



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD) .No.737 of 2020

R.Sivakumar

... Petitioner

Vs.

1.The Government of Tamil Nadu
represented by its Secretary to Government,
Transport Department,
Chennai.

2.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai)
Limited,
Madurai 625 010.

3.The Chief Financial Officer,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Madurai 625 010. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertains to the impugned order passed by the second respondent in Ref:Madurai/Law/ W.P.(MD).No.10474 of 2019, dated 24.12.2019 and quash the same and consequently directs the respondents to revise the petitioner's pay scale attached to the post of programmer from the date of his re-designation as programmer i.e., from 16.02.2016, in the light of the order passed by this Court in W.P.(MD).No.3642 of 2012, dated 26.03.2012.

For Petitioner : Mr.G.R.Satish
For Respondents : Mr.J.Senthil Kumariah
2 and 3 Standing counsel for TNSTC

O R D E R

This writ petition has been filed challenging the impugned order passed by the second respondent dated 24.12.2019 and to quash the same and consequently, directs the respondents to revise the petitioner's pay scale attached to the post of Programmer from the date of his re-designation as programmer i.e., from 16.02.2016, in the light of the order passed by this Court in W.P.(MD).No.3642 of 2012, dated 26.03.2012.

2. The case of the petitioner is that initially he was appointed in the second respondent Corporation as Non-ITI helper (Tire Man) on 02.11.1995. The said appointment was made on temporary basis. Subsequently, the said appointment was converted into permanent post vide order dated 23.09.1996 and the said post was upgraded to the post of Senior helper and it was re-designated on



13.05.2010, as Senior Attender. In the month of November 2007, the petitioner has completed his Post Graduate Diploma in Computer Applications and in the year 2009, he completed his Post Graduate in Master of Computer Applications and finally, in the year 2014, he completed Master of Business Administration.

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3. As the petitioner has acquired the Master Degree in Computer Applications and other degrees relating to Computer courses, the second respondent by order dated 16.02.2016, had re-designated the petitioner from Senior Attender to Programmer with some conditions. On 23.02.2019, the petitioner has made a representation to the second respondent stating that the post of Programmer is equivalent to that of the Computer Programmer and requested him to fix the pay scale on par with other similarly placed person and that the petitioner is also entitled to same scale of pay on par with the Computer Programmer. But, the second respondent has passed the impugned order on 24.12.2019, rejecting the request of the petitioner. Against the said order, the petitioner has filed the present writ petition.

4. The learned counsel appearing for the petitioner would submit that in other Transport Corporations, similarly placed employees are entitled for pay parity. However, in the present case, the representation of the petitioner was rejected. He would further submit that the present issue is no more *res integra* and the same is covered by the judgment of this Court in W.P.No.3642 of 2004, dated 26.03.2012 and he referred the following paragraphs in support of his contentions.

"After joining service, the petitioner acquired Diploma in Computer Applications Software, Diploma in System Analysis and Data Processing, Post Graduate Diploma in Computer Applications, Certificate in Computer Hardware Maintenance and Servicing and Master of Computer Applications.

2. In view of the acquisition of the above qualifications, the petitioner was re-designated as Junior Programmer as per the proceedings of the respondents in Pro.No.19921/A.1/NTC/92, dated 27.05.1992. In the said order dated 27.05.1992, however, it was directed as follows:

"There cannot be any change in the seniority list and also his pay. He should not claim any additional benefit. He has also no preferential claim for out of turn promotion. As and when he is transferred from E.D.P. Section due to administrative reasons his original designation viz., Junior Assistant will be restored."

3. The duties to be performed by the petitioner were also prescribed in the proceedings in O.O.No.2074/Mis.I/NTC/93, dated 24.07.1993. Subsequently, he was promoted as Programmer w.e.f. 01.11.1993, in the time



scale of pay of Rs.1140-20-1340-25-1740. His pay was fixed at Rs.1415/- in the said scale as per the proceedings of the respondents in Pro.No.10144/A1/NTC/93, dated 25.01.1994. In pursuance of a subsequent Wage Settlement, the scale of pay was revised as Rs.1330-1070-20-1620. Subsequently, the pay scale of the petitioner was further revised as Rs.3600-90-4230-95-6035."

5. By referring the above judgment, the learned counsel for the petitioner would submit that the petitioner is entitled for pay parity.

6. On the other hand, the learned Standing counsel appearing for the respondents would submit that the petitioner is not entitled for any pay parity and in the order dated 16.02.2016, it has been clearly stated that due to re-designation, there will be no change in his existing emoluments. The learned Standing counsel has also referred Paragraph No.6 of the counter affidavit, wherein it is stated as follows:

"6. I humbly submit that it is pertinent to note that the similarly placed employees were recruited through the employment exchange as Junior Programmer (Trainee) and thereafter there were regularised as Junior Assistant in respected scale of pay and thus they were re-designated as Computer Programmer. But in this case the petitioner was initially employed as Tyreman (Non ITI Helper) in Miscellaneous Group-II cadre and thereafter he was designated as Selection Grade Attender in Miscellaneous Group -I cadre with the pay scale of 5200-20200-Grade Pay 1800. Thereafter on 16.02.2016 the petitioner was re-designated as Programmer from Selection Grade Attender at the same wage rate by maintaining same cadre as Miscellaneous Group -I with no change in existing emoluments and continued with his present same basic and same Grade pay. Hence, the petitioner cannot claim equal status on par with employees in another Corporation."

7. This Court heard the submission of the learned counsel for the petitioner as well as the learned Standing counsel for the respondents and perused the materials available on record.

8. The petitioner was originally appointed in the post of Non-ITI helper (Tire Man) on 02.11.1995. The said appointment was made on temporary basis on daily wages system. At the time of appointment, the petitioner completed his Under Graduate in B.A.Economics. Subsequently, on 23.09.1996, his appointment was converted into permanent post and thereafter, his post was upgraded to the post of Senior helper. Subsequently, on 13.05.2020, his post was re-designated as Senior Attender. In the meantime, he has



completed his Post Graduate diploma in Computer Application during November, 2007 and in the year 2009, he has also completed his post graduate in Master of Computer Application. Finally, in the year 2014, he has also completed his degree course in Master of Business Administration. As the petitioner obtained Master degrees in Computer Application and other degrees relating to Computer courses, the second respondent by his order dated 16.02.2016, has re-designated the petitioner from Senior Attender to the programmer with the following conditions:-

"(a).Due to re-designation there will be no change in his existing emoluments;

(b).He will be continued with his present same basic and same Grade pay; and

(c).For his future review, his designation will be the same and Grade Pay will be changed as per rules and regulations governed by under 12(3) Wage Settlement in the existing category."

9.The writ petitioner had acknowledged the aforesaid conditions and thereafter he was re-designated as programmer.

10.Under these circumstances, though the petitioner had acknowledged and received the re-designated order dated 16.02.2016, the work and the nature of the duty was completely changed. Previously, the petitioner was in the post of Senior helper, now he was re-designated as programmer. The post of Programmer is nothing but it requires technical qualifications to perform any work under the above re-designated post. The petitioner was engaged to perform his duty as programmer, which is not merely a data entry operator, that apart, the petitioner is possessing Master degree in Computer Application and also acquired M.B.A. Degree. With these qualifications he was working as a Senior helper and subsequently, due to the acquisition of those Master degrees in Computer Application and M.B.A., the second respondent, to utilise the services of the petitioner, has re-designated him as programmer in the Computer Section.

11.The grievance of the petitioner is that though the second respondent, to utilise the services of the petitioner, since he was acquired Master degrees in Computer Application and M.B.A., had re-designated the petitioner with the unfair conditions, the equally placed persons have been placed with better pay scale in other transport corporations, whereas the respondents herein deliberately denied to re-fix the pay scale of the petitioner by referring the unfair conditions issued in the order, dated 16.02.2016.

12.Further, the petitioner referred the Judgment of the learned Single Judge of this Court made in W.P.No.3642 of 2004 dated 26.03.2012. The relevant portions of the said order have been extracted at paragraph No.4 of this order, wherein the principle



laid down by the learned Single Judge of this Court is squarely applicable to the present case.

13. On 23.02.2019, the petitioner had given a representation to the second respondent to set right his pay anomaly, but however, the second respondent failed to take any action to set right the pay anomaly, which this Court is of the view that the petitioner is legally entitled.

14. When the similarly placed persons in the other transport corporations getting higher amount of salary, certainly the petitioner is also entitled the same scale of pay of salary than what he was drawing when he was working as a Senior helper. It is totally unfair to force the petitioner to receive the same salary when he was working as a Senior helper. The job of the Senior helper and the programmer are entirely different, as the Senior helper does not require any specialised skills, whereas the work of the programmer certainly required technical qualifications and specialised skills to perform as a programmer. That apart, when a similarly placed persons are getting a different salary, certainly, the petitioner is also entitled to get equivalent pay on par with the other transport corporations. It is the right of the labour to get equal pay for equal work and he should not be deprived of his personal rights of getting the remuneration on par with the other programmers those who are working in the same association or in the other corporations. Therefore, it is totally unfair to continue to pay the same scale of pay when he was working as a Senior helper and hence, this Court is of the serious view that the scale of pay of the petitioner should be refixed on par with the other programmers those who are working in the other corporations.

15. Therefore, I propose to quash the impugned order of the second respondent, dated 24.12.2019. Accordingly, the impugned order is quashed and the writ petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar (CSI)

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Sub Assistant Registrar (CS)

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To

1. The Government of Tamil Nadu
represented by its Secretary to Government,
Transport Department,
Chennai.



2.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai)
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Madurai 625 010.

3.The Chief Financial Officer,
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+1 CC to M/s.SPL GP (SR-19888[F] dated 13/10/2020)

W.P(MD).No.737 of 2020
09.10.2020

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