



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.1279 of 2015

and

M.P.(MD)No.2 of 2015

WEB COPY

T.Bhupathi Ammal

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Higher Education (G2) Department,
Secretariat, Chennai-9.

2.The Principal Accountant General(A & E)
Accountant General Office,
Chennai-18.

3.The Director of College Education,
E.V.K.Sampath Maligai,
College Road, Chennai-6.

4.The Joint Director of Collegiate Education,
Madurai Zone, Madurai-20.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in proceeding No.P20/12014429/4/PPO No.R2014429/EDG, dated 24.09.2014 and quash the same and consequently, direct the respondents to sanction and disburse the pensionary benefits in accordance with the proposal of the fourth respondent dated 31.07.2014 within a time frame that may be stipulated by this Court.

For Petitioner	: Mr.S.C.Herold Singh
For R1, R3 & R4	: Mr.G.Arjunan Government Advocate
For R2	: Mr.P.Gunasekaran

ORDER

The order dated 24.09.2014 passed by the second respondent rejecting the claim of the petitioner to refix her pay is under challenge in the present writ petition.

2.The petitioner states that she joined as Lab Assistant on 23.06.1975 and the selection grade was granted with effect from 23.06.1985. As the selection / special grade lab assistant, she was paid the salary. The petitioner was posted as Junior



Assistant on transfer of service and was paid the selection grade lab assistant as per the option exercised by her. The petitioner retired from service as Assistant on 31.08.2014.

3.The learned counsel for the petitioner states that the fixation done by the respondents is improper and the grade pay applicable to the post of Assistant has not been paid to her. Accordingly, the pensionary benefits are also to be revised.

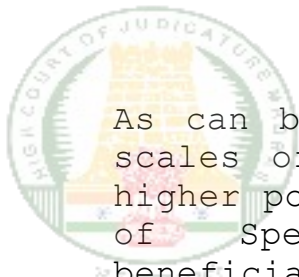
4.The Accountant General of Tamil Nadu filed a counter affidavit setting out the facts and circumstances. The entire service particulars of the petitioner has been narrated in the counter which reads as under:-

"5.It is respectfully submitted that the various posts held by the petitioner during her entire service are as under:-

Post	From	To
Lab Assistant	23.6.75	5.07.85
Selection Grade in Lab Assistant	6.7.85	5.7.95
Special Grade in Lab Assistant	6.7.95	6.10.2004
Promotion as Junior Assistant (fixation option for 1.4.2005)	7.10.2004	8.10.2009
Promotion as Assistant (Fixation option for 1.4.2010)	09.10.2009	31.08.2014

The pre-revised and revised scales of pay for the posts of Special Grade Lab Assistant and Junior Assistant (ordinary grade) are as under:-

Post	Pre-revised scale of pay	Revised scale of pay and grade pay
Special Grade Lab Assistant	4300-100-6000	5200-20200+GP 2600 Revised scale as per OMC 9300-34800+GP 4400 with effect from 1.2.2011
Junior Assistant	3200-82-4900	5200-20200+GP 2600 OMC 9300-34800+GP 4400 with effect from 1.2.2011



As can be seen from the comparative statement of pre-revised scales of pay, the post of Junior Assistant, though it is a higher post carries a lower scale of pay than that of the lower post of Special Grade Lab Assistant. Therefore, as it was beneficial to her, the petitioner on her promotion as Junior Assistant on 07.10.2004 had opted to continue to draw the pre-revised pay in the higher scale of pay of the lower substantive post i.e., Special Grade Lab Assistant carrying the scale of pay of 4300-100-6000 which was subsequently revised to Rs.5200-20200 with a grade pay of Rs.2600/- which was further refixed @ Rs.2800/- on her further promotion as Assistant."

5.The above para categorically states that during the relevant point of time, even on promotion as Junior Assistant on 07.10.2004, she retained the benefit attached to the post of Special Grade Lab Assistant. The petitioner had opted to continue to draw the pre-revised scale of pay in the higher scale of pay of the lower substantive post i.e., Special Grade Lab Assistant in view of the fact that the scale of pay was beneficial to her during the relevant point of time. Based on the option, the scale of pay was fixed to the petitioner and accordingly, she was allowed to continue and retired from service.

6.The Government Letter No.10135/CMPC/2013-1, Finance (CMPC) Department, dated 04.10.2013 issued by the Finance Department also reveals that "employees/teachers who have been promoted to the higher post prior to 01.01.2006 and continued to retain the higher scale of pay of the substantive post by applying G.O.Ms.No.590, Finance (Pay Cell) Department dated 01.08.1992 have already availed the fitment benefit of fixation of pay by applying 1.86 factor in the revised scale of pay with effect from 01.01.2006 by taking into account the substantive pay in the pre-revised scale of pay as on 31.12.2005. Therefore, they are not entitled for higher grade pay applicable to the Selection Grade/Special Grade for the substantive post i.e., lower post consequent on the subsequent revision of pay made to such categories.

7.When the petitioner had opted the beneficial pay attached to the post of Special Grade Lab Assistant and accordingly, the pay was revised, now, she cannot turn around and claim the higher grade pay attached to the promoted post. Even on promotion, she had opted to continue to draw the pre-revised pay in the higher scale of pay applicable to the post of Special Grade Lab Assistant. When an option is exercised and the benefit of grade pay attached to the post of Special Grade Lab Assistant was granted and after enjoying the same, now she cannot say that the grade pay applicable to the promotional post of Junior Assistant and Assistant is to be granted. The petitioner cannot approbate and reprobate. Thus, the option exercised became final as she had



continuously received the scale of pay applicable to the post of Special Grade Lab Assistant. When the beneficial monetary benefits were received, now, she cannot go back. Thus, the very claim set out is misconceived and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary,
Higher Education (G2) Department,
Secretariat,
Chennai-9.
- 2.The Director of College Education,
E.V.K.Sampath Maligai,
College Road, Chennai-6.
- 3.The Joint Director of Collegiate Education,
Madurai Zone,
Madurai-20.
- 4.The Principal Accountant General(A & E)
Accountant General Office,
Chennai-18.

W.P. (MD)No.1279 of 2015
24.11.2020

PK(CO)
KM (16.12.2020) 4P 5C