



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.4233 of 2015

C.Elangovan

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
Rep. by Principal Secretary,
Finance (PC) Department,
Fort St. George,
Chennai-600 009.
2. The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai-600 006.
3. The Joint Director of Collegiate Education,
Madurai Region,
Madurai 625 020.
4. N.M.S.S.V.N.College,
Rep. by its Secretary,
Nagamalai Pudukkottai,
Madurai District.
5. The Accountant General,
(Accounts and Entitlements)
No.361, Anna Salai,
Chennai-600 018.

... 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 pertaining to impugned order passed by the fifth respondent in No.Pr AG(A&E) /PEN P22/1/REV/32201759 PPO NO/C 675450/770, dated 23.01.2014, quash the same insofar as disallowing a portion of petitioner's last drawn salary for calculating pension is concerned and direct the fifth respondent to calculate and disburse pension as per the additional fitment table No.5 annexed with the Letter No.51082/Pay Cell/2010-1, dated 15.09.2010 issued by the first respondent.



For Petitioner : Mr.R.Subramanian
For Respondents : Mr.CM.Marichelliah Prabhu
Additional Government Pleader
(for R1 to R3)
Mr.P.Gunasekaran (for R5)

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ORDER

The fifth respondent, in proceedings, dated 23.01.2014 with reference to the fixation of pay of the petitioner, is under challenge in the present writ petition.

2.The reason stated in the impugned order is that the Additional Fitment Table enclosed in the Government Order, dated 15.09.2010, is applicable only in cases, where, the pay in respect of ordinary grade of a cadre exchanged from one pay band to another pay band. As there is no change in the pay band, the retired Government servant is not eligible for pay fixation under the Additional Fitment Table. Challenging the said objections of the Accountant General of Tamil Nadu, the writ petitioner states that he was working as Lab Assistant and the writ petition itself was filed after a lapse of about four years from the date of retirement. The impugned order is only the objection raised by the Accountant General of Tamil Nadu and based on the said order, the writ petition is filed. The petitioner joined as an Office Assistant in the fourth respondent/Government Aided College and promoted to the post of Lab Assistant on 07.09.1988. The Selection Grade and Special Grade was awarded with effect from 07.09.1998 and thereafter, the petitioner retired from service on 30.11.2010. The grievance of the writ petitioner is that the Government issued revised Additional Fitment Table in proceedings, dated 15.09.2010 and as per the Fitment Table, the pay as well as the pension of the petitioner is to be revised. The Government Letter was issued pursuant to the Government orders passed in G.O.Ms.No.254 to 230, Finance (PC) Department, dated 26.08.2010, based on the recommendations of the One Man Commission.

3.The petitioner states that he was awarded Selection Grade after issuance of G.O.Ms.No.63, dated 26.02.2011. Thus, applying the Additional Fitment Table No.5, the pay of the petitioner is to be revised. The opinion of the petitioner is that the Additional Fitment Table is applicable to the post of Lab Assistant. Thus, the revision of pay is to be granted.

4.The learned Additional Government Pleader appearing on behalf of the respondents 1 to 3 as well as the learned counsel appearing for the fifth respondent objected the said contentions by stating that the Additional Fitment Table is published only in respect of certain categories in various departments, wherein, there was pay anomaly. When there is no anomaly in respect of the other



categories, the Additional Fitment Table would not be applicable at all. As far as the writ petitioner is concerned, his pay was revised in the post of Lab Assistant as per the Government Order passed in G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009. The said G.O.Ms.No.234, is implemented based on the recommendations of the pay commission. All the categories were granted pay revision with reference to the said G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009. After the said Government Order, certain categories of employees approached the Government stating that the pay anomaly arouse and in respect of those categories, where there was a pay anomaly, the Government appointed One Man Commission and pursuant to the recommendations of the One Man Commission and in order to rectify the pay anomaly, the Additional Fitment Table was issued.

5.It is contended that as far as the post of Lab Assistant is concerned, a separate order was issued after the issuance of the Additional Fitment Table in G.O.Ms.No.63, Finance (PC) Department, dated 26.02.2011. When G.O.Ms.No.63 was issued on 26.02.2011, after the issuance of the Additional Fitment Table, dated 15.09.2010, the said Government Order alone would prevail over and the Government letter cannot be relied upon. This apart, the Government order issued in G.O.Ms.No.63, stating that the revised scale of pay for the Lab Assistant is Rs.5,200-20,200+2,400 Grade Pay. The said pay was revised notionally from on 01.01.2006 and the benefits are extended from 01.03.2011.

6.A perusal of these orders reveal that basically, the pay commission recommendations were originally implemented in G.O.Ms.234, Finance (PC) Department, dated 01.06.2009. The Government appointed One Man Commission to rectify the pay anomalies based on the recommendations of the One Man Commission and in order to rectify the pay anomaly in respect of few categories, G.O.Ms.No.254 to 340, Finance (PC) Department, dated 26.08.2010 was issued. Consequently, the Additional Fitment Table was issued in Letter No.51082/Pay Cell/2010-1, dated 15.09.2010. The said G.O.Ms.63 was issued on 26.02.2011, after issuance of the Additional Fitment Table in letter, dated 15.09.2010. Thus, relying on the said Additional Fitment Table, issued in a Government letter, the petitioner cannot seek any revision over and above the revision confirmed to the post of Lab Assistant in G.O.Ms.No.63, Finance (PC) Department, dated 26.02.2011.

7.Subsequent Government letter regarding the clarification had not only created confusion but also violation of the original order passed in G.O.Ms.No.63, Finance Department, dated 26.02.2011. The clarificatory letter cannot supersede the contention stated in G.O.Ms.No.63. Thus, the pay fixation done in G.O.Ms.No.63, dated 26.02.2011 became final. Relying on the clarification letter, the petitioner cannot seek any higher scale of pay than that of the pay granted in G.O.Ms.No.63. Thus, the petitioner is entitled for pay



fixation in accordance with G.O.Ms.No.63, Financial Department, dated 26.02.2011.

8.This apart, any clarificatory letter cannot run counter to the original order passed by the Government in G.O.Ms.No.63, Finance Department, dated 26.02.2011 and such clarificatory letters are to be treated with reference to the questions.

9.This being the factum established, this Court is of the considered opinion that the revised scale of pay granted in G.O.Ms.No.63, Finance (PC) Department, dated 26.02.2011 was extended to the writ petitioner, who was working as Lab Assistant in an Government Aided College.

10.Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

sjj/rmk

To

1. The Principal Secretary,
Government of Tamil Nadu,
Finance (PC) Department,
Fort St. George, Chennai-600 009.
2. The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai-600 006.
3. The Joint Director of Collegiate Education,
Madurai Region, Madurai 625 020.'

+1 CC to Mr.R.SUBRAMANIAN, Advocate SR-24540.
+1 CC to to the GP SR-24680.

W.P. (MD) .No.4233 of 2015
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ARK(CO)
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