IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 27.11.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.1547 of 2010

A.Jayapal ... Petitioner

Vs

1.State of Tamil Nadu
Rep. By Secretary to Government,
Personal & Administrative Reforms Dept.,
Fort St. George,
Chennai - 600 009.

2.Secretary to Government,
Finance Department,
Fort St. George,
Chennai - 600 009. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the Respondents to extend the benefit of G.O.Ms.No.126 P & A.R Department dated 25.09.1998 and G.O.Ms.No.154 P & A.R. Department dated 30.10.2009 to the Petitioner and consequently direct the inclusion of the Petitioner's name in the U.O. Note dated 25.11.2009 so as to enable the Petitioner to get the upgradation and stepping up of pay on par with his juniors in the Finance Department viz., Thiru.R.V.Nathan with effect from 30.10.2009.

For Petitioner :Mr.Abhishek Jenasenan

For Respondents :Mr.G.K.Muthukumar
Spl. Govt. Pleader for R1 and R2

O R D E R

In this writ petition, the Petitioner prays for a Writ of Mandamus to direct the Respondents to extend the benefit of G.O.Ms.No.126, Personnel & Administrative Reforms Department (P&AR Department), dated 25.09.1998 (G.O.Ms.No.126) and G.O.Ms.No.154, P&AR Department, dated 30.10.2009 (G.O.Ms.No.154) and consequently direct the inclusion of the Petitioner's name in the U.O. Note dated 25.11.2009 so as to enable the Petitioner to get the upgradation and stepping up of pay on par with his juniors in the Finance Department with effect from 30.10.2009.

2. The Petitioner was selected through the Tamil Nadu Public Service Commission (the TNPSC) for the Tamil Nadu Secretariat Service (the TN Secretariat Service) in 1981 and appointed as a steno-typist in the Education Department on 01.01.1982. As per the common seniority list, the Petitioner was in the 34th position, whereas Thiru.R.V.Nathan, his immediate junior, was in the 35th position. The said R.V.Nathan was posted in the Finance Department and was promoted to the post of Deputy Secretary to Government in the Finance Department while the Petitioner continues to be a Section Officer. The State Government was conscious of the fact that persons posted in the Finance Department received promotions on an accelerated basis as compared to their contemporaries or even seniors in other units. In order to redress this anomaly, the Government issued G.O.Ms.No.126 to direct the pay of seniors in one unit, who were recruited to the TN Secretariat Service on before 28.01.1994, to be stepped up on a par with their juniors in the Finance Department by upgrading the post held by them to the scale of pay applicable to their juniors in the Finance Department. This benefit was not extended to the Petitioner at the relevant point of time because he was working as a converted Assistant, i.e. a typist who opted for conversion to the post of Assistant.

3.Thereafter, the Petitioner made a representation dated 05.06.1998 contending that his name had been erroneously omitted. Upon receipt of representations from persons such as the Petitioner, the Government issued G.O.Ms.No.171, P & AR Department dated 28.09.2006 (G.O.Ms.No.171) directing that Assistant Section Officers (ASOs), who were promoted from the post of Assistant and were senior to the ASO's promoted from the post of typist, be given pay parity and upgradation on par with their juniors by applying the yardstick set out in GO.Ms.No.126. On account of G.O.Ms.No.171, the Petitioner derived the limited relief of pay parity and upgradation with juniors in the same unit. However, as regards the pay anomaly as between persons like the Petitioner and those in the Finance Department, the situation continued to remain the same. Therefore, several representations were made and this resulted in the Government issuing G.O.Ms.No.154. By this Government Order, it was directed that the pay of the seniors in one unit who were recruited to the TN Secretariat Service on or before 21.08.1994 and promoted as ASO from the category of Assistant shall be upgraded on a par with their juniors in the Finance Unit with effect from 30.10.2009. Subsequent to this Government order, U.O. Note dated 25.11.2009 was issued but the

Petitioner's name was not included therein. The present writ petition was filed in these facts and circumstances.

4. I heard Mr.Abhishek Jenasenan, the learned counsel for the Petitioner, and Mr.G.K.Muthukumar, the learned Special Government Pleader for the Respondents.

5. Mr.Abhishek Jenasenan provided an overview of the facts and circumstances with the assistance of a list of dates and events. He opened his submissions by referring to the fact that the Petitioner was recruited as a steno-typist through the TNPSC in the year 1981. His immediate junior, R.V.Nathan, was posted to the Finance Department. Therefore, he received promotions in quick succession. Several persons, such as the Petitioner, made representations regarding the anomaly between persons working in the Finance Department and other Units of the TN Secretariat Service. G.O.Ms.No.126 was issued in order to redress this anomaly. Unfortunately, the Petitioner was not extended the benefit of the said Government Order. Later, G.O.Ms.No.154 was issued so as to ensure that ASOs, who were originally recruited on or before 28.01.1994 and promoted as ASOs from the category of Assistant, are upgraded on a par with their juniors in the Finance Unit with effect from the date of issue of the order as a one-time affair. As regards Typists/Personal Clerks, it was stated therein that the rectification of pay anomaly would be taken up separately. Mr.A. Jenasenan submitted that the U.O. Note was issued on the basis of G.O.Ms.No.154, on 25.11.2009, but the Petitioner's name was not included therein. Therefore, he submitted that a representation was submitted and, on account of there being no response, the writ petition was filed.

6.The learned counsel contended that the subject matter of the present writ petition is squarely covered by the Order dated 08.04.2014 of this Court in S.Saraswathi v. The Secretary to Government and others, W.P.No.25556 of 2013. He invited the attention of the Court to paragraph 10 of the said Order where the Court set out the questions for consideration. In particular, he pointed out that the first question before the Court in the said writ petition was whether paragraph 6 of G.O.Ms.No.112 is discriminatory inasmuch as it applies only with effect from the date of issue of the order, i.e. 13.07.2012. The second question was whether the Petitioner therein is entitled to the benefit of pay parity with effect from 30.10.2009, namely, the date of issue of G.O.Ms.No.154. He pointed out that the first question was answered in the Petitioner's favour by concluding that paragraph 6 of G.O.Ms.No.112 is discriminatory and that, therefore, the Petitioner should be given benefits on a par with those promoted from the post of Assistant under G.O.Ms.No.154. As regards the second question, he submitted that pay parity with retrospective effect from 30.10.2009 was denied to the Petitioner therein on the ground that he did not object within a reasonable time of the issuance of G.O.Ms.No.154.

7.As regards the case at hand, he submitted that the Petitioner herein objected as soon as his name was omitted from U.O. Note dated 25.11.2009 and that the Writ Petition was filed in the said circumstances. Therefore, the learned counsel for the Petitioner contends that the Petitioner herein would be entitled to retrospective pay parity with effect from 30.10.2009 because he objected immediately to his non-inclusion in the U.O. Note issued pursuant to G.O.Ms.No.154. He also pointed out that the order dated 08.04.2014 in W.P.No.25556 of 2013 was affirmed by the Division Bench. The last contention of Mr.Abhishek Jenasenan was that the Petitioner attained the age of superannuation in May 2011 and that the monetary benefits that would accrue to the Petitioner if the present writ petition is allowed is minimal.

8. On the contrary, Mr.G.K.Muthukumar, the learned Special Government Pleader contended that the Petitioner cannot claim stepping-up of pay by drawing a comparison to Mr.R.V.Nathan. By drawing reference to paragraphs 9 to 13 of the counter affidavit of the first and second Respondents, he pointed out that Mr.R.V.Nathan's pay was fixed under G.O.No.1034 as a protected pay and that, therefore, the Petitioner cannot claim pay parity upon comparison with Mr.R.V.Nathan. He further pointed out that R.V.Nathan was receiving a higher pay on account of his previous service in the Tamil Nadu Ministerial Service for more than five years. In fact, he pointed out that neither the Petitioner nor Mr.R.V.Nathan were provided the benefit of G.O.Ms.No.126 or G.O.Ms.No.154. His next contention was that the Special Rules of the TN Secretariat Service specifies the feeder categories of Assistant and Personal Clerk/Typist for the promotional post of ASO, and the ratio as between these two categories is 4 : 1. The Petitioner opted for conversion as an Assistant so as to improve prospects of a quick promotion to the post of ASO.

9.As regards the judgment in W.P.No.25556 of 2013, Mr.G.K.Muthukumar submitted that the said judgment dealt with persons who were directly promoted from the post of typist to ASO, whereas the Petitioner herein started his career as a steno- typist and later opted for conversion to the post of Assistant before being promoted as ASO. Accordingly, he submitted that the judgment in W.P.No.25556 of 2013 would not apply to the Petitioner.

10. By way of rejoinder, Mr.Abhishek Jenasenan submitted that Mr.R.V.Nathan was the beneficiary on account of being

posted in the Finance Department and, therefore, his name would logically not be included in the list prepared pursuant to G.O.Ms.No.126 or G.O.Ms.No.154. As regards the Petitioner, he submitted that his name was omitted when G.O.Ms.No.126 was issued on the ground that he had opted for conversion as an Assistant. Even when G.O.Ms.No.154 was issued, his name was omitted. According to Mr.Abhishek Jenasenan, the Petitioner cannot be denied the benefit both under G.O. Ms.No.126 and G.O. Ms.No.154 merely because he opted for conversion as an Assistant. Hence, he submits that the order in W.P.No.25556 of 2013 undoubtedly applies to the Petitioner.

11. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

12. The first question that arises for consideration is whether the benefit of G.O.Ms.No.126 and 154 should have been extended to the Petitioner. For this purpose, it is necessary to examine the relevant paragraphs of G.O.Ms.No.126 and 154. Paragraph 10(i) of G.O.Ms.No.126 is as under:

> 10. The Government accordingly direct that:-
> (i) the pay of the seniors in one Unit who have been recruited to the Tamil Nadu Secretariat Service or or before 28.01.1994, shall be stepped up on par with their juniors in the Finance Unit by upgrading the posts held by them to the scale of pay applicable to the juniors with immediate effect.

Paragraphs 5 and 6 of G.O. Ms. No.154 are material and the same are extracted below:

> "5.The government after careful consideration direct that the post / pay salaries in one Unit who have been recruited to the Tamil Nadu Secretariat Service or or before 28.01.1994 and promoted as Assistant Section Officers from the category of Assistant(formerly Junior Assistant) only and who are in service on the date of issue of this order shall be upgraded / stepped up on par with their juniors in the Finance Unit with effect from the date of issue of this order as "another one time affair", subject to the terms and conditions prescribed in the Government order first read above. Similarly, the post / pay of the seniors in Finance Unit as on the date of order shall be

upgraded / stepped up on par of Typist/Personal Clerk promotees shall be taken up separately.

6. The Government also direct that:-

(i)the upgradation / stepping up of pay on par with the juniors in the Finance Unit and One unit is purely a person-oriented upgradation and no new posts shall be created for the purpose.

(ii)the upgradation sanctioned for the seniors will lapse in the event of retirement of the individuals concerned or their prootion to the higher post in their normal turn and other contingencies such as voluntary retirement, resignation, death etc.,

(iii) The upgradation ordered above is subject to the following terms and conditions prescribed in the Government Order first read above:

(1) the upgradation ordered will involve only stepping up of pay of the senior on par with his junior in the upgraded scale of pay;

(2) it does not entitle him to any claim for arrears of pay

(3) on upgradation, the senior shall not vacate his post and shall continue to perform the duties attached to the existing post, till he/she gets his/her normal promotion in his/her turn to the next higher post.

(4) the attendant benefits attached to the upgraded posts will be given to them only in the event of their normal promotion to a post of carrying such scale and they are not eligible for the same on their upgradation to these posts."

13.Upon perusal of G.O.Ms.No.154, it is clear that it is applicable to persons who were recruited on or before 28.01.1994. The Petitioner was recruited as a steno-typist through the TNPSC in the year 1981 and opted for conversion as an Assistant in 1991. Therefore, the Petitioner satisfies the requirement of having been recruited on or before 28.01.1994. The second requirement under G.O.Ms.No.154 is that the employee should have been promoted as an ASO from the category of Assistant. As stated earlier, the Petitioner opted for conversion in the year 1991 and was promoted as a ASO in the year 1994. Consequently, he fulfilled the second condition in G.O.Ms.No.154. The exclusion in the last line of paragraph 5 of G.O.Ms.No.154 is with regard to typists/personal clerks promotees. Given the fact that the Petitioner had opted for conversion as an Assistant in the year 1991, the Petitioner should have been treated as a person who was promoted as an ASO from the category of Assistant and not as a person promoted from the category of typist. As such, in my view, the omission of the Petitioner's name from U.O. Note dated 25.11.2009 was improper.

14. The next issue that should be examined is the implication of the order dated 08.04.2014 in W.P.No.25556 of 2013. The said order dealt with persons who were promoted from the post of typist to the post of ASO. The Hon'ble Court examined the question as to whether G.O.Ms.No.112 dated 13.07.2012 is discriminatory inasmuch as the persons promoted as an ASO from the post of typist are given the benefit of stepping up of pay on par with juniors in the Finance Department only with effect from 13.07.2012, whereas persons promoted as ASO from the post of Assistant are extended such benefits from 30.10.2009. On this basis, the Court concluded that G.O.Ms.No.112 is discriminatory. In view of the conclusion in the preceding paragraph that the Petitioner would come within the purview of G.O.Ms.No.154 and that the non-inclusion in U.O. Note dated 25.11.2009 is incorrect, the question of extension of the benefit of the Order dated 08.04.2014 in W.P.No.25556 of 2013 is immaterial.

15. The learned Special Government Pleader contended that Mr.R.V.Nathan was paid a higher salary as per G.O.Ms.No.1034 by taking into account his previous service of more than 5 years in the Tamil Nadu Ministerial Service. Mr.Abhishek Jenasenan was unable to refute this contention. Therefore, the Petitioner's pay cannot be stepped up by drawing a comparison with Mr.R.V.Nathan.

16. Based on the aforesaid discussion and analysis, I conclude that the Petitioner is entitled to the benefit of G.O.Ms.No.154. However, such benefit may be extended to the Petitioner only if any of his juniors in the Finance Department were given a higher pay. For reasons set out above, the comparison with Mr.R.V.Nathan cannot be countenanced. Accordingly, this writ petition is disposed of by permitting the Petitioner to submit a representation to the Respondents for stepping up of his pay with effect from 30.10.2009 provided any of his juniors in the Finance Department, other than

Mr.R.V.Nathan, were drawing a higher salary. If such representation is received, the Respondents are directed to consider the same on merits by taking into account the observations and conclusions herein and dispose of such representation within a period of one month from the date of receipt thereof. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu
Personal & Administrative Reforms Dept.,
Fort St. George,
Chennai - 600 009.

2.Secretary to Government,
Finance Department,
Fort St. George,
Chennai - 600 009.

+2 cc to Mr.A.Jenasenan, Advocate Sr.38109

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