IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved On | 07.08.2020 |
| Pronounced On | 31.08.2020 |

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.2246 of 2019

(Through Video Conferencing)

N.Varadharajan ... Appellant

Vs.

1.The State of Tamilnadu
Rep. by the Secretary,
Finance Department,
Secretariat, Chennai.

2.The Director,
Local Fund Auditing
Kuralagam, 4th Floor,
Chennai - 600 108. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by the learned Single Judge in W.P.No.8600 of 2009 dated 02.11.2018.

WP NO.8600 OF 2009
Prayer: Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of certiorari, to call for the records leading to pass the impugned order of the 2nd respondent dated 25.08.2008 in Na.Ka.En.Pa & Ni II(8)/870 of 2002 and quash the same.

For Appellant : M/s.R.Ramya

For Respondents : Mrs.Srijayanthi
Spl. Govt. Pleader

J U D G M E N T

C.SARAVANAN, J.

This Writ Appeal has been filed against the impugned order dated 02.11.2018 passed by the learned Single Judge in W.P.No.8600 of 2009. By the impugned order, the learned Single Judge has dismissed the said Writ Petition filed by the appellant for quashing the order dated 25.06.1983 bearing reference No.Na.Ka.En.Pa& Ni II (8)/870 of 2002 passed by the 2nd respondent.

2. While dismissing the above Writ Petition, the learned Single Judge has observed as follows:-

> 8.It could be seen from the above tabular column that the said Pannerselvam was promoted as Deputy Inspector and joined duty on 01.07.1998, which is prior to the cut of date of 01.09.1998 entitling the Government Servants to receive 5% personal pay. Undoubtedly the petitioner has joined duty in the post of Deputy Inspector on 16.09.1998, that is after the cut off date i.e., only on 01.09.1998. Since the Government order has not specified any relaxation or rectification for such events, the respondents have rightly passed the order, which is impugned in the writ petition and the said order has been passed in consonance with G.O.(Ms).No.497 Finance Department dated 15.09.1998 and it could not be interfered with.
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> 9.The petitioner being(sick) finding fault with the Government order for not providing any rectification of pay anomaly in the event of such Government Servant, who is joining the said post after the cut off date of 01.09.1998, but has not chosen to challenge the said Government order, cannot seek rectification of pay anomaly on the basis of the said Government order. The petitioner has joined the post of Deputy Inspector on 01.09.1998 but challenged the said pay anomaly only in the year 2009 by filing this writ petition. Under these circumstances, it is clear that the petitioner, who has joined the duty beyond the cut off date cannot compare himself with the other person and claim personal pay on par with the Government Servant who has joined the said post prior to the cut off date.

3. It is the case of the appellant that he should be given the benefit of 5% personal/special pay in terms of G.O.Ms.No.497

dated 15.09.1998, Finance (Pay cell) Department. The relevant portion of the aforesaid G.O.Ms. No.497 reads as under:-

> 2. The Government has carefully examined the representations of Associations of employees in the light of the recommendations of the One Man Commission. The Government, after taking note of the fact that the Ministerial categories have already been granted with appropriate Central scales of pay, consider that any further revision of scales of pay will distort the pay structure already evolved. Therefore, Government has decided to grant personal pay at the rate of 50% of basic pay as on 1-9-98 as an alternative benefit to all categories of employees who have been granted with 5% personal pay prior to 1-1-96 in the pre-revised scales of pay as ordered and modified in the Government Orders first and second read above.
>
> 3. The personal pay is sanctioned as onetime benefit and shall not be altered once fixed as on 1-9-98 in the event of promotion/reversion and movement to Selection Grade/Special Grade. It will apply also to the employees in the Selection Grade and Special Grade of the respective categories. The personal pay will be computed on basis pay only as on 1-9-98. The fraction of personal pay shall be rounded off to the nearest rupees (i.e.) 50 paise and above shall be treated as a rupee and below 50 paise shall be ignored. The personal pay shall not apply to any promotion beyond the scale of pay Rs. 5500-9000. The personal pay shall be considered as pay for all purposes such as Pension. Dearness Allowance, House Rent Allowance and City Compensatory Allowance There shall be no entitlement for this personal pay from any other category - in any other scale. This scheme of personal pay is exclusive to the specified scales of pay, keeping in mind the job responsibilities attached to these categories as laid down n the Government Order first read above.
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> 4. These orders shall also apply to the employees of Local Bodies and non- teaching staff of Aided Educational Institutions.

4. It was contended that the appellant was promoted to the post of Deputy Inspector in the office of the Local Fund Audit Department on 08.09.1997. However, he was relieved from the post of Assistant Inspector only on 31.05.1998. Thereafter, the

appellant was on paid leave from 01.06.1998 and reported to the promotional post on 16.09.1998.

5. It was submitted that the said G.O.Ms.No.497 dated 15.09.1998 was issued just one day before he reported to the duty as the Deputy Inspector. It is submitted that if the said G.O.Ms.No.497 dated 15.09.1998 was issued on an earlier date and had fixed the cut-off date prospectively, the appellant would have also jointed duty and would have forgone the leave.

6. It is contention of the appellant that appellant's immediate junior Mr.E.Pannerselvam was given the benefit of the G.O.Ms.No.497 dated 15.09.1998 merely because he had reported to duty as a Deputy Inspector on 01.07.1998 though he was promoted only on 30.03.1998 which was much after the appellant was promoted.

7. In this connection, the appellant had sent a representation dated 18.11.1999 o the office of the 2nd respondent. Initially, the appellant was informed by the office of the 2nd respondent vide letter dated 31.07.2006 that for undertaking any work relating to either removal of discrepancy in pay or seeking clarification from the Government, the conditions stipulated in Rule 22(a)(2) of the Tamil Nadu Government Fundamental Rules ought to have been fulfilled.

8. It was stated that the appellant qualified for advanced increment only on 16.11.1996 after passing SAS Examination, whereas, his Junior Mr.E.Pannerselvam qualified in the aforesaid examination on 17.05.1995. He was informed that the discrepancy arising out of application of the said G.O.Ms.No.497 dated 15.09.1998 cannot be rectified as the appellant joined to the post of the Deputy Inspector only on 16.09.1998.

9. The appellant kept sending representations through proper channel but did not receive any favourable response. Under these circumstances, the above Writ Petition came to be filed by the appellant. As mentioned above, the learned Single Judge dismissed the writ petition.

10. We have considered the arguments advanced by the learned counsel for the appellant and by the learned Special Government Pleader appearing for the respondents.

11. On behalf of respondents, it was submitted that the impugned order of the learned Single Judge was well reasoned and requires no interference. It is further submitted that Rule 22B of the Tamil Nadu Government Fundamental Rules is not applicable to the facts of the case. It is submitted that as per said Rules, where a Government servant holding a post in a substantive or officiating capacity is promoted to another post

having duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the timescale of a higher post shall be fixed at the next stage above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment, at the stage at which such pay has accrued.

12. It is submitted that after getting promotion order, the appellant was voluntarily on leave and during the aforesaid period G.O.Ms.No.497 dated 15.09.1998 was issued and since the cut off date for getting the benefit of the above Government order was 01.09.1998, the appellant cannot seek for the benefit.

13. It is further submitted that the appellant should have worked in the post of the Deputy Inspector prior to 01.09.1998 to claim the benefit of 5% personal pay and therefore the request of the appellant for rectification of the anomaly in the pay has been rightly rejected by the learned Single Judge.

14. The appellant did not get the benefit of G.O.(Ms.)No.497 dated 15.09.1998 since the appellant had not joined duty on 01.09.1998. He jointed duty only on 16.09.1998. He was on leave after he was relieved from his previous posting as the Assistant Inspector on 31.05.1998.

15. The benefit of G.O.(Ms.)No.497 dated 15.09.1998 has been given to the said Mr.E.Pannerselvam because he joined duty as a Deputy Inspector on 01.07.1998.

16. In our view, denial of benefit to the appellant based on a condition which did not exist prior to 01.09.1998 is arbitrary. If a cut-off date was prospective, the appellant would have had a choice. He would have perhaps reported to duty before the cut-off date, in which case he would have been eligible to the benefit. In this case, 01.09.1998 was fixed as the cut-off date vide G.O.(Ms.).No.497 dated 15.09.1998.

17. In our view, though the very purpose of issuing G.O.(Ms.).No.497 dated 15.09.1998 was to remove the anomaly in pay, yet it had resulted in an anomaly. It has resulted in an unfair discrimination. Such administrative orders which are beneficial in nature ought to have been interpreted liberally. The appellant was otherwise entitled to receive the same as he was promoted to the post of the Deputy Inspector as early as 08.09.1997 but was relieved on 31.05.1998. He was on leave thereafter. Had he reported before 01.09.1998, he would have got the benefit like others. However, he could not have contemplated a situation in G.O.(Ms.).No.497 dated 15.09.1998.

18. As canvassed, there is no point in diluting G.O.(Ms.).No.497 dated 15.09.1998. We are therefore inclined to hold that

the appellant had reported to duty on 01.09.1998 as the Deputy Inspector for the purpose of G.O.(Ms.).No.497 dated 15.09.1998.

19. We therefore set aside the impugned order of the learned Single Judge and allow the writ petition with consequential benefit to the appellant.

20. The respondents are therefore directed to re-compute the attendant benefits payable to appellant by treating the appellant having joined the post of Deputy Inspector on 01.09.1998, within a period of three months from the date of receipt of a copy of this Judgment.

21. Accordingly, the Writ Appeal stands allowed with the above observations. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To.

1.The Secretary,
The State of Tamil Nadu,
Finance Department,
Secretariat, Chennai.

2.The Director,
Local Fund Auditing
Kuralagam, 4th Floor,
Chennai - 600 108.

+1cc to M/s.R.Ramya, Advocate in SR.28250

Pre-Delivery Judgment
in
W.A.No.2246 of 2019

VSN-II(CO)
RV (16/09/2020)