

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 14.08.2019

Orders Pronounced on : 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.32149 of 2018

S.M.Kuppan

.. Petitioner

Vs.

1. The Principal District Judge,
Dharmapuri District,
Dharmapurai.
2. The District Munsif-cum-Judicial Magistrate,
Pennagaram,
Dharmapuri District.
3. The Principal Accountant General
(Accounts and Entitlement) Tamil Nadu,
Chennai-600 018.
4. The Registrar General,
High Court, Chennai-104.

(Fourth respondent impleaded, vide
order of Court dated 07.01.2019 made in
W.M.P.459 of 2019)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in No.PO2/2/10223655/ADK/417, dated 05.11.2018 and quash the same and direct the third respondent to implement the order of the second respondent in ROC.No.1803/2018, dated 08.10.2018 in D.No.1840/2018, dated 08.10.2018 within a fixed time frame.

For petitioner : Mr.R.V.Raj Kumar for Mr.M.Selvam
For respondents : Mr.S.Kaithamalai Kumaran for RR-1, 2 and 4
Mr.V.Vijaya Shankar for R-3

ORDER

R.SUBBIAH, J

The petitioner has come forward with the present Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in No.PO2/2/10223655/ADK/417, dated 05.11.20188 and quash the same and direct the third respondent to implement the order of the second respondent in ROC.No.1803/2018, dated 08.10.2018 in D.No.1840/2018, dated 08.10.2018 within a fixed time frame.

2. It is the case of the petitioner that he joined the service of the Judicial Department as a part-time Masalchi on 16.07.1980 and his services were regulated and he became a Dhalayat on 10.03.1982. He had rendered unblemished service and was promoted as Senior Bailiff on 01.04.1993 and was further moved to Selection Grade Senior Bailiff with effect from 11.06.2003. He was promoted as Special Grade Senior Bailiff on 13.06.2013 and retired on the afternoon of 31.03.2016.

3. It is further stated by the petitioner that the scale of pay of Senior Bailiff was Rs.825-15-900-20-1200 during 1996. The Government, based on its order in G.O.Ms.No.61, dated 24.01.1996 from Finance (PC) Department, revised the same to the scale of pay of Rs.975-25-1150-30-1660 as per the recommendation of V Pay Commission with effect from 01.06.1988. The petitioner was drawing the pay accordingly. He was moved to Selection Grade Senior Bailiff with effect from 11.06.2003 in the time scale of pay of Rs.4000-100-6000. Further, as per the recommendation of VI Central Pay Commission, the salary of the Government employees was revised and the Government of Tamil Nadu, by its G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, notified the revised scales of pay. The Government, by its letter in Letter No.63305/Pay Cell/2010-1, dated 08.11.2010, issued from Finance (PC) Department, issued an order fixing the pay of employees in the Selection Grade/Special Grade, as per which, the revised Selection Grade/Special Grade scales of pay in case of the employees awarded Selection Grade/Special Grade prior to 01.01.2006, shall be fixed as per the scales of pay indicated in the Annexure-I to the said letter. The petitioner was moved to the Selection Grade with effect from 11.06.2003 and therefore, his pay shall be revised as per the said letter. As per the said letter, his pay ought to be Rs.9300-34800+Grade pay of Rs.4200. The said revised scales of pay ought to have taken effect from 01.01.2006 with monetary benefits from 01.02.2011. However, his salary was not revised according to the said G.O. and the petitioner continued to draw the salary at lower pay scale of Rs.4000-100-6000 and he is entitled to pay revision according to the said letter dated 08.11.2010. The petitioner gave representation to the respondent(s) for revision of his pay as per the said Government letter. In the meantime, the

petitioner retired from service on attaining the age of superannuation on the afternoon of 31.03.2016 as Special Grade Senior Bailiff. He had put in 36 years of unblemished service and now he is drawing pension.

4. It is further stated by the petitioner that his salary has not been fixed according to the G.Os. aforesaid and he had approached the respondent(s) several times and his pay was not re-fixed for want of clarity in the said G.Os. In the meanwhile, the Madurai Bench of this Court in W.P.(MD).No.12104 of 2017, by order dated 20.12.2017, in a similar case, clarified as follows:

"6. It is not in dispute that the petitioner was awarded Selection Grade as on 26.04.2003 and the scale of pay was revised to Rs.4000-100-6000 as per the Tamil Nadu Revised Pay Scale Rules, 1998, the pay for Selection Grade Junior Assistant is as above. However, the Government while issuing G.O.Ms.No.234, dated 01.06.2009, the Tamil Nadu Revised Pay Scale Rules, 2009 was introduced with effect from 01.01.2006 notionally and with monetary benefits from 01.01.2007. As per the said Rules, the pay scale for Junior Assistant was re-fixed as Rs.5200-20200 with Grade Pay of Rs.2400-. Further, the Government by letter, dated 08.11.2010, re-fixed the pay of Selection Grade as Rs.9300-34800+4200 Grade Pay, for those employees whose pay scale was fixed at Rs.5200-20200+2400 Grade Pay i.e. by Government Letter, dated 08.11.2010 and increased the Grade Pay Rs.2,400/- to Rs.4,200/-.

7. It could be seen from the above letter, dated 08.11.2010, in paragraph No.4 and the same reads as follows:

"4. The above issue has been examined by Government in detail in the light of the orders issued in para-4 of Government Order second cited and the consequential revision made to the various categories in the Ordinary Grade scales of pay based on the One Man Commission recommendations and subsequent Government Orders. Accordingly, I am directed to issue the following guidelines for fixation of pay in the revised Selection Grade / Special Grade posts:

i) The revised Selection Grade / Special Grade scales of pay in the case of employees awarded Selection Grade / Special Grade prior to 1-1-2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of One Man Commission / further order of Government thereon shall be fixed as per the scales of pay indicated in the Annexure-I to this letter following the same methodology of fixation of pay in the Selection Grade /

Special Grade scales of pay of employees as was done in pre--2006 scales of pay as indicated in Appendix-II of G.O.Ms.No.162, Finance (PC) Department, dated: 13-4-98 subject to the same condition stipulated therein that if the revised Selection Grade / Special Grade scales of pay indicated in the Annexure-I happens to be higher than the first level / second level promotion posts, then in such cases, only the revised Selection Grade / Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

ii) The above revised Selection Grade / Special Grade scales of pay indicated in the Annexure-I to this letter shall be confined only to the employees who were awarded Selection Grade / Special Grade prior to 1-1-2006 and in the case of employees who have exercised their option to come over to the revised scales of pay on the date of their award of Selection Grade / Special Grade between 1-1-2006 and 31-5-2009, (prior to the issue of G.O.Ms.No.234, Finance (Pay Cell) Department, dated: 1-6-2009)."

8. On a plain reading of the above stated instructions, it is clear that the Government has intended to increase the Grade Pay of those employees, who were awarded Selection Grade Pay prior to 01.01.2006. As per the admitted fact, the petitioner was awarded Selection Grade on 26.04.2003, as such, following G.O.Ms.No.234, dated 01.06.2009, the Tamil Nadu Revised Pay Scale Rules 2009 came into effect from 01.01.2006 notionally and with monetary benefits from 01.01.2007 and the Pay Scale for Junior Assistant was re-fixed as Rs.5200-20200-2400 Grade Pay and thereafter, the Government in letter dated 08.11.2010 categorically cleared that the re-fixing of pay for Selection Grade was Rs.9300-34800+4200 Grade Pay, whereby there was an increase in the Grade Pay from Rs.2400/- to Rs.4200/- to all those employees who were awarded Selection Grade prior to 2006 in the post of Selection Grade Junior Assistant."

5. It is the stand of the petitioner that he is similarly placed as that of the petitioner in the above said W.P.(MD). No.12104 of 2017 and the petitioner herein was promoted as Senior Grade Bailiff prior to 2006 and he is entitled to pay scale as fixed in the above said Madurai Bench case. Since the

Madurai Bench of this Court had clarified the issue, the petitioner made a representation dated 07.08.2018 to the second respondent requesting him to re-fix his pay based on the said Government Letter and the said judgment of the Madurai Bench of this Court. The second respondent, by his proceedings in ROC.No.1803/2018 dated 08.10.2018 in D.No.1840/2018, dated 08.10.2018 passed an order re-fixing his salary in the post of Selection Grade Senior Bailiff with effect from 01.01.2006 with monetary benefit with effect from 01.02.2011 and the arrears of salary was ordered to be drawn and paid to the petitioner as per the Rules in force, less already drawn. The second respondent also ordered pension proposal to be revised and the same was sent to the third respondent for his further action on the said order.

6. It is the further case of the petitioner that the third respondent, by proceedings in No.PO2/2/10223655/ADK, dated 05.11.2018 had returned the proposal/order of the second respondent on the ground that the Grade Pay to the Senior Bailiff had been restricted to Rs.2800/- and further questioned as to whether any order had been made based on the order of the Madurai Bench of this Court in the said case. Since the proposal was returned, the petitioner has filed the present Writ Petition for the relief stated supra.

7. When the Writ Petition is taken up for hearing, the learned counsel for the petitioner submitted that the petitioner was appointed as Masalchi on 16.07.1980 and was promoted as Senior Bailiff on 01.04.1993 and was awarded Selection Grade Bailiff on 11.06.2003. After the Pay Rules of 2009, the pay of the petitioner was fixed at Rs.5200-20200+2000 GP and based on One Man Commission's recommendations, the pay was further re-fixed as Rs.5200-20200+2400 GP. As per the Government proceedings, dated 08.11.2010 stated supra, the corresponding Selection Grade is fixed as Rs.9300-34800+4200 GP, i.e. the Grade Pay was increased from Rs.2,400 to Rs.4,200/- for those employees who were awarded the Selection Grade prior to 01.01.2006, i.e. the date of implementation of Revised Pay Rules, 2009. Since the petitioner was awarded the Selection Grade prior to 01.01.2006, i.e. 11.06.2003, he is entitled to receive Rs.4200 G.P. as Selection Grade Pay. The benefit was rejected to the petitioner for the reason that the Selection Grade pay had to be restricted to the level of Basic Pay of the first level promotional post and the petitioner's first level promotional post is Assistant and the petitioner is entitled to only Rs.2800 GP. The correctness of the above reason came up for consideration before the Madurai Bench of this Court in W.P. (MD).No.12104 of 2017 filed by the similarly placed employee working in the Subordinate Judiciary and the Division Bench of the Madurai Bench, by order dated 20.12.2017, elaborately considered the issue and interpreted the Government proceedings

dated 08.11.2010 in favour of the employee and granted Rs.4200 G.P. as Selection Grade pay and the same was implemented, which attained finality. The learned counsel for the petitioner submitted that the promotion from the post of Assistant will carry the following pay:

Assistant (Pay Scale: 5200-20200+2800 GP)

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| Promotion

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Junior Assistant

Typist

(5200-20200+2400 GP)

(5200-20200+2400 GP)

8. The learned counsel for the petitioner further contended that the post of Examiner, Reader and Bailiff carry same scale of pay, i.e. Rs.5200-20200+2400 GP, and they are not feeder category to the post of Assistant and not having promotional avenue, unless employee working in these categories is transferred to the post of Junior Assistant or Typist. The learned counsel also contended that the transfer is not a right and cannot be sought for and the transfer of an employee is different from the principle of post having promotional post. There is an object to give higher pay for those categories of post, which does not have promotional avenue, so as to avoid frustration among the employees and also for better administration. This is recognised by Rule 4 of the Tamil Nadu Revised Pay Scale Rules, 1998. Hence, the condition that if a post is having promotional post carrying higher pay, the Selection Grade pay has to be restricted to the Basic Pay of the first level promotional post, which is not applicable to the petitioner, as he was working and retired as Senior Bailiff. Therefore, the contention of the third respondent that the petitioner's first level promotion is Assistant, and therefore, he is entitled only Rs.2800 GP as Selection Grade pay is unsustainable. Hence, the petitioner is entitled to Rs.4200 GP as Selection Grade pay as per the Schedule in the Government proceedings dated 08.11.2010. Hence, for these reasons, the learned counsel prayed for quashing the impugned order and to direct the third respondent to implement the order of the second respondent in R.O.C.No.1803/2018 dated 08.10.2018 in D.No.1840/2018, dated 08.10.2018 within a time frame that may be fixed by this Court.

9. The first respondent has filed counter affidavit stating the writ petitioner was promoted as Senior Bailiff with effect from 01.04.1993. After completion of ten years of continuous service in the post of Senior Bailiff, he was moved to the Selection Grade post of Senior Bailiff with effect from 11.06.2003, as per the proceedings of the Principal District Judge, Dharmapuri @ Krishnagiri in R.O.C.No.4453/2007-A, dated 18.07.2007. His pay in the post of Selection Grade Senior

Bailiff was fixed at Rs.4000/- with effect from 11.06.2003 in the time scale of pay of Rs.4000-100-6000. Consequent to the Revised Pay Rules, 2009, the pay of the petitioner was fixed with effect from 01.01.2006 at Rs.7820+GP 2400 in the revised scale of pay of Rs.5200-20200+GP 2400 (PB-2). As per the proceedings of the Principal District Judge, Dharmapuri in R.O.C.No.2838/2012-CN, dated 15.06.2012, and as per G.O.Ms.No.45, Finance (PC) Department, dated 10.02.2011, the pay of the writ petitioner was revised and fixed at Rs.8560+GP 2800 in the revised pay band and GP of Rs.5200-20200+ GP 2800. After completion of ten years of continuous service in the post of Selection Grade Senior Bailiff, the petitioner was moved to the Special Grade Post of Senior Bailiff with effect from 13.06.2013 and his pay was fixed at Rs.15,310 (Rs.12510 + GP 2800) in the pay band of Rs.5200-20200+GP 2800. It is further stated by the first respondent that the Government of Tamil Nadu in Letter No.63305/Pay Cell/2010-1, dated 08.11.2010, issued the following guidelines for fixation of pay in the revised Selection Grade/Special Grade posts consequently to the revision of scales of pay:

(i) The revised Selection Grade/Special Grade scale of pay in the case of employees awarded Selection Grade/Special Grade prior to 01.01.2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of One Man Commission/further order of Government thereon shall be fixed as per the scales of pay indicated in the Annexure-I to this letter following the same methodology of fixation of pay in the Selection Grade/Special Grade scales of pay of employees as was done in pre-2006 scales of pay as indicated in Appendix-II of G.O.Ms.No.162, Finance (PC) Department, dated 13.04.1998 subject to the same condition stipulated therein that if the revised Selection Grade/Special Grade scales of pay indicated in the Annexure-I happens to be higher than the first level/second level promotion posts, then in such cases only the revised Selection Grade/Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

(ii) The above revised Selection Grade/Special Grade scales of pay indicated in the Annexure-I to this letter shall be confined only to the employees who were awarded Selection Grade/Special Grade prior

to 01.01.2006 and in the case of employees who have exercised their option to come over to the revised scales of pay on the date of their award of Selection Grade/Special Grade between 01.01.2006 and 31.05.2009 (prior to the issuance of G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009).

(iii) The revised Selection Grade/Special Grade scales of pay indicated in Annexure-I to that letter is admissible only in cases where the scales of pay of the Ordinary Grade posts were revised based on the recommendations of the One Man Commission and subsequent Government Orders.

(iv) The abovesaid revised Selection Grade/Special Grade scales of pay is not applicable to the employees moving to Selection Grade/Special Grade posts on or after 01.06.2009, since these employees are awarded Selection Grade/Special Grade directly in the revised scales of pay and therefore, entitled for one increment benefit equal to 3% of Basic Pay plus Grade Pay on the date of award of Selection Grade/Special Grade as ordered in para-4 of G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009.

10. The first respondent further stated in the counter that as the writ petitioner was moved to the Selection Grade post of Senior Bailiff prior to 01.01.2006, as per the abovesaid guidelines of the Government in the said letter dated 08.11.2010, and as per the observation of this Court in W.P. (MD).No.12104 of 2017, the pay of the writ petitioner as on 01.01.2016 was fixed as below, vide proceedings of the District Munsif-cum-Judicial Magistrate, Pennagaram, in R.O.C.No.1803/2018, dated 08.10.2018:-

(a) Pay of the writ petitioner as on 01.01.2006 in the Selection Grade Post of Senior Bailiff (in the pre-revised scale of pay of Rs.4000-100-6000): Rs.4,400+PP 20 + PP 181 (subsequent to the implementation of VII Pay Commission and G.O.Ms.No.45, Finance (PC), dated 10.02.2011, the existing pay and Grade Pay of the post of Senior Bailiff Rs.5200-20200+2000 had been enhanced to Rs.5200-20200+2400. As per the Annexure-I to the said letter dated 08.11.2010, for the ordinary Grade Scale of pay of Rs.5200-20200+GP 2400, the Selection Grade scale of pay is Rs.9300-34800+4200. Accordingly, the pay of the writ petitioner was re-fixed as below:

(b) Pay after multiplication by factor of 1.86... Rs.8557.86

- (c) Rounded off to the nearest 10 Rupees Rs.8560
 (d) Pay in the Pay Band-PB -1 Rs.8560
 (e) Grade Pay attached to this scale ... Rs.4200
 (f) Revised Basic Pay (d + e) ... Rs.12,760

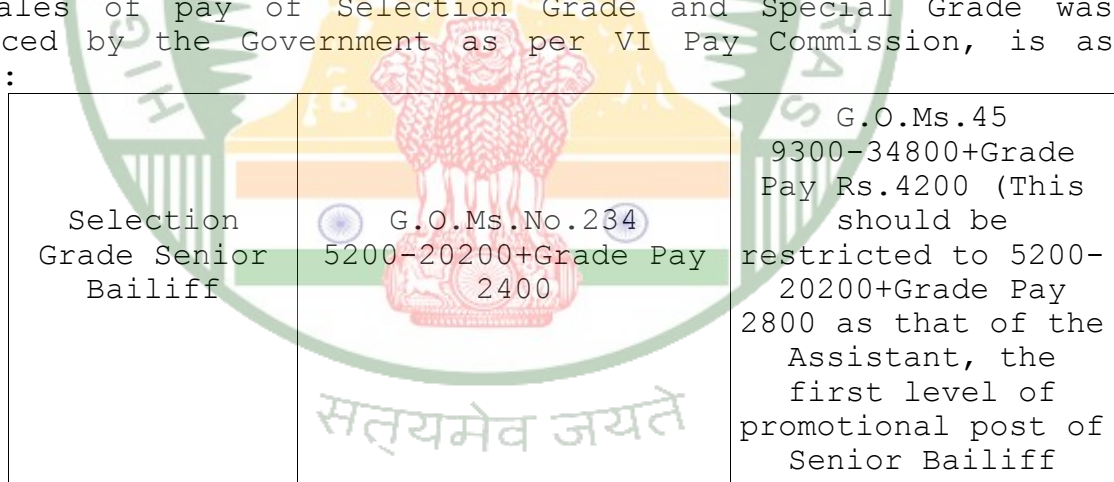
But the minimum pay in the Pay Band of S.G. Senior Bailiff is Rs.9300+GP 4200. Hence, the pay of the petitioner as on 01.01.2006 is fixed at Rs.13,500/- in the Pay Band of Rs.9300-34800+GP 4200. Further, periodical annual increments and increment for movement to Special Grade with effect from 13.06.2013 was granted and the pay was revised as per VII Pay Commission recommendations and finally, the pay of the petitioner was fixed at Rs.52,000/- as on 31.03.2016 as per G.O.Ms.No.311, Finance (CMPC) Department, dated 31.12.2014. Hence, the first respondent prayed for disposing of the above Writ Petition based on the counter affidavit contents as stated supra.

11. The third respondent has filed counter affidavit stating that the services of the petitioner had been regularised as Dhalayat on 10.03.1982; he was then promoted as Senior Bailiff on 01.04.1993 and awarded Selection Grade on 11.06.2003; Special Grade on 13.06.2013 and he retired on 31.03.2016. As he was holding the post of Selection Grade Senior Bailiff on 01.01.2006, he had been allowed the scale of pay of Rs.5200-20200+GP 2800 as per G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 read with G.O.Ms.No.45, Finance (PC) Department, dated 10.02.2011 applicable to that of Selection Grade Senior Bailiff corresponding to the pre-revised scale of pay of Rs.4000-100-6000 by the third respondent's office. Subsequently, on his movement to Special Grade on 13.06.2013, he had been sanctioned two increments as per G.O.Ms.No.237, Finance (PC) Department, dated 22.07.2013. His pensionary benefits had been admitted with pay last drawn as Rs.42000 as per subsequent VII Pay Commission G.O.303. Aggrieved by the above pay last drawn and claiming Grade Pay at Rs.4200 on 01.01.2006 in the post of Selection Grade Senior Bailiff, with subsequent revision, he has filed the present Writ Petition.

12. It is the further stand of the third respondent in the counter that the scale of pay and Grade Pay of the post of the petitioner, i.e. Senior Bailiff which is equivalent to that of Junior Assistant and the promotional post of Assistant as per VI Pay Commission G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 and One Man Commission G.O.Ms.No.45, Finance (PC) Department, dated 10.02.2011, is as follows:

Post	G.O.Ms.No.234 VI Pay Commission	G.O.Ms.No.45 One Man Commission
Senior Bailiff - Ordinary Grade	5200-20200+GP 2000	5200-20200+GP 2400
Assistant - Ordinary Grade	5200-20200+GP 2400	5200-20200+GP 2800

Further, the Government, vide Annexure-I to Letter No.63305/pay cell/2010-1, dated 08.11.2010, had issued revised Selection and Special Grade Scales of pay as per VI Pay Commission and as per paragraph 4(i) of the said Government Letter, " if the revised Selection/Special Grade scales of pay indicated in the Annexure-I happens to be higher than the first/second level promotion posts, then in such cases only the revised Selection/Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively." The first level promotional post of Senior Bailiff is Assistant and that the Grade Pay of the Selection Grade Junior Assistant Grade Pay Rs.4200 has to be restricted to the Grade Pay of Assistant (i.e.) Rs.2800 only. Further, on his movement to Special Grade on 13.06.2013, he is eligible for two increments as per said G.O.237 read with said G.O.234 and no change in the Grade Pay and the same had also been admitted. By the above Rule provision, the pay on 01.01.2006 has to be fixed in the eligible scale of pay of Rs.5200-20200+Grade Pay Rs.2800 as that of Selection Grade Senior Bailiff only and the same was admitted by the third respondent's Office. It is further stated that the Selection Grade Scale of pay of the Senior Bailiff as per VI Pay Commission G.O.Ms.No.234 and One Man Commission G.O.45 read with Government's Letter dated 08.11.2010 in which the scales of pay of Selection Grade and Special Grade was introduced by the Government as per VI Pay Commission, is as follows:

Selection Grade Senior Bailiff	 G.O.Ms.No.234 5200-20200+Grade Pay 2400	G.O.Ms.45 9300-34800+Grade Pay Rs.4200 (This should be restricted to 5200- 20200+Grade Pay 2800 as that of the Assistant, the first level of promotional post of Senior Bailiff
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The relevant portion of the said Rule provision regarding the Selection/Special Grade Scale of pay as per Annexure-I to Government Letter No.63305/Pay Cell/2010-1, dated 08.11.2010 had already been stated above. The Grade Pay of the Selection Grade Senior Bailiff post of the petitioner as per Annexure-I to the above letter dated 08.11.2010 is though Rs.4200, which is higher than the first level promotional post of Assistant which is Rs.2800, the same should be restricted to Rs.2800, as per the provisions of para 4(i) of the above said Government Letter dated 08.11.2010.

13. It is further stated by the third respondent in the counter affidavit that without taking note of the above Rule provision explained, vide, the third respondent's Office letter dated 05.11.2018, the petitioner is claiming the higher Grade Pay of Rs.4200, which is not feasible based on the prevailing Rule provision. The judgment in W.P.(MD).No.12104 of 2017, relied on by the petitioner, is only applicable to the petitioners therein and not the present petitioner, who is not a party to the said W.P. The Account General being the Field Officer of the Comptroller and Auditor General of India, is vested with the authority of authorising the pensionary benefits of retired Tamil Nadu Government Employees as per the Tamil Nadu Pension Rules and various Government Orders issued by the Government of Tamil Nadu. Hence, for all the above reasons, the third respondent prayed for dismissing the Writ Petition.

14. The fourth respondent has filed counter affidavit, inter-alia stating that the Government in G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, had revised the scale of pay of employees and the scale of pay of the Senior Bailiff was revised to Rs.3200-4900 and in respect of the revised pay structure under Selection Grade and Special Grade scale of pay, the Government in the said G.O., had stated as follows:

"(i) for posts, having no promotional avenue, the Selection Grade and Special Grade shall be allowed as indicated in Schedule-II.

(ii) for posts having promotional posts, if the Selection Grade scale of pay indicated in the said Schedule is higher than the pay scale of promotional post, the Selection Grade scale should be limited to the pay scale of the first level promotion post. Similarly, if the Special Grade scale is higher than the pay scale of second level promotional post, the Special Grade scale shall be limited to the pay scale of the second level promotional post only."

Further, the Government in G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, have revised the scale of pay of employees and the scale of pay of the Senior Bailiff was revised to Rs.5200-20200+GP 2000. In the revised pay structure, no separate scale of pay had been provided for Selection Grade/Special Grade holders. The employees, on award of Selection Grade/Special Grade in the revised scale of pay, have been granted the benefits of one increment equal to 3% Basic Pay, including Grade Pay, in the same pay band and Grade Pay. Moreover, the Government in Letter No.63305/Pay Cell/2010-1, dated 08.11.2010, among other things, had clarified that the revised Selection Grade/Special Grade scales of pay in the case of employees awarded Selection Grade/Special Grade prior to

01.01.2006 and the ordinary grade scales of pay have been revised based on the recommendations of One Man Commission/further order of Government thereon, which shall be fixed as per the scales of pay indicated in Annexure-I to the said letter, following the same methodology of fixation of pay in the Selection Grade/Special Grade scales of pay of employees as was done in pre-2006 scales of pay as indicated in Appendix-II of G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, subject to the same condition stipulated therein that if the revised Selection Grade/Special Grade scales of pay indicated in the Annexure-I happens to be higher than the first level/second level promotional posts, then in such cases, only the revised Selection Grade/Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

15. Based on the above stipulation, the first level promotion of Senior Bailiff is Junior Assistant and next level of promotion is Assistant. As per G.O.(Ms).No.45, Finance (Pay Cell) Department, dated 10.02.2011, the pay scale of Junior Assistant is Rs.5200-20200+GP 2400 and the pay scale of Assistant is Rs.5200-20200+GP 2800. Further, the Government in G.O.(Ms).No.956, Home (Cts.V) Department, dated 08.11.2013, revised the scale of pay of the Senior Bailiff (Judicial Ministerial Service) from Rs.5200-20200+GP 2000 to Rs.5200-20200+GP2400 with notional effect from 01.01.2006 and monetary benefit from 01.04.2013. Therefore, the fourth respondent prayed for passing appropriate orders in this Writ Petition.

16. The petitioner has filed additional affidavit stating that since in the Revised Pay Rules, 2009, the practice of granting Selection Grade and Special Grade was removed and alternatively, 3% increment was provided for those who are awarded the Selection Grade after 01.06.2009, i.e. the date of the issuance of the Revised Pay Rules, 2009. The Revised Pay Rules, 2009, was issued on 01.06.2009 with effect from 01.06.2006 notionally and 01.06.2007 monetarily. In order to protect the pay of the senior employees who are awarded Selection Grade and Special Grade prior to 01.06.2006, the Government issued the said letter dated 08.11.2010. The authorities concerned, by proceedings dated 08.11.2010, 16.06.2011 and ... 07.2011, granted Rs.4200/- Grade Pay for similarly placed employees working in the other Departments and the third respondent/Accountant General had also approved the similar benefits to similarly placed employees by proceedings dated 19.10.2011, 31.07.2014 and 20.12.2016. It is the further averment of the petitioner in the additional affidavit that in the impugned order as well as in the counter affidavit, the third respondent had taken a stand that as per the Government proceedings/letter dated 08.11.2010, the petitioner's Selection Grade pay should be restricted to Rs.2,800/- Grade Pay and hence, the petitioner is not entitled for Rs.4,200/- Grade Pay.

The correctness of the above reason came up for consideration before a Division Bench of this Court (Madurai Bench) in W.P. (MD).No.12104 of 2017 filed by the similarly placed employee working in the Subordinate Judiciary and the said Division Bench, by order dated 20.12.2017, elaborately considered the issue and interpreted the Government proceedings dated 08.11.2010 in favour of the employee and granted Rs.4,200/- Grade Pay as Selection Grade Pay. The said order passed by the Division Bench was implemented and it attained finality. The employees in the Subordinate Judiciary alone are discriminated.

17. With regard to the contention of the third respondent that the said order of this Court in W.P.(MD).No.12104 of 2017 is not applicable to the petitioner as he is not a party to it, the petitioner in the additional affidavit stated that as per the various decisions of the Supreme Court, if the issue is decided and attained finality, the benefits shall be extended to all similarly placed persons and expecting everyone to approach the Court for same relief, is arbitrary and the precious time of the Court would be wasted. The petitioner relied on various cases and states in the additional affidavit that based on the order passed by this Court from 01.06.1998, the pay scale for Junior Assistant, Typist, Examiner and Reader, Senior Bailiff and Copyist in the Subordinate Judiciary, is one and the same and the posting from one category to another is only an appointment by transfer and on this reason, the petitioner prays that the impugned order is liable to be quashed. In the said letter of the Government, dated 08.11.2010, the Grade Pay of Rs.2800/- for Selection Grade is not all provided and the impugned order passed in respect of the petitioner is contrary to the object of the Government letter discussed above.

18. Heard both sides and perused the materials available on record.

19. In fact, the fourth respondent-Registrar General of this Court, had sent the proposal dated 09.10.2018 to the Additional Chief Secretary to Government, Home Department, Secretariat, Chennai, based on the representation submitted by the Tamil Nadu Civil Court Process Servers Association, Sub Court (State Centre), Ponneri, requesting to address the Government to revise the Grade Pay from Rs.2200/- to Rs.2400/- in favour of the Junior Bailiffs in the lower judiciary (upto District Court level) with effect from July 2015. But the said proposal was returned by the Government. According to the petitioner, since he was awarded Selection Grade prior to 01.01.2006, i.e. 11.06.2003, he is entitled to receive Rs.4200 Grade Pay as Selection Grade Pay. But this request of the petitioner was rejected for the reason that the Selection Grade Pay had to be restricted to the level of Basic Pay of the first level promotional post and the petitioner's first level promotional post is Assistant and he is entitled to only Rs.2800 Grade Pay. Further, the Madurai Bench of this Court in W.P.

(MD).No.12104 of 2017, by order dated 20.12.2017, had considered the similar issue and interpreted the Government's letter dated 08.11.2010 as discussed above. As per the said letter of the Government, dated 08.11.2010, the revised Selection Grade/Special Grade scales of pay in case of the employees awarded Selection Grade/Special Grade prior to 01.01.2006 shall be fixed as per the scales of pay indicated in the Annexure-I therein. The petitioner was moved to Selection Grade Senior Bailiff with effect from 11.06.2003, and hence, according to the petitioner, his pay shall be revised as per the said letter and it should be in the scale of Rs.9300-34800+Grade Pay 4200, which ought to have taken effect from 01.01.2006 with monetary benefits from 01.02.2011.

20. Further, the case of the petitioner is squarely covered by the order of the Madurai Bench of this Court in W.P.(MD). No.12104 of 2017, dated 20.12.2017. But in the counter affidavit of the third respondent, it has been stated that the petitioner herein is not a party to the said Writ Petition and hence, his claim cannot be accepted. But in our considered opinion, when pursuant to the said order of this Court, the Grade Pay was fixed as Rs.4200, and similarly placed employees have been awarded with the said benefit, the same could be applied to the petitioner also. Simply the respondents cannot reject the said claim of the petitioner based on the said order of this Court on the ground that the petitioner herein is not a party to it. Therefore, by virtue of the said judgment of this Court, we are of the view that the impugned order is liable to be quashed.

21. Accordingly, the impugned order is quashed. The Writ Petition is allowed as prayed for. The third respondent-Principal Accountant General is directed to implement the order of the second respondent-District Munsif-cum-Judicial Magistrate, Pennagaram, in R.O.C.No.1803/2018, dated 08.10.2018 in D.No.1840/2018, dated 08.10.2018 within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

CS

To

1. The Principal District Judge,
Dharmapuri District,
Dharmapurai.

2. The District Munsif-cum-Judicial Magistrate,
Pennagaram,
Dharmapuri District.

3. The Principal Accountant General
(Accounts and Entitlement) Tamil Nadu,
Chennai-600 018.

4. The Registrar General,
High Court, Chennai-104.

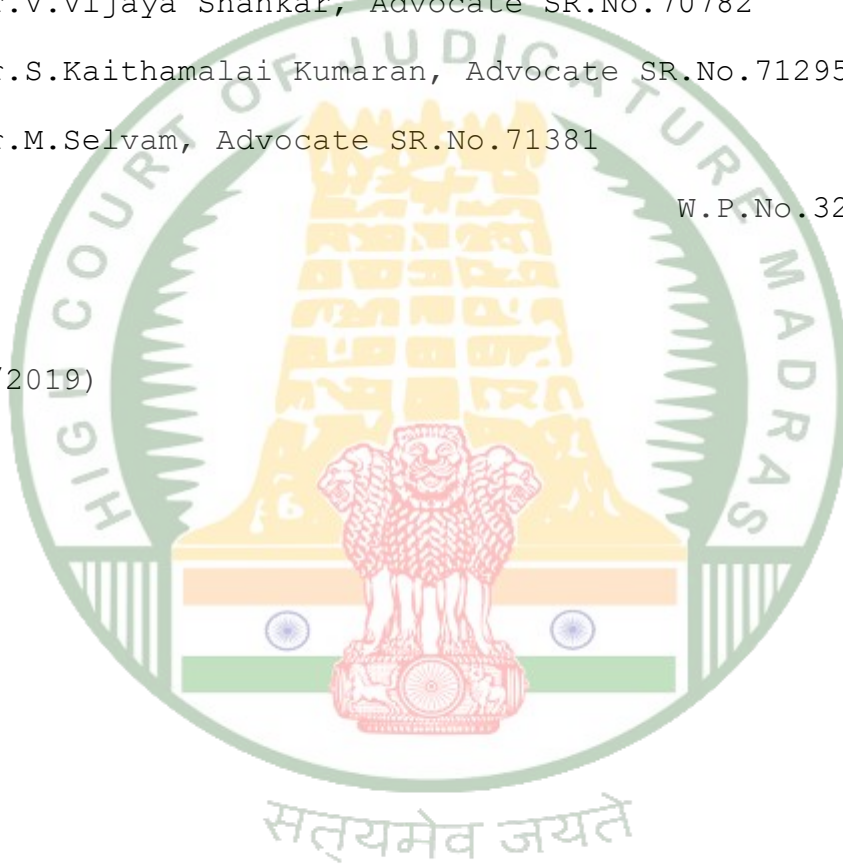
+1cc to Mr.V.Vijaya Shankar, Advocate SR.No.70782

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.71295

+1cc to Mr.M.Selvam, Advocate SR.No.71381

W.P.No.32149 of 2018

VD(CO)
GMY(27/08/2019)



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