

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07.01.2020
Pronouncing orders on : 13.01.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.24466 of 2018

P.V.Girija Bai

...Petitioner

vs.

1. The Tamil Nadu Adi Dravidar Housing and Development Corporation Limited, rep. by its Managing Director, 31, 2nd Lane, Cenotaph Road, Teynampet, Chennai - 600 018.
2. The General Manager (Administration), The Tamil Nadu Adi Dravidar Housing and Development Corporation Limited, 31, 2nd Lane, Cenotaph Road, Teynampet, Chennai - 600 018.

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 from the 1st respondent relating to the proceedings dated 19.06.2018 bearing reference Letter No.A2/9831/2017 and quash the same as illegal, arbitrary, without jurisdiction and to consequently direct the respondents 1 and 2 to refix the petitioner's pay in the Selection Grade Divisional Accountant Post in the pay scale of 8000-275-13500 w.e.f. 18.03.2002 as ordered by the Government Corporation when the similarly persons like the seniors Sridharan, Ramasubramanian and junior D.Thiyagarajan were granted time scale of pay of Rs.8000-275-13500 and in the absence any promotional post when the petitioner made a claim she has to be treated on par with his seniors and as it was done in the case of petitioner's junior D.Thiagarajan and subsequent pay scales, pay monetary, service and other consequential benefits with arrears on account of the same within a time frame fixed by this Court.

For Petitioner : Mr.K.Srinivasa Murthy

For Respondents: Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

O R D E R

This writ petition has been filed challenging the impugned order passed by the 1st respondent rejecting the claim made by the petitioner to re-fix the pay of the petitioner in the Selection Grade Divisional Accountant post in the scale of pay of Rs.8000-275-13500.

2.The subject matter of challenge in this writ petition is the impugned order passed by the 1st respondent rejecting the claim made by the petitioner to re-fix the pay of the petitioner in the Selection Grade Divisional Accountant post in the scale of pay of Rs.8000-275-13500.

3.The case of the petitioner is that she was appointed in the year 1974 as a Junior Assistant and subsequently she was promoted as Divisional Accountant w.e.f. 18.03.1992. On completion of 10 years of service, she was made as Selection Grade Divisional Accountant and the pay in the Selection Grade was fixed in the scale of Rs.6500-200-10500 instead of Rs.8000-275-13500. Representations were made by the petitioner and others who were similarly placed and this mistake was not rectified.

4.One of the similarly placed person, who is in fact Junior to the petitioner, approached this Court and filed W.P.(MD). No.5226 of 2010. In the writ petition, he had challenged the proceedings of the 2nd respondent and he had sought for rectification and re-fixation of the salary in the scale of Rs.8000-275-13575. The respondents filed their counter and this Court considered the issue in detail and the writ petition was allowed by an order dated 14.03.2013. The relevant portions of the order is extracted hereunder:

3.The facts which are necessary for the disposal of the Writ Petition are that the petitioner was appointed as Assistant Grade-II in the respondent Corporation and he was promoted as Assistant during 1988. The petitioner passed the Departmental examination for the post of Divisional Accountant and was promoted as Divisional Accountant by the proceedings of the first respondent, dated 09.07.1993. Thereafter, he was designated as Selection Grade Divisional Accountant since he has completed 10 years of service and this order was passed by the second respondent by the proceedings, dated 14.07.2004. On account of the grant of Selection Grade Divisional

Accountant, the petitioner is entitled to be placed in the scale-of-pay of Rs.6,500-200-10,500. Therefore, the petitioner has been making several representations from 2004 onwards and no orders were passed.

4. Thereafter, the petitioner has pointed out that there has been a discrimination in the matter of one Ramasubramanian, who since retired, is also getting the scale-of-pay as referred to by the petitioner and the petitioner alone has been denied the pay. Therefore, he sent a representation to the Honourable Chief Minister's Cell. It is only thereafter, the respondent decided to send a reply to the G.O.Ms.No.162, dated 13.04.1988, there is a promotional avenue for the petitioner and he cannot be granted to pay Rs.6,500-200-10,500 and since there is a promotional avenue, his request for payment of enhanced pay cannot be granted.

5. On perusal of the relevant document, it is clear that on the date, the petitioner was promoted as Selection Grade Divisional Accountant there was no promotional avenue and in such circumstances, it is deemed that the petitioner is stagnating in the said post and the petitioner has also pointed out that two persons who were similarly placed have been granted higher scale-of-pay of Rs.8,000-275-13,500.

6. The learned counsel appearing for the respondent by relying upon the counter-affidavit submitted that by order, dated 07.03.2010, the petitioner was informed that the promotional avenue is created from the post of Divisional Accountant to the post of Assistant Account Officer in the Board Service Rules 2000 and they are awaiting approval. Further, it is admitted that the said two persons, viz., Ramasubramanian and Sridhar were given the scale-of-pay of Rs.8000-275-13500, as they have completed 10 years of service when the avenue of promotion was created.

7. Thus from the counter-affidavit, it appears that the only contention raised by the Board is that the Board was created promotional avenue from the post of Divisional Accountant to Assistant Accounts Officer in the 2000 Service Rules and therefore, they are denying the benefit of the petitioner. The stand taken by the respondent is wholly arbitrary and unreasonable. Admittedly, as ordered by the Government when the similarly placed persons like Ramasubramanian and

Sridhar were granted scale-of-pay of Rs.8000-275-13500 and in the absence of any promotional post "as on the date, when the petitioner made a claim, he also has to be treated on par with the other two candidates.

8.The contentions raised by the respondent in the counter-affidavit that because the promotional post has been created, the benefit cannot be granted to the petitioner cannot be accepted as such creation of post is yet to be approved by the Government. Therefore, the petitioner has to be permitted to draw higher scale, since the Government is yet to approve the said promotional post. Therefore, the petitioner is entitled to be placed under the scale-of-pay of Rs.8000-275-13500 with effect from 27.07.2003.

9.Accordingly, the Writ Petition is allowed and there will be a direction to the respondent to pay the difference in salary between Rs.8,000-275-13500 and Rs.6,500-200-10500 with effect from 27.07.2003 and such difference in salary shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order, as it is stated that the petitioner is to shortly attain the age of superannuation. No Costs.

5.This order was challenged by filing an appeal in W.A.(MD). No.1285 of 2016 and the Division Bench of this Court by an order dated 17.08.2017 was pleased to dismiss the writ appeal. The orders passed by this Court was subsequently implemented by the 1st respondent by his proceedings dated 12.12.2017 and his pay was refixed.

6.The petitioner who is senior to the said D.Thiagarajan also made similar request to the respondents to extend the very same relief to him. The representation made by the petitioner was rejected by the impugned order passed by the 1st respondent on the ground that the relief granted by this Court in the case of D.Thiagarajan confined itself only to the said D.Thiagarajan and it cannot be extended to the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

7.Mr.K.Srinivasa Murthy appearing on behalf of the petitioner submitted that the impugned order passed by the 1st respondent suffers from total non-application of the mind and the same is liable to be interfered by this Court. The learned counsel submitted that if the relief has been granted to a junior and his pay has been refixed, the petitioner is also entitled for the same relief. The learned counsel submitted that

the 1st respondent failed to appreciate the fact that the issue involved in the writ petition filed by Thiagarajan is the same issue which is involved in the case of the petitioner also. The learned counsel therefore, prayed for allowing the writ petition and granting the same relief to the petitioner.

8.Per contra, Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the Board had created the promotional avenue from the post of Divisional Accountant to Assistant Accounts Officer in the Service Rules of the year 2000 and therefore, the petitioner is not entitled for the said benefit. The learned counsel further submitted that there are absolutely no grounds to interfere with the impugned order passed by the 1st respondent.

9.This Court has carefully considered the submissions made on either side and also the materials available on record.

10.It is seen from the regularization order dated 11.11.2002 where this candidate was regularized in the post of Divisional Accountant with D.Thiagarajan as junior to the petitioner. The said D.Thiagarajan also had the same grievance as that of the petitioner and all of them gave representations to the respondents to refix the scale of pay. Subsequently, D.Thiagarajan had approached this Court and filed W.P.(MD). No.5226 of 2010 and this Court allowed the writ petition and directed the refixation of pay and the payment of all the consequential benefits. This order was confirmed in Appeal and ultimately it was implemented in respect of the said D.Thiagarajan by the 1st respondent in its proceedings dated 12.12.2017.

11.The 1st respondent ought to have extended the same benefits to the petitioner who is senior to D.Thiagarajan and he is also entitled for such refixation. The 1st respondent failed to take note of the fact that the petitioner is also similarly placed and therefore, it is unnecessary that the petitioner will get the same relief only when she gets similar orders before this Court. It is unnecessary that everybody should approach this Court to get the relief and if similarly placed person has already been granted relief, it has to be necessarily extended to others also.

12.The 1st respondent misdirected himself in rejecting the claim made by the petitioner and the order clearly suffers from non-application of mind.

13.In the result, the impugned proceedings of the 1st respondent dated 19.06.2018 is hereby quashed and there shall be

a direction to the respondents to refix the pay of the petitioner in the Selection Grade Divisional Accountant post in the time scale of pay of Rs.8000-275-13500 w.e.f. 18.03.2002 and pay the petitioner with the arrears in the difference in the salary ,within a period of eight weeks from the date of receipt of copy of this order. The order passed in favour of the petitioner shall be dealt with in the same way in which D.Thiagarajan was granted relief by the proceedings of the 1st respondent dated 12.12.2017.

14.Accordingly, this Writ Petition is allowed with the above directions. No Costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Managing Director,
Tamil Nadu Adi Dravidar Housing
and Development Corporation Limited,
31, 2nd Lane, Cenotaph Road,
Teynampet, Chennai - 600 018.
2. The General Manager (Administration),
The Tamil Nadu Adi Dravidar Housing
and Development Corporation Limited,
31, 2nd Lane, Cenotaph Road,
Teynampet, Chennai - 600 018.

+lcc to M/s.Row & Reddy Advocate sr3294

+lcc to Government Pleader srl805

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