

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.04.2019

CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.28952 of 2015
and
M.P.No.1 of 2015 & W.M.P.Nos.4158 of 2016

R.Samboshini

... Petitioner

Vs

- 1.The Agricultural Production Commissioner
And Secretary to Government,
Agricultural Department,
Fort St.George,
Chennai - 9.
- 2.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai - 9.
- 3.The Director of Agriculture,
Chepauk, Chennai - 5. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to Government Letter No.27841/AA4 (1)/2014-6 dated 12.05.2015 Agriculture (AA4) Department, Secretariat, Chennai - 9 issued by the agricultural production commissioner and secretary to Govt, Agricultural Department, Chennai -9 quash the same and upgrade the petitioner scale and promote the petitioner to the post of Senior Supervisor as done in the case of similarly placed person.

For Petitioner : Ms.G.Sridevi

For Respondents: Mr.S.N.Parthasarathy, Govt.Advocate

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O R D E R

The petitioner is aggrieved against the proceedings of the 2nd respondent dated 12.05.2015, wherein and whereby, the petitioner's request for promotion to the post of Senior Supervisor from the post of Telephone Operator was rejected. Consequently, the petitioner seeks for a direction to the respondents to upgrade the petitioner's scale and promote her to the post of Senior Supervisor.

2. The case of the petitioner in short is as follows:

The petitioner was appointed as Telephone Operator on 22.02.1985 at the office of the Director of Agriculture, Chennai-5. For the post of Telephone Operator, there is no avenue for promotion. Therefore, the Association of Telephone Operators working in the Secretariat made a representation to the Government to upgrade the post of Telephone Operator as Telephone Supervisor. Consequently, the Government issued G.O.Ms.No.26 P & AR Department dated 23.01.1995 creating three posts of Telephone operators as Telephone Supervisors. One R.V.Deenadayalan, who was working as Telephone Operator made a request to extend the benefit of G.O.Ms.No.26. When his request was rejected, he filed a Writ petition before this Court, which came to be dismissed by the Writ Court. However, in the Writ Appeal No.1188/2009 dated 15.07.2010, the Division Bench allowed the claim of R.V.Deenadayalan and directed the respondents therein to promote the said person as Senior Supervisor and grant similar pay. The said order was implemented by the Government by issuing G.O.Ms.No.11, Agriculture Department dated 14.01.2011. Since the petitioner and the said Deenadayalan were working in the same Agriculture Department and when the benefit of upgradation of post was given to the said Deenadayalan, similar benefits should be given to the petitioner as well. However, the said request was rejected only on the reason that the benefit given to the said Deenadayalan was in pursuant to the Court order, that too, as a special case and on humanitarian ground.

3. The respondents filed a counter affidavit, wherein it is stated as follows:

The said R.V.Deenadayalan, Telephone Operator, who was working in the office of Agriculture Department, submitted a representation to the Government to place him as Senior Supervisor similar to the posts created in the Secretariat Service. The Government, in pursuant to the order passed in W.A.No.1188/2009 dated 15.07.2010 decided to promote the said R.V.Deenadayalan as Senior Supervisor by upgrading one post of Telephone Operator as has been done in the case of similarly placed employees of the Secretariat Service and granted similar pay, subject to the condition that such promotion should be treated as Special case on humanitarian ground and it should not be quoted as a precedent. Therefore, the petitioner cannot be equated with the case of the R.V.Deenadayalan.

4. Learned counsel for the petitioner submitted that when the petitioner and the said R.V.Deenadayalan were working in the same Agriculture Department, the respondents having given the benefit of upgradation of the post as Senior Supervisor to R.V.Deenadayalan, cannot deny the very same benefit to the petitioner, who was also working as Telephone Operator in the

same Department. She further contended that the Government cannot treat the case of R.V.Deenadayalan as a Special case.

5. Per contra, learned Government Advocate contended that the benefits given to R.V.Deenadayalan was based on the order passed by this Court in W.A.No.1188/2009, that too, by specifically indicating that such benefit was given as a Special case on humanitarian ground and that the same should not be treated as a precedent. Therefore, he contended that the petitioner is not entitled to similar benefit.

6. Heard both sides.

7. There is no dispute to the fact that the petitioner and the said R.V.Deenadayalan were working in the same Agriculture Department as Telephone Operators. It is also not in dispute that the said R.V.Deenadayalan was given the benefit of promotion/upgradation of the post from Telephone Operator to Senior Supervisor, in pursuant to the order passed in W.A.No.1188/2009. No doubt G.O.Ms.No.11 Agriculture Department dated 14.01.2011 issued to comply with the order passed in the above said Writ appeal indicated that upgradation of the post given to R.V.Deenadayalan was to be treated as a Special case on humanitarian ground and that the same should not be quoted as a precedent. At the same time, it is to be borne in mind that the said order came to be passed by the Government only in compliance of the order passed by the Division in W.A.No.1188/2009 dated 15.07.2010, wherein the Division Bench of this Court has observed as follows:

"7. We find from the materials available on record that the language incorporated in the Government Order and the stand taken in the counter affidavit the inconsistent. In G.O.Ms.No.26 P & AR (G) Department, dated 23.01.1995, it is stated that, in view of the stagnation as represented by the Tamil Nadu Secretariat Association, the posts were upgraded and pay scales were revised. In the counter affidavit, it is stated that the nature of work and responsibilities attached to the post of Telephone Operator in the Secretariat is higher when compared to this work in other Departments and hence this request cannot be complied with. It is also stated therein that it would be an additional expenditure to the Government and therefore such request cannot be compiled with. Therefore, we are of the opinion that the learned Judge ought not to have accepted the inconsistent version of the Government.

8. The learned counsel appearing for the appellant relied upon a decision of the Hon'ble Supreme Court of India in the case reported in (2008) 7 SCC 375 (Haryana State Minor Irrigation Tubewells Corporation vs. G.S.Uppal) to contend that the Government cannot put forth financial loss as a ground only with regard to a limited category of employees and that courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees. We perused the said judgment in the light of the submission made by the learned counsel for the appellant. In paragraph No.21 of the said judgment, the Hon'ble Supreme Court has held as follows:

"21. There is no dispute nor can there be any to the principle as settled in the above cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. (See K.T.Veerappa vs. State of Karnataka)."

9. Therefore, applying the above said principle to the facts of this case and in the absence of the respondents bringing to the notice of this Court the difference in the duties and responsibilities discharged by the Telephone Operators working in the Secretariat and the persons working in the Agriculture Department, we are unable to agree with the order passed by the first respondent dated 04.10.2002. Accordingly, the said order is set aside. Consequently, the order under challenge is liable to be set aside and it is accordingly set aside.

10. At this stage, it is brought to the notice of this Court by the learned counsel appearing for the appellant that the appellant has retired from service on 31.12.2007. Therefore, we consider it appropriate to direct the respondents to promote the appellant as Senior Supervisor as done in the case of similarly placed employees of Secretariat service and grant the similar pay with effect from 23.01.1995 and disburse the same to the appellant within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, the writ appeal is allowed. No costs."

8. Perusal of the above said order of the Division Bench would show that the same was not passed either as a special case or as a matter of concession with a direction to the respondents therein to consider the case of the appellant therein as a Special case or on humanitarian ground. On the other hand, the Division Bench, after noticing the facts that there is no difference in the duties and responsibilities discharged by the Telephone Operators working in the Secretariat and the persons working in the Agriculture Department, found that the order of rejection therein was liable to be set aside. Accordingly, after setting aside the said order, the Division Bench, directed the respondents therein to promote the appellant therein as Senior Supervisor as done in the case of the similar placed employees of the Secretariat Service as to similar pay.

9. When such being the findings rendered on merits by the Division Bench, I do not think that the Government, while implementing the said order, can say that such benefit is given to the appellant therein as a special case and on humanitarian ground. In my considered view, such stand taken by the Government, in fact, is not in consonance with the findings given by the Division Bench therein. The decision made by this Court based on merits of the matter, certainly binds the Government on merits as well and hence, while implementing such order, the Government cannot say that compliance is made as a special case. Therefore, I find that the petitioner herein is also entitled to the similar benefit as has been granted to the said R.V.Deenadayalan.

10. It is stated by the learned counsel for the petitioner that during the pendency of the writ petition, the petitioner retired from service and therefore, the notional promotion / upgradation can be given and monetary benefit be given to the petitioner. I find that even in the case of R.V.Deenadayalan,

during the pendency of the Writ Petition, he retired from service on 31.12.2007 and by taking note of the said fact only, the Division Bench directed the respondents to promote him and grant the similar pay.

11. Accordingly, I find that the petitioner is also entitled to the similarly relief. Thus, the Writ Petition is allowed and the impugned order is set aside. Consequently, the respondents are directed to notionally promote/upgrade the petitioner as Senior Supervisor, as has been done in the case of R.V.Deenadayalan, and grant similar pay with effect from 23.01.1995 being the date of G.O.Ms.No.26 P & AR Department. Such exercise shall be done by the 2nd respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

- 1.The Agricultural Production Commissioner
and Secretary to Government,
Agricultural Department,
Fort St.George,
Chennai - 9.
- 2.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai - 9.
- 3.The Director of Agriculture,
Chepauk, Chennai - 5.

+lcc to Mr.G.Sridevi, Advocate, S.R.No.37235

+lcc to the Government Pleader, S.R.No.38227

W.P.No.28952 of 2015

SKV(CO)

RRS (22/04/2019)