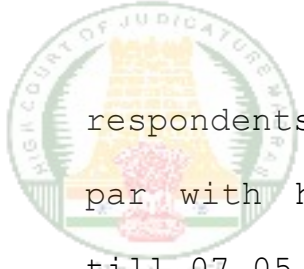
2.It is not in dispute that the petitioner was having the requisite qualifications to be appointed as Junior Training Officer. He was promoted to the said post in the year 1992. G.O.Ms.No.58, dated 08.05.1996 was issued and the seniority of the technical personnel absorbed by the Department of Employment and Training was fixed as indicated in the annexure. The petitioner is shown at Serial No.7 in the said annexure. The date of seniority fixed in the post of Junior Training Officer in the Department of Employment and Training was mentioned as 28.09.1977. However, Column No.6 which gives the date of promotion as Junior Training Officer in the said department is mentioned as 21.02.1992.



G.O.Ms.No.20, Labour and Employment Department dated 24.01.1991, the Government had taken the stand that if the date of entry in the department is taken for the purpose of fixation of their seniority they would lose their earlier service and they would become junior most in the seniority for no fault on them. Therefore, decision was taken to fix their seniority in the Department of Employment and Training by placing them next below the departmental candidates in the post based on their date of appointment in the respective post.

4.The grievance of the petitioner is that he was shown as above G.Aruchamy, the departmental candidate. G.Aruchamy was also fixed in the post of Junior Training Officer only with effect from 28.09.1977. But, the said G.Aruchamy was drawing pay higher than that of the petitioner. This pay anomaly was set right and the petitioner was paid on par with his junior Thiru.G.Aruchamy, with effect from 08.05.1996.

5.The petitioner's contention is that the authorities should also rectify the pay anomaly in respect of the preceding four years also, that is, from 21.02.1992 till 07.05.1996. In this regard, he gave a representation and since it was not considered, he filed WP No.3129 of 2011. This Court by order dated 27.06.2011 directed the authorities to consider the said representation. Pursuant to the direction, the impugned letter dated 08.11.2011 came to be passed whereby the petitioner's request was rejected. The petitioner



respondents to fix his pay in the post of Junior Training Officer on par with his Junior Thiru.G.Aruchamy with effect from 21.02.1992 till 07.05.1996.

6. Heard Mr.S.Ponraj, the learned counsel for the petitioner and Mrs.S.Srimathy, the learned Special Government Pleader appearing for the State. The respondents filed their detailed counter affidavit also.

7. The learned counsel for the petitioner placing reliance on the decision of the Hon''ble Supreme Court reported in **(2009) 3 SCC 94 (Gurcharan Singh Grewal v. Punjab State Electricity Board)**, submitted that senior cannot be paid less than his junior even if anomaly in senior's pay is due to difference of incremental benefits. Therefore, his pay should be properly stepped up with reference to the higher pay of the junior. He pointed out that as per G.O.Ms.No.58, dated 08.05.1996, the petitioner was ranked at Serial No.7 in the annexure. On the other hand, Thiru.G.Aruchamy, the departmental candidate was ranked at Serial No.8. It is not in dispute that the seniority of the petitioner was in the post of Junior Training Officer was fixed with effect from 28.09.1977 as in the case of Thiru.G.Aruchamy. Therefore, by no stretch of imagination can the pay of the petitioner be lower than that of G.Aruchamy. In fact, realizing the same, the petitioner's pay was fixed on par with Thiru.G.Aruchamy, with effect from 08.05.1996. But, there still remains the preceding four years. It is this anomaly that ought to be rectified and according to him, the authorities erred in passing the impugned order of rejection.



9. This Court is unable to agree with the said submissions of the petitioner's counsel. The learned counsel for the petitioner is absolutely right as far as the legal submission is concerned. But then, the facts do not favor him. It is true that vide G.O.Ms.No.20, dated 24.01.1991, a policy decision was taken to the effect that the date of entry in the department of Employment and Training will not be taken for the purpose of fixation of seniority since they would result in loss of earlier service of the absorbed candidates. Therefore, the Government decided to fix their seniority by placing them next below the departmental candidates in the post based on the date of appointment in the respective post.

10. Applying the said yardstick, this Court will have to see if the petitioner was occupying the post in General Purpose Engineering Workshop under the Department of Backward Classes corresponding to the post of Junior Training Officer in the department of Employment and Training. It is not in dispute that the petitioner was initially working as Machine Operator and he was appointed as a Workshop Assistant. He was absorbed in the post of Department of Employment and Training on 13.07.1984. This Court posed a specific question to the learned counsel for the petitioner as to whether the petitioner's pay in the post which he was holding in the erstwhile department was less than that of Junior Training Officer. The fair response of the learned counsel for the petitioner was that it was less than that of the Junior Training



11.If that be so, this Court is unable to appreciate the stand of the petitioner that he should be paid on par with Thiru.G.Aruchamy who was working as Junior Training Officer right from the year 1977. Admittedly, he was drawing the pay above the writ petitioner even when the petitioner was absorbed in the Department of Employment and Training in the year 1984. That explains the difference between the pay drawn by the petitioner and Thiru.G.Aruchamy.

12.In the considered view of this Court, there is no pay anomaly at all whatsoever. There was always a pay difference. Thiru.G.Aruchamy, the departmental candidate was drawing higher pay in the year 1977 and even in the year 1984 when the petitioner was absorbed in the department of Employment and Training. The pay between the two was completely different. Considering the fact that the petitioner having the qualification to be appointed as Junior Training Officer, he was promoted to the said post on 21.02.1992. A person who promoted to the post of Junior Training Officer on 21.02.1992 cannot seek parity with a person who was holding the post with effect from 28.09.1977.

13.In fact, the error committed by the Government was sought to be rectified later. But then, the process of rectification was not done in consonance with the principles of natural justice. That is why the petitioner succeeded before this Court in WP No.10924 of 2005. His subsequent litigative venture in WP No.17401 of 2007 however ended in failure. Since this Court has found that the pay



the view that the decision relied on by the learned counsel for the petitioner cannot be applied to the facts of this case.

14. In this view of the matter, sustaining the submissions of the learned Special Government Pleader for the State, this Court dismisses this writ petition. At this stage, the learned counsel for the petitioner expresses his apprehension that as a result of this order, the petitioner may suffer any prejudice in the drawal of his pension. It is made clear that the petitioner shall not suffer any monetary loss and that this Court rejects his claim for payment of the difference in pay for the period from 21.02.1992 till 07.05.1996 only. Except this, the petitioner shall not suffer any other monetary impact or loss.

15. With these observations and monetary protection to the writ petitioner and intending to give a complete quietus to the whole issue, this writ petition is dismissed. No costs.

SD

ASSISTANT REGISTRAR (T&P)

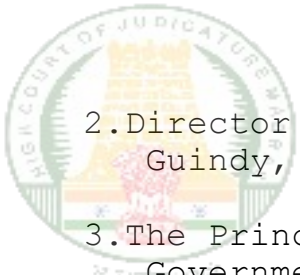
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SUB ASSISTANT REGISTRAR

Skm

To

1. The Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai - 600 009.



2. Director of Employment and Training,
Guindy, Chennai - 600 032.

3. The Principal,
Government Industrial Training Institute, Dindigul - 3.

+1cc to Mrs. S. Srimathy, Adv Spl Government Pleader SR-No 73501
+1cc to Spl government Pleader SR-No 73546

W.P (MD) No. 12040 of 2014

NM/SKN/SAR3/10.09.12/8P/6C