

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P. No.28753 of 2005

and

W.P.M.P.No.305 of 2009

V.Krishnan Kutty

... Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.

2.The Special Commissioner and
Director of Survey and Settlement,
Chepauk,
Chennai - 600 005.

3.The Joint Director,
Central Survey Office,
Survey House,
Chepauk,
Chennai - 600 005.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records connected with the G.O.(ID) No.320 Revenue (Land and survey) 4(1) department dated 29.4.2005 order passed by the 1st respondent and quash the same and further direct the 1st and 2nd respondents herein to fix the petitioner pay on par with the petitioner's junior as per Fundamental Rules 22-B 2(ii) immediately.

For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.K.Magesh
Special Government Pleader

O R D E R

This writ petition has been filed, challenging G.O.(1D) No.320, Revenue (Land and survey 4(1)) Department, dated 29.4.2005, passed by the 1st respondent, and for a direction to

the 1st and 2nd respondents herein to fix the pay of the petitioner on par with his junior, as per Rule 22-B 2(ii) of the Fundamental Rules.

2.V.Krishnan Kutty, the petitioner herein, who was appointed as Junior Computer Draughtsman on 20.08.1965 on 10 (a)(i) basis, was again appointed on regular basis on 01.10.1966. Thereafter, he was promoted as Senior Draughtsman on 01.09.1973 and then, he was further promoted as Head Draughtsman on 03.05.1989. After some time, he was further promoted as Technical Manager on 27.03.1998.

3.Mr.S.Arunachalam, learned counsel appearing for the petitioner, would submit that the petitioner was promoted as Head Draughtsman on 03.05.1989 and the said promotion was given to him on the basis of State Level Seniority List drawn in the category of Senior Draughtsman. The petitioner was further promoted as Technical Manager on the basis of the State Level Seniority List drawn in the category of Head Draughtsman. When empanelment was made just before his promotion as Technical Manager, the petitioner was ranked at Sl.No.4 in the panel for the post of Technical Manager for the year 1997, whereas, one S.Venkatachalam, was ranked at Sl.No.13. Therefore, the petitioner was promoted as Technical Manager, along with four other persons upto Sl.No.5, by the same order and the petitioner also joined duty on 27.05.1998. After the petitioner was given promotion as Technical Manager, a Government Order in G.O.Ms.No.497, Finance (Pay Cell) Department, dated 15.09.1998, was issued, granting 5% Personal Pay with effect from 01.09.1998 to certain categories of employees, viz., Record Clerk, Junior Assistant, etc. upto the category of Superintendent, taking into account the job responsibilities and similarly, 5% Personal Pay in the scale of pay was made applicable to the employees in the cadres upto Head Draughtsman in the technical wing of the Survey Department. The learned counsel further contended that, for the reason that the petitioner was promoted as Technical Manager before the announcement and effect of this 5% Personal Pay, the same cannot be denied to the petitioner. Whereas, the petitioner's juniors, who were promoted after 01.09.1998, were given 5% Personal Pay and these type of anomalies of junior getting more pay than seniors have to be rectified as per the procedure laid down under Rule 22(B) of the Fundamental Rules of the Government of Tamil Nadu. In this regard, the petitioner had given various representations, but they were not considered.

4.The learned counsel appearing for the petitioner would further submit that the said S.Venkatachalam, being junior to the petitioner, has received the benefit of 5% Personal Pay in the post of Head Draughtsman from 01.09.1998 and he was fixed with a pay of Rs.7,700/- in the post of Technical Manager on

03.11.1998, whereas, the petitioner, who was promoted as early as on 27.03.1998, was drawing only a pay of Rs.7,300/-. Thus, there is a difference of Rs.400/- between the petitioner and his junior S.Venkatachalam. The learned counsel would submit that, if such anomaly is allowed, it would cause so many discrepancies in the matter of fixation of pay and for such anomalies, remedy is also given under Rule 22(B) of the Fundamental Rules and the same should be applied to the case of the petitioner by allowing this writ petition.

5.A detailed counter affidavit has been filed by the respondents in this writ petition.

6.Mr.K.Magesh, learned Special Government Pleader, appearing for the respondents, submitted that the contention of the learned counsel for the petitioner that the petitioner is senior to S.Venkatachalam is incorrect, the reason being, S.Venkatachalam was originally appointed on 20.08.1964 in Chennai as Junior Computer Draughtsman, whereas, the petitioner was appointed as Junior Computer Draughtsman on 10 (a)(i) basis on 20.08.1965 in Kanyakumari District. There is a difference of one year between the petitioner and the said S.Venkatachalam. Although the petitioner and the said S.Venkatachalam were regularised on the same day, i.e. on 01.10.1966, subsequently, on the basis of the State Level Seniority, the petitioner was again given further promotion to the post of Head Draughtsman on 03.05.1989, and the said S.Venkatachalam was given promotion to the post of Head Draughtsman only on 07.03.1990. After sometime, the petitioner was given further promotion to the post of Technical Manager on 27.03.1998. Even after the petitioner was given promotion to the post of Technical Manager on 27.03.1998, the said S.Venkatachalam was continuing in the same post, viz., Head Draughtsman. It is at this stage, the Government Order in G.O.Ms.No.497, Finance (Pay Cell) Department, dated 15.09.1998, was introduced, granting 5% Personal Pay with effect from 01.09.1998 to certain categories of employees, viz., Junior Assistant, Record Clerk, etc. upto the cadre of Superintendent. Hence, the 5% Personal Pay was given to the said S.Venkatachalam, who was continuing in the post of Head Draughtsman (which was equivalent to the post of Superintendent) on the date of effect of the Government Order, however, the same was denied to the petitioner, because, he was not coming within the categories of employees upto the cadre of Superintendent, since the post of Technical Manager was above the cadre of Superintendent.

7.The learned Special Government Pleader would further contend that the prayer of the petitioner that Rule 22(B) of the Fundamental Rules should be applied to the case of the petitioner since the petitioner was senior to the said S.Venkatachalam is also misplaced, for the simple reason that,

S.Venkatachalam was appointed on 20.08.1964 and the petitioner was appointed on 20.08.1965 as Junior Computer Draughtsman. Vide G.O.Ms.No.497, Finance (Pay Cell) Department, dated 15.09.1998, the benefit of 5% Personal Pay was restricted upto the cadre of Superintendent. On the date of effect of the aforesaid Government Order, the petitioner was holding the post of Technical Manager. Inasmuch as the post of Technical Manager was above the cadre of Superintendent, the prayer of the petitioner that the pay anomaly between the petitioner and the said S.Venkatachalam should be rectified under Rule 22(B) of the Fundamental Rules is far from acceptance.

8.This Court finds merits in the submissions made by the learned Special Government Pleader, the reason being that, at no point of time, the petitioner can be equated with the said S.Venkatachalam, because, the petitioner is junior to S.Venkatachalam. As I mentioned above, S.Venkatachalam was appointed as Junior Computer Draughtsman on 20.08.1964, whereas, at that time, the petitioner was not even born in the service, even on 10(a)(i) basis, as Junior Computer Draughtsman. Though the petitioner joined the Government service as Junior Computer Draughtsman on 10(a)(i) basis on 20.08.1965 in Kanyakumari District, he was promoted upto the post of Senior Draughtsman only based on District-wise seniority, as promotions upto the post of Senior Draughtsman were considered only on the basis of District-wise seniority of a particular district. Whereas, for the post of Head Draughtsman, State Level Seniority was followed. Following the State Level Seniority, the petitioner was given promotion to the post of Head Draughtsman on 03.05.1989, whereas, the said S.Venkatachalam was given promotion to the said post on 07.03.1990. Again, the petitioner was given promotion to the post of Technical Manager on 27.03.1998, whereas, S.Venkatachalam was given promotion to the post of Technical Manager on 03.11.1998. When G.O.Ms.No.497, Finance (Pay Cell) Department, dated 15.09.1998 was issued, granting 5% Personal Pay, it was restricted upto the cadre of Superintendent, i.e., from the posts of Record Clerk, Junior Assistant, etc., upto the cadre of Superintendent. Since the post of Technical Manager was above the cadre of Superintendent and for the reason that the petitioner was given promotion to the post of Technical Manager on 27.03.1998, the benefit of 5% Personal Pay granted in G.O.Ms.No.497, Finance (Pay Cell) Department, dated 15.09.1998, to Record Clerks, Junior Assistants, and to the employees upto the cadre of Superintendent, could not have been extended to the petitioner. However, S.Venkatachalam, who was continuing in the post of Head Draughtsman till 02.11.1998, was given the said benefit. Moreover, by virtue of the State Level Seniority, the petitioner was again given two more promotions, as Technical Officer on 20.03.2000, and as Assistant Director on 29.03.2000, but the same were not given to the said S.Venkatachalam. Therefore, this Court is

unable to find any merit in this writ petition.

Hence, this writ petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

To

1.The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.

2.The Special Commissioner and
Director of Survey and Settlement,
Chepauk,
Chennai - 600 005.

3.The Joint Director,
Central Survey Office,
Survey House,
Chepauk,
Chennai - 600 005.

+1cc to the Government Pleader, S.R.No.22656

सत्यमेव जयते

W.P. No.28753 of 2005

RSK (CO)
RSI (22/05/2020)

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