

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.14926 of 2007

B.M.S. Shanmugam

...Petitioner

.Vs.

1. The Special Secretary to Government,
Finance (Pay Cell) Department,
(One Man Commission), Secretariat,
Chennai - 600009.
2. The Secretary to Government,
Information and Tourism Department,
Secretariat,
Chennai - 600009.
3. The Director,
Information and Tourism Department,
Secretariat,
Chennai - 600009.
4. The Principal,
Film and Television Institute of Tamilnadu,
Taramani,
Chennai - 600113.

...Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the fourth respondent herein in Q.No.1.313/3/2005 dated 23.09.2005, quash the same and direct the respondents herein to fix the revised pay scale after rectifying the disparity drawn by the pay Commission.

For Petitioner : Mr.S.V.Karthikeyana

For Respondents: Mr.P.Chinna Durai [R1 to R3]
Additional Government Pleader
No appearance [R4]

ORDER

This Writ Petition has been filed challenging the proceedings of the fourth respondent in G.No.1.313/3/2005 dated 23.09.2005, quash the same and direct the respondents to fix the revised pay scale after rectifying the disparity drawn by the pay Commission.

2. The case of the petitioner is that he was working as a Supervisor in the Film and Television Institute of Tamil Nadu and he was a B.Sc Graduate and also had Diploma in Film Technology (Sound Recording and Sound Engineering) awarded by the Department of Technical Education in the year 1975. He was also a Diploma holder in Radio and Television Servicing (I.C.S., USA 1975) and was fully qualified to hold the post of Production Manager. Even though, he became qualified in the year 1983, he was not considered for the post, inspite of his representation. Even, he was qualified to be selected as Principal of the Film and Television Institute of Tamilnadu. Due to some disparity in the scale of pay recommended by One Man Commission in G.O.Ms.No.542 dated 28.09.1998 for the post of Supervisor, a representation was made by the Welfare Association to the Personal Secretary to Government Finance Department (pay cell) for rectification in the scale of pay. Without considering the representation made by the petitioner and also by the Association, the fourth respondent passed an order dated 23.09.2005, rejecting his representation on the ground that the claim is belated. As the petitioner made several requests to the Department to re-fix his revised pay through the Association, the order of the fourth respondent rejecting the petitioner's request on the ground of belated claim, was not correct. There is no question of delay in granting the revised pay as per the pay commission report. Once the pay commission report is released, it is the duty of the Department to fix the revised pay scale to all the employees without waiting for their representations. As the Association made representation for its members to consider and fix the revised scale, the rejection order passed by the respondent is contrary to law. Challenging the same, the present writ petition has been filed before this Court.

3. The learned counsel appearing for the petitioner would submit that the post of Supervisor held by the petitioner is equal to an Instructor and Demonstrator and the pay scale fixed for them as per the G.O.No.666 dated 27.06.1989 is one and the same viz., 780-1385 1320-2040. Thereafter, the One Man Commission constituted in the Government Order has recommended revision of scales of pay in G.O.No.542 dated 28.09.1998 and as per the Commission, the Government fixed the salary for Demonstrator, Instructor from 4300-6600 to 5000-8000 and for

supervisor from 4300-6000 to 4500-7000. Therefore, the Association made the representation, since the petitioner is also entitled to draw the salary at a rate of Rs.5000-8000 but the fourth respondent passed the order stating that the representation made by the petitioner was delayed and the claim was made after five years.

He would further submit that the Association made the representation on behalf of the employees seeking revised pay. However, the petitioner's representation seeking revised pay stating that he is also entitled to draw the salary at a rate of Rs.5000-8000 was rejected by the fourth respondent vide impugned order dated 23.09.2005 on the ground that the said representation was submitted after five years and due to belated claim, the same cannot be sent for approval before the Government.

He would further state that since the Technicians Union had already given petition for revised pay scale and the Department of Information and Public Relations, by letter dated 15.09.2000, communicated to the 4th respondent that the representation made by the Union had been sent to the Government for revised scale of pay and therefore, the petitioner has not made separate request before the respondents at that point of time. However, till his retirement, he could not get revised pay scale. Since the Union followed the matter, the petitioner did not pursue. Thereafter only, he came to know that his representation was not considered and the Union's representation, seeking revised scale of pay, was not recommended to the Government. As such, till his retirement, his pay scale was not revised. Therefore, the petitioner filed present writ petition.

According to the petitioner, there is no delay since Union already taken care of the issue and pursued the matter, the petitioner has not filed individual representation at the earliest point of time. However, by representation dated 20.04.2005, 25.05.2005 and 25.07.2005, the petitioner sought revised scale of pay, and there is no delay in the said claim. Further, solely on the ground of delay, the benefit which has to be granted to the petitioner cannot be rejected. Therefore, the impugned order is liable to be set aside and the respondents may be directed to revise the scale of the petitioner.

4. Learned Additional Government Pleader would submit that the Government appointed One Man Commission for rectifying the anomalies that arose consequent to the implementation of the Tamil Nadu Revised Scales of Pay Rules, 1998. The One Man Commission had recommended revision of the scales of pay and for the post of Instructor and Demonstrator (Teaching Posts) from Rs.4300-100-6000 to Rs.5000-150-8000 and for the post of Supervisor from Rs.4300-100-6000 to Rs.4500-125-7000. The petitioner's representation is that he is entitled to draw Rs.5000-150-8000 on par with Instructor/Demonstrator, whereas he

held the post of Supervisor. The post of Supervisor cannot be treated on par with that of Instructor/Demonstrator and therefore, petitioner's claim for revised pay scale of Rs.5000-150-8000 has been rejected.

It is further submitted that the representations given by the petitioner vide letters dated 20.04.2005 and 25.07.2005 were examined and the petitioner was requested to furnish the details of correspondence made in the issue immediately. The petitioner however failed to submit the relevant copies to the office and stated that his Senior Supervisors handled the connected files and that he is proceeding the matter since the other Supervisors already retired. However, the petitioner has not disclosed any further details and the decision regarding revised pay scale was informed to the Principal, by the Government in the year 2001 itself and his fresh representation was submitted in the year 2005 after a long gap and therefore, it was considered as belated and on that ground, his representations were rejected vide impugned order dated 23.09.2005 and there is no merit in this writ petition.

5. Admittedly, the petitioner joined the service as Supervisor in the Film and Television Institute on 22.12.1980. Aggrieved of the Pay anomaly which arose consequent on the revision of pay scales ordered in G.O.Ms.No.542 Finance (Pay Cell) Department dated 28.09.1988, based on the recommendation of the One Man Commission, Government has revised the pay scale of the Demonstrator from 4300-100-6000 to 4500-125-7000 and for the post of Instructor and Demonstrator (Teaching Posts) from Rs.4300-100-6000 to Rs.5000-150-8000. The request of the petitioner was turned down since the petitioner was not holding the post of Instructor/Demonstrator.

6. Though the learned counsel for the petitioner would submit that delay and laches may not be valid ground for rejecting the claim of the petitioner. However, learned Additional Government Pleader would submit that the category of Demonstrator comes under teaching faculty and the Supervisor cadre comes under technical category. Further, after recommendation of One Man Commission regarding revision of the scales of pay, the claim of the petitioner was rejected after scrutinizing all the requirements thoroughly. After passing of G.O.Ms.No.542 Finance (Pay Cell) Department dated 28.09.1998, the petitioner kept quiet for 5 years and thereafter, sought for revision of scale of pay and that too for the post of Instructor/Demonstrator whereas, he was holding the post of Supervisor.

7. Considering the reasons pointed out for rejection of claim of the petitioner, taking note of fact that the petitioner has not explained the delay occurred in making the

representation and also for the reason that the Union has not filed any writ petition and now the petitioner attained superannuation and while in service, the petitioner neither made further representation for pursuing the matter nor challenged the G.O, this Court is of the view that no merits in this Writ Petition and therefore, the same is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Special Secretary to Government,
Finance (Pay Cell) Department,
(One Man Commission), Secretariat,
Chennai - 600009.
2. The Secretary to Government,
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Chennai - 600113.

+1cc to Mr.S.V.Karthikeyan, Advocate, S.R.No.39247

W.P.No.14926 of 2007

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rr ii (05/02/2021)