

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :21.12.2020

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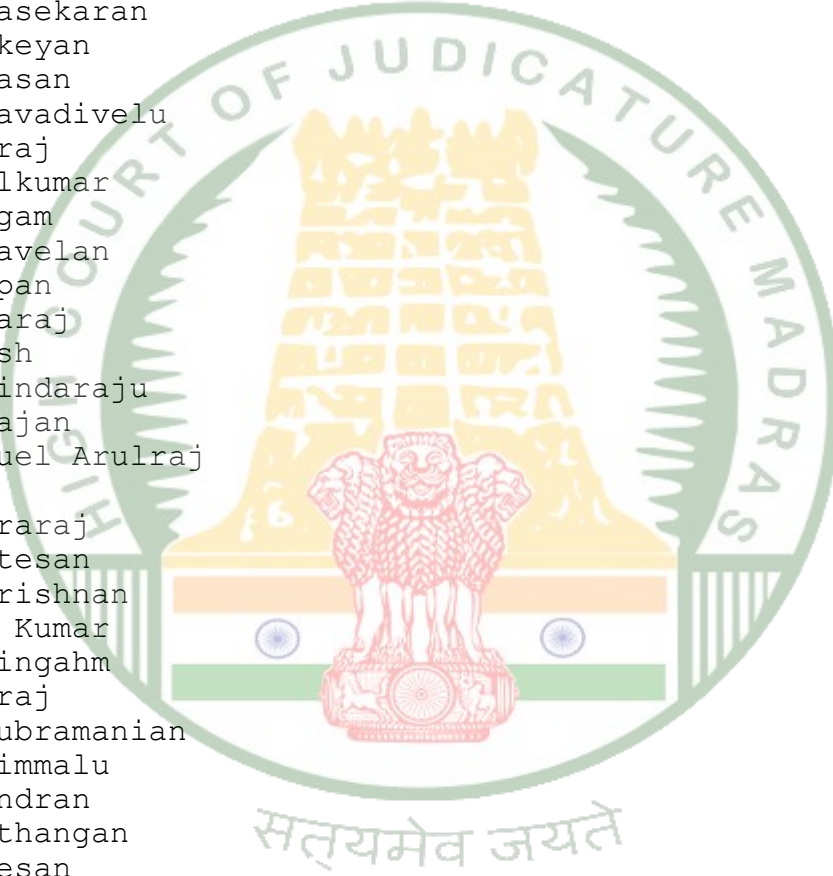
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.22712 of 2014

and

M.P.Nos.1 & 2 of 2014

- 1.S.Chandrasekaran
- 2.R.Karthikeyan
- 3.T.Srinivasan
- 4.v.Sundaravadivelu
- 5.N.Dharmaraj
- 6.P.Senthilkumar
- 7.A.Shunmugam
- 8.N.Singaravelan
- 9.K.Muniappan
- 10.D.Thangaraj
- 11.R.Prakash
- 12.T.A.Govindaraju
- 13.R.Natarajan
- 14.G.Immanuel Arulraj
- 15.D.Ravi
- 16.P.Sundararaj
- 17.K.Venkatesan
- 18.P.Balakrishnan
- 19.K.Rajiv Kumar
- 20.P.Mahalingahm
- 21.R.Selvaraj
- 22.K.Balasubramanian
- 23.D.Narasimmalu
- 24.R.Raveendran
- 25.D.Paranthangan
- 26.R.Murugesan
- 27.K.S.Muralitharan
- 28.P.Manoharan
- 29.I.Venkatesan
- 30.B.Veerabadran
- 31.M.Duraipandi
- 32.S.Amuthapandian
- 33.K.A.Sivabalan
- 34.E.Paraman
- 35.A.Muthuraj
- 36.K.Rajappa
- 37.V.R.K.Srinivasan
- 38.S.S.K.Mohandoss



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39.S.Palanivel
40.N.Karunanithi
41.S.Saravana Kumar
42.G.Soundarapandi
43.R.Pandi
44.P.Murugan
45.A.Balagurusamy
46.A.Seenivasan
47.J.Robinson (Retd.,)

.. Petitioners

- Vs -

- 1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Finance (PC) Department,
Secretariat,
Chennai 600 009.
- 2.The Principal Secretary to Govt.,
Higher Education Department,
Secretariat,
Chennai -9.
- 3.The Joint Secretary to Government,
Finance (CMPC) Dept.,
Secretariat,
Chennai-9.
- 4.The Commissioner,
Directorate of Technical Education,
Guindy,
Chennai -25.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the order passed by him in Letter No.24220/CMPC/2013-1, dated 04.06.2013 and also on the file of the 4th respondent in connection with the order passed by him in Letter No.45517/A4/2013, dated 30.12.2013 and letter No.41134/A3/2013 dated 31.12.13 and the order passed by the 1st respondent in Letter No.28445/CMPC/2014-1, dated 15.07.2014 in which the petitioners were granted the selection grade scale of pay with effect from 01.01.2006 with all monetary and service benefits with 18% interest per annum and cost.

For Petitioners : Mr.Singaravelan,
Senior counsel for
M/S.M.Srividhya

For Respondents :Mr.A.N.Thambidurai,
Spl.G.P., for RR1 & 3
:Mr.G.Karthikai Balan,
G.A., for RR2 & 4

ORDER

The writ petition has been filed by the petitioners, to call for the records on the file of the 3rd respondent in connection with the order passed by him in Letter No.24220/CMPC/2013-1, dated 04.06.2013 and also on the file of the 4th respondent in connection with the order passed by him in Letter No.45517/A4/2013, dated 30.12.2013 and letter No.41134/A3/2013 dated 31.12.13 and the order passed by the 1st respondent in Letter No.28445/CMPC/2014-1, dated 15.07.2014 and quash the same and direct the respondents to pay the selection grade scale of pay to the post in which the petitioners were granted the selection grade scale of pay with effect from 01.01.2006 with all monetary and service benefits with 18% interest per annum and cost.

2.The case of the petitioners is that they are working in the Government Polytechnic College at Coimbatore in Non Technical Post of skilled Assistant for so many years without any blemish on their part. The petitioners have no promotional avenue in the said posts and, therefore, they are entitled for selection and special grade scale of Pay after completion 10 and 20 years of unblemished service. It is the claim of the petitioners that the Government order granting Selection and Special Grade Scale of Pay without any restriction available to the employees of the same cadre of other colleges are not paid to them inspite of the Government Order clarifying that the petitioners are also entitled to the above benefit and the representation made in this regard to the 1st respondent did not yield fruitful result.

3. It is the case of the petitioners that based on the Government order/letter dated 08.11.2010, they are entitled for selection grade scale of pay of Rs. 9200-34800+GP 4200, however the respondents wrongly understood the effect of the Government order dated 08.11.2010 wrongly and provided them with selection grade scale of pay in their ordinary scale and not in the pay scale in which the petitioners were holding the post in line with Annexure I to letter dated 08.11.2010. The respondents

have misinterpreted clause (i) of para 4 of the letter dated 08.11.2010 and restricted selection grade to the ordinary level scale of pay. Aggrieved by the said rejection, they made a representation, for non consideration of the representation, they filed a writ petition before the Madurai Bench of this court in WP.(MD)No.7685 of 2014, this Madurai Bench of this Court by its order dated 30.04.2014, directed the respondents to consider and pass appropriate orders on the petitioners representation. However pursuant to the order of Madurai Bench of this Court, the respondents rejected their claim stating that paragraph No.4(1) of letter dated 08.11.2010 was not applicable to the petitioners. Challenging the same the present writ petition is filed.

4. Learned senior counsel appearing for the petitioners submitted that even in the counter affidavit, the respondents themselves admitted that paragraph No.4 of the G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, clearly mandates that the selection grade and Special Grade scales of pay will be applicable based on the ordinary grade scale of pay of the respective posts. The appropriate revised selection grade/special grade scales of pay are indicated in Schedule -II of the above said G.O. And insofar as posts for which no promotional avenue is available, the selection/special grade scales of pay shall be on the basis of the ordinary grade scale of pay as indicated in Schedule-II and insofar as posts for which promotional avenue is available, if the selection/special grade scales of pay indicated in the Schedule-II is higher than the pay scales of the first level/second level promotional posts, then in such cases, the selection/special grade scales of pay should be limited to the pay scales of the first level/second level promotional posts. It is the submission on behalf of the petitioner's that since their posts have no promotional avenue, fixing the pay should not be limited to the pay scale to the first and second level of promotional posts. Hence the impugned order is contrary to G.O.Ms.No.162, dated 13.04.1998 and it is liable to be set aside. Learned Senior counsel further submitted that the said letter does not have any control on the posts filled up by direct recruitment and the above said Government Order pertains only to the stagnated posts. It is the further submission of the learned senior counsel that the information sought by the one of the petitioner through RTI, dated 06.11.2021, reveals that the respondents have confirmed that according to the Government Aided Polytechnic colleagues, promotions are not granted based on the seniority, because each and every person is appointed by selection process under direct recruitment.

5.Per contra, learned Special Government Pleader appearing for the respondents, while reiterating the points raised in the

counter affidavit, particularly in paragraph No.6, contended that non-teaching posts (other technical posts) are entitled for the selection Grade Scale of pay with effect from 1.1.2006 at Rs.5200-20200 + G.P. Rs.2600 and Special Grade Scale of pay at Rs.5200-20200 + G.P.Rs.2800 with reference to the ordinary grade scale of pay of Rs.5200-20200 + G.P. Rs.2400 as per the restrictive provisions ordered in para 4(i) of the Government Letter No.63305/Pay Cell/2010-1, Finance Department, dated 08.11.2010. In view of the above the petitioner is not entitled for the higher selection grade scale of pay, as prayed for in their affidavit. He further submitted that as per the orders issued at para 4 of the Government Letter, dated 08.11.2010, fixation of pay has been done for the technical staff working in the aided colleges on the same lines as fixed in Government Engineering colleges and Polytechnic Colleges. He further submitted that the fixation of pay has been done based on the orders issued by the Government from time to time as per the recommendations of the Pay Grievance Committee. Hence the quest of revision of pay and grade pay does not arise and the prayer of the petitioners does not merit consideration and the same is liable to be dismissed. Accordingly he prays for dismissal of the petition.

6.This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

7. A perusal of the materials available on record reveal that the intent and spirit of the Government Order has not been appreciated in proper perspective by the respondents while rejecting the claim of the petitioners. The letter emanating from the Commissioner of Technical Education Department clearly states that the posts in the Government Aided Engineering Colleges are filled up on the basis of selection and not on the basis of seniority. Such being the categorical stand relating to the appointment of the persons in the said posts, the petitioners having been appointed only by way of selection, they ought to be paid selection/special grade scale of pay on the basis of the ordinary grade scale of pay of the next higher level post. However, without providing the petitioners with the said scale of pay pertaining to the next higher level, the petitioners have been granted restricted scale, as if the petitioners posts are promotional posts, is wholly impermissible and not in consonance with the Government Order. A careful perusal of proviso to para 4 of the said Government Order clearly reveals that the restriction of the selection grade to the ordinary grade of the promotion post is permissible only in case of promotion and not in the case of selection and the said restriction is permissible only when the selection grade happens to be higher than the 1st level and 2nd level promotion post and

insofar as selection post is concerned, where there is no avenue of promotion, no restriction has been provided precluding movement to the pay scale of the next higher level post available. Further, on perusal of the counter affidavit filed in WP.MD.No.8015/2019, reveals that therein, the Government made it clear that there is no promotion to the post held by the petitioners and it is only by way of selection, they can reach the higher level and that being the categorical stand of the respondents, this Court is at a loss to understand the reasoning of the respondents herein for declining the relief to the petitioners. The respondents have not taken into consideration para 4(1) of the Government Order dated 08.11.2010 and G.O.Ms.No.304, dated 28.03.1990, in proper perspective, but have passed the impugned order, which requires to be set aside.

8. For the reasons aforesaid, the impugned orders passed by the 3rd respondent, vide his Letter No.24220/CMPC/2013-1, dated 04.06.2013 and also the order of the 4th respondent in Letters No.45517/A4/2013, dated 30.12.2013 and letter No.41134/A3/2013 dated 31.12.13 and also the order passed by the 1st respondent in Letter No.28445/CMPC/2014-1, dated 15.07.2014, are hereby quashed and the matter is remanded back to the respondents for fresh consideration with regard to the request made by the petitioners in their representation for grant of selection grade pay and special grade pay on the basis of Schedule-II. The respondents are directed to consider the representation of the petitioners in the light of the order passed above and pass appropriate orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of copy of this order.

9. This writ petition is allowed with the aforesaid observation and direction. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

jrs

To

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Finance (PC) Department,
Secretariat,
Chennai 600 009.

2.The Principal Secretary to Govt.,
Higher Education Department,
Secretariat,
Chennai -9.

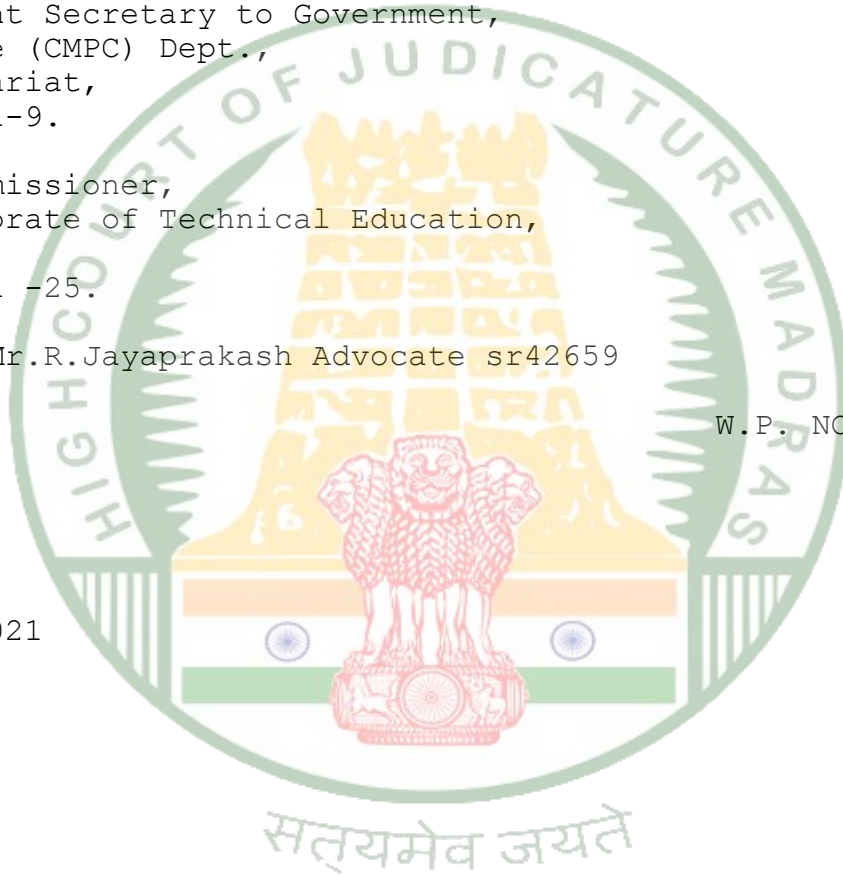
3.The Joint Secretary to Government,
Finance (CMPC) Dept.,
Secretariat,
Chennai-9.

4.The Commissioner,
Directorate of Technical Education,
Guindy,
Chennai -25.

+1 cc to Mr.R.Jayaprakash Advocate sr42659

W.P. NO.22712/2014

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