

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. Nos.2617 to 2619 of 2013

and

M.P. Nos.1 and 2 of 2013 & 1 of 2013

A.Subramani ..Petitioner in W.P. 2617/2013
S.N.Mathesan ..Petitioner in W.P. 2618/2013
P.Jagadeesan ..Petitioner in W.P. 2619/2013

- Vs -

1. Government of Tamil Nadu,
Rep. by its Secretary,
Higher Education Department,
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Technical Education,
Guindy, Chennai - 600 032.
 3. Government College of Engineering,
Rep. by its Principal, Salem - 11.
- ..Respondents in all the petitions

PRAYER in W.P.No.2617 of 2013: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records from the 3rd respondent relating to his order dated 15.02.2012 bearing Ref.Aa.Thi.Mu.No.607/C2/2012 quash the same and consequently direct the 3rd respondent to implement the G.O.Ms.No.338, Finance Department, dt:26.08.2010, read with the letter dt: 15.9.2010, pay the petitioner the wages applicable in the scale of pay of Rs.9300- 34800 plus Grade pay of Rs.4200/- (Rs.5200-20200 Grade Pay Rs.2800/- pre-revised) based on the additional fitment Table No.3 dt: 15.9.2010 together with compound interest at 12% p.a. from the date the wages became due i.e., on and from 1st August 2010.

PRAYER in W.P.No.2618 of 2013: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records from the 3rd respondent relating to his order dated 15.02.2012 bearing Ref.Aa.Thi.Mu.No.626/C2/2012 quash the same and consequently direct the 3rd respondent to implement the G.O.Ms.No.338, Finance

Department, dt:26.08.2010, read with the letter dt: 15.9.2010, pay the petitioner the wages applicable in the scale of pay of Rs.9300- 34800 plus Grade pay of Rs.4200/- (Rs.5200-20200 Grade Pay Rs.2800/- pre-revised) based on the additional fitment Table No.3 dt: 15.9.2010 together with compound interest at 12% p.a. from the date the wages became due i.e., on and from 1st August 2010.

PRAYER in W.P.No.2619 of 2013: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records from the 3rd respondent relating to his order dated 15.02.2012 bearing Ref.Aa.Thi.Mu.No.607/C2/2012 quash the same and consequently direct the 3rd respondent to implement the G.O.Ms.No.338, Finance Department, dt:26.08.2010, read with the letter dt: 15.9.2010, pay the petitioner the wages applicable in the scale of pay of Rs.9300- 34800 plus Grade pay of Rs.4200/- (Rs.5200-20200 Grade Pay Rs.2800/- pre-revised) based on the additional fitment Table No.3 dt: 15.9.2010 together with compound interest at 12% p.a. from the date the wages became due i.e., on and from 1st August 2010.

For Petitioners: Ms. R.Vaigai, SC, for Mrs. S.Meenakshi
For respondents: Mr.S.Karthikai Balan, GA

COMMON ORDER

Since the issue involved in all these writ petitions are identical, they are heard together and disposed of by this common order.

2. The grievance of the petitioners in all the present petitions is for fixation of their pay as per G.O. Ms. No.338, Finance Department dated 26.8.10 read with letter dated 15.9.2010 and for payment of pay at the appropriate scale of Rs.9300- 34800 + Grade pay of Rs.4200/- (Rs.5200-20200 - Grade Pay Rs.2800/- pre-revised) in conformity with Table No.3 of the Fitment Table dated 15.9.10 along with interest on on and from 1st August 2010.

3. It is the case of the petitioners that they were initially appointed in the third respondent college on temporary basis in various posts and subsequently their services were regularised on 06.07.2011. As such, their entry level pay, as per the V Pay Commission, was fixed at Rs.3050-4590, which was thereafter revised to Rs.5200-20200 + Grade Pay Rs.1900, on the recommendations of the VI Pay commission. However, discrepancies/anomalies in the fixation of pay led to the constitution of One Man Commission, which recommended merger of certain posts and fixing the pay. Pursuant to the

recommendation of the One Man Commission, G.O.Ms.No.338, dated 26.08.2010 was issued, which also did not seem to have addressed the issue resulting in grouping of several employees in one particular category resulting in their pay not being fixed appropriately. In furtherance of the anomalies that arose due to the implementation of the recommendations of the One Man Commission, the Government issued clarification letter dated 15.9.2010, providing for an additional fitment table codifying higher pay to some categories by hiking their pay from one pay band to the other pay band, by issuance of G.O. Nos.254 to 340, dated 26.08.2010, and the fixation of pay relevant to petitioners are driven by G.O. No.338.

4. It is the grievance of the petitioners that Fitment Table No.3 is squarely equatable to G.O. No.338 which governs the scale of pay of the petitioners and, therefore, the petitioners are entitled to have their pay as per Fitment Table No.3. However, the 3rd respondent, without properly appreciating the intent and tenor of the Government Orders, have wrongfully fixed the scale of pay of the petitioners at a much lower scale, without giving the benefit of Fitment Table No.3, as envisaged under Government Letter No. 51082/Pay Cell/2010-1 dated 15.9.2010 and, thereby, the petitioners have been denied of their rightful increase in salary. It is the further grievance of the petitioners that mere increase in the Grade Pay by Rs.100/- and Rs.200/- could in no way be termed to be an increase in pay on the basis of the recommendations of pay commission and the improper appreciation of the relevant Government Orders by the 3rd respondent have resulted in the present anomalous situation and the representation submitted by the petitioners having been rejected, the present writ petitions have been filed.

5. Learned Senior Counsel appearing for the petitioners vehemently submitted that the petitioners are entitled for fixation of their pay on par with other categories of persons at their entry level, who are similarly placed like that of the petitioners. Learned Senior Counsel, to buttress her submissions, drew the attention of this Court to the Government Letter dated 15.9.2010 in which particular reference is drawn to G.O No.338, which covers the petitioners and submitted that the Government having issued a clarification that the Fitment Table, annexed therewith, would stand attracted towards fixing of pay in the appropriate pay band for the employees of the various categories, who fall within the particular pay structure, the petitioners, who also form a composite lot of technical persons, their case would equally be attracted to pay structure provided in Fitment Table No.3.

6. It is the further submission of the learned Senior Counsel that the fitment table annexed to the Government Letter dated 15.9.10 only prescribes that such of the persons, whose scales of pay have been elevated from one pay band to another pay band which falls within G.O. Nos. 254 to 340, the petitioners case being covered by G.O. No.338, would equally be entitled to the fitment provided in the table annexed with the said Government Letter.

7. Per contra, learned Government Advocate appearing for respondents submitted that based on G.O. Ms.No.234, dated 01.06.2009, pay scales of the petitioners have been correspondingly revised to Rs.5200-20200 + eligible Grade pay. In view of the anomalies, on the basis of the recommendations of the One Man Commission, the Government implemented the said recommendations, whereby certain posts were merged. On such merger, the petitioners were placed under the post of Skilled Assistant Grade - II. The petitioners were provided with the relevant pay scales in the appropriate pay band along with the grade pay by applying G.O. No.338 and the fitment table provided in the Government Letter would not stand attracted to the case of the petitioners, as the petitioners pay band did not stand elevated. In view of the non-enhancement of the pay band, the petitioners were only provided with increase in grade pay by Rs.100/- or Rs.200/- as the case may be and, therefore, the request of the petitioners for adoption of Fitment Table No.3 as provided in the government letter, would not be available to the petitioners, as they are covered only by G.O. No.338. Therefore, it is the submission of the learned Government Advocate that for all intent and purposes, the Government letter would not over ride G.O. No.234 and the basic pay increase made in G.O. No.234 would stand enhanced only to the limited extent as provided under G.O. No.338 and the Government letter would not come to the aid of the petitioners to avail further enhancement of pay. Therefore, no interference is called for with G.O. Ms.No.338 and clarification letter dated 15.09.2020, which are impugned herein.

8. This Court paid its undivided attention to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record to which this Court's attention was drawn.

9. The issue in these petitions revolve around a very limited sphere. While the petitioners claim that they are entitled for the grade pay as provided under the Fitment Table No.3 forming part of the Government Letter dated 15.9.10 in continuation of the revision of pay scale granted under G.O. No.338, however, it is the stand of the respondents that the petitioners case centers only around G.O. No.338 and the Fitment

Table annexed with the Government Letter dated 15.9.10 has no relevance to the case of the petitioners and the petitioners have been provided with the revised pay scale in consonance with G.O. No.338.

10. The pay scale of the petitioners in the pre-revised scale as well as under the revised scale pursuant to the implementation of the recommendations of the VI Pay Commission are not in dispute. It is the further case of the petitioners that the nature of work and responsibilities discharged by the petitioners are also more than that of the other employees, who are provided with higher scale of pay at Rs.9300-34800 + GP Rs.4200, and, therefore, fixing the pay of the petitioners at Rs.5200-20200 + GP Rs.2000 is unreasonable. Only in the above backdrop, the Government Letter was issued clarifying the impugned G.O. No.338 and providing persons, who were in receipt of the pre-revised scale of pay of Rs.3050-4590 to be provided with the revised pay scale of Rs.9300-34800 + GP Rs.4200.

11. It is the undisputed case of the petitioners that they are employees belonging to Trade categories and in view of the anomalies in pay fixation, One Man Commission was constituted, which re-fixed the scale of pay of the skilled and unskilled employees belonging to various technical categories in and by which, the petitioners, being graded as entry level employees in Grade-II, were designated as Skilled Assistant Grade-II and provided with revised scale of pay of Rs.5200-20200 + GP Rs.2000/- from the Grade Pay of Rs.1,900/-. However, ambiguities in the fixation of pay led to the provision of fitment table annexed to the Government Letter dated 15.9.10 in and by which Grade Pay of the petitioners, fixed at Rs.2000/-, by the One Man Commission for the revised pay scale of Rs.5200-20200 insofar as the pre-revised scale of pay at Rs.3050-4590 was revised. The revised scale of pay was fixed at Rs.5200-20200 + GP 2000 by the One Man Commission by enhancing the grade pay from Rs.1900/- to Rs.2000/-, which facts are not in dispute.

12. On the heels of the fixation of pay made by the One Man Commission, subsequently, the impugned Government Letter dated 15.9.10 was issued in which the pre-revised scale of pay of Rs.3050-4590 was provided with the revised scale of pay of Rs.9300-34800 + GP of Rs.4200/- as is evident from the fitment table. Further, it is not in dispute that the pre-revised scale of the petitioners was Rs.3050-4950. The One Man Commission had merged certain posts into single category and fixed the revised scale of pay at Rs.5200-20200 + GP 2000. However, a perusal of the report reveals that the One Man Commission has not detailed the posts, which were merged into a single category. In effect, the One Man Commission Report is not composite, as the said

report nowhere reveals that the petitioners post was merged into a single category with other equivalent posts and graded as Grade-II (Entry Level posts) and re-designated as Skilled Assistant Grade-II. It is also observed from the fitment Table No.3, on which reliance has been placed by the petitioners, that the categories of posts, which fall under the pre-revised scale of pay of Rs.3050-4950 would be entitled to the benefit of the revised scale of pay of Rs.9300-34800 + GP Rs.4200 has not been prescribed. However, only the pre-revised scale of pay and the consequent revised scale of pay alone are provided in fitment Table No.3.

13. If it is to be construed that the pre-revised pay scale for which revised scale of pay is provided under fitment Table No.3, then the petitioners, being persons, who were in the pre-revised scale of pay of Rs.3050-4590 would be entitled to have their pay fixed as per fitment Table No.3. However, the Government Letter dated 15.9.10 does not state in unequivocal terms that the report of the One Man Commission stands replaced by the pay scale provided in fitment Table No.3. The Government Letter dated 15.9.10, while highlighting the recommendations made by the One Man Commission, which have been accepted by the Government, only proceeds on the premise that the fitment table for fixation of pay in the corresponding revised pay scale have been provided in Appendix-I of G.O. Ms. No.234, finance (PC) Department, dated 1.6.09, which pertains to implementation of the recommendations of the VI Pay Commission./ The Government Letter further mandates that in furtherance to the revision of pay scales based on the above Government Orders, scales of pay of some of the categories in various departments have been elevated from one pay band to another pay band and to that extent additional fitment table Nos. 1 to 17 are provided in the said letter and the Heads of the Department have been directed to adopt the said pay scales for their employees. However, the said Government Letter also does not specify the types of categories of posts, which have been provided with the above revised scale of pay. सत्यमेव जयते

14. In essence, the Government Letter dated 15.9.10, merely speaks about providing scales of pay for certain categories by elevating them from one pay band to another pay band, as provided in the additional fitment table. It is to be pointed out at this juncture that a group of categories were put under one single composite category and provided with a pay scale. The VI Pay Commission had provided different pay bands and each pay band had been provided with a higher grade pay to mark the ascendancy in the administrative hierarchy. While the scale of pay is similar to different bands, only the grade pay vary showing that the persons belong to different posts in the hierarchical matrix. The fitment table No.3, which is pressed

into service by the petitioners, provide the scale of pay in the pre-revised scales, which the petitioners were drawing and the said scale of pay was provided with revised scale of pay at Rs.9300-34800 + GP Rs.4200/-. However, it is not clear where from in G.O. No.338, the One Man Commission had fixed the scale of pay at Rs.5200-20200 + GP Rs.2000. It is also not clear from G.O. No.338, which had accepted the report of the One Man Commission as to which were the posts, which would fall under the above revised scale of pay of Rs.5200-20200 + GP 2000. When the One Man Commission had fixed the revised scale of pay at Rs.5200-20200 + GP 2000 for the pre-revised scale of pay of Rs.3050-4590, the fitment Table No.3 reveals that for the very same pre-revised scale of pay of Rs.3050-4590, the revised scale of pay has been fixed at Rs.9300-34800 + GP Rs.4200.

15. Further, it is to be pointed out that if the One Man Commission report fixing the revised scale of pay at Rs.5200-20200 + GP Rs.2000 is to be accepted, the existing scale of pay, which stood revised by the One Man Commission was Rs.5200-20200 + GP Rs.1900. This Court is at a loss to understand as to how a revision of Rs.100/- in the grade pay alone could be termed to be a revision on the basis of the recommendation of the pay commission. Further, when it is alleged by the petitioners that very many posts in the equivalent scale of pay in the pre-revised scale were provided with higher pay in the revised scale of pay, what is the yardstick on the basis of which revised scale of pay is fixed is not evident from the various Government Orders. Further, it is to be pointed out that even in the impugned Government Letter dated 15.9.10, reference is drawn to G.O. No.338 on the basis of which the pay of the petitioners have been refixed. Once the said G.O. No.338 is pressed into service, any alterations/refixations made to the pay scale provided therein ought to stand reflected in the Government Letter and that the said G.O. No.338 and the Government Letter has to be read in conjunction and not in isolation. Therefore, there is no question of the Government letter superceding G.O. No.338. Without providing clarity on the basis of which pay scale has been fixed, providing the petitioners with a pay scale, which is bereft of any details, would make the whole exercise of fixing the pay scale an exercise in futility. This Court cannot be a mute spectator to such a fixing of pay scale without providing the basis on which such a scale is being fixed, more so, when it is the stand of the petitioners in their reply that persons, equivalently situated as also lesser in hierarchy to the post of the petitioners have been provided with scale of pay higher than the petitioners. In the absence of the respondents controverting the said plea of the petitioners and also providing this Court with any worthwhile explanation and the basis on which the scale of pay of the petitioners have been fixed and showing that G.O. No.338 has no nexus with the Fitment

Table as envisaged in the Government Letter, this Court has no other option but to set aside G.O. No.338 as also the Government Letter No.51082/Pay Cell/2010-1 dated 15.9.2010.

16. On the findings rendered above, this Court is of the considered view that the matter requires to be remanded back to the respondents for considering the case of the petitioners for fixation of their pay equivalent to the pay fixed for persons holding posts analogous to the petitioners.

17. For the reasons aforesaid, the impugned G.O.Ms.No.338, Finance Department, dated 26.08.2010 and the Government Letter No.51082/Pay Cell/2010-1 dated 15.9.2010 are hereby set aside and the matter is remanded back to the 1st respondent for fresh consideration. The 1st respondent shall consider the case of the petitioners afresh on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this judgment.

18. This writ petition stands disposed of with the aforesaid observations and directions. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Secretary,
Government of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Technical Education,
Guindy, Chennai - 600 032.
3. The Principal,
Government College of Engineering,
Salem - 11.

+1cc to M/s.S.Meenakshi, Advocate, S.R.No.38979
+1cc to the Government Pleader, S.R.No.39074

W.P. Nos.2617 to 2619 of 2013

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rv(12/02/2021)