



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.4327 of 2015

and

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

- 1.Manonmani (died)
- 2.P.Kathiresan
- 3.P.Gananakkumar
- 4.P.Ganapathy

... Petitioners

(P2 to P4 are substituted as Lrs of the deceased P1 vide order dated 15.10.2019 made in W.M.P(MD).No.15617 of 2019 in W.P(MD).No.4327 of 2015)

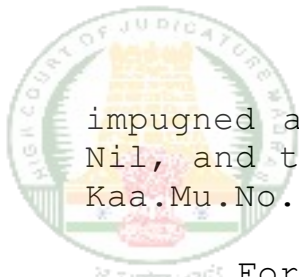
-Vs-

- 1.The Government of Tamil Nadu
Rep. by its Principal Secretary,
Finance (pay cell) Department,
Fort St.Goerge, Secretariat,
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.
- 4.N.M.S.S.Vellaichamy Nadar Arts and
Science College, rep., by its Secretary,
Nagamalai, Madurai 19.
- 5.The Assistant Accounts Officer (AAO)
Office of the Accountant General,
(Accounts and Entitlements)
No.361, Anna Salai, Chennai 600 015.
- 6.The Treasury Officer,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, pertaining to the

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impugned audit objection of the fifth respondent in No.Nil dated Nil, and the impugned memorandum issued by the sixth respondent in Kaa.Mu.No.484/2015/J1 dated 17.02.2015 and quash the same.

For Petitioners : Mr.R.Subramanian
For Respondents : Mr.C.M.Marichelliahprabhu
Additional Government Pleader
for R1 to R3 & R6
Mr.P.Gunasekaran (for R5)

ORDER

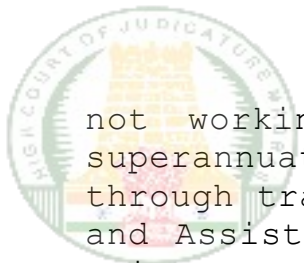
The order passed declining grant of Grade Pay attached to the post of Lab Assistant, are under challenge in the present writ petition.

2.The first petitioner is the wife of deceased S.Panjavarnam. The grievances in nutshell put forth by the petitioners in the writ petition is that the first petitioner's husband is entitled for the Grade Pay attached to the post of Special Grade Laboratory Assistant with reference to the Government Orders passed in G.O.Ms.No.63 as well as the consequential clarifications issued by the Government in letter, dated 23.05.2011.

3.Admittedly, her husband was appointed as Laboratory Assistant in the Department of Collegiate Education. There is no promotional avenue available for the post of Laboratory Assistant. Thus, the Selection Grade and Special Grade was granted to the employees working in the post of Laboratory Assistants by fixing the next higher scale of pay applicable to the promotional post.

4.The learned counsel for the petitioners mainly contended that as per the Government Order passed in G.O.Ms.No.63, Finance Department, dated 26.02.2011, the Scale of Pay fixed for the Laboratory Assistant was revised. Consequently, the clarification was issued in letter, dated 23.05.2011, granting the Selection Grade and Special Grade of Pay and accordingly, the Special Grade of Pay fixed for the post of Laboratory Assistant was Rs.9,300-34,800+Grade pay of Rs.4200/4,400/-. The first petitioner's husband is entitled for the said Grade Pay and therefore, the impugned order passed imposing recovery is also irregular. The learned counsel for the petitioners reiterated that as per the clarification, the Special Grade Pay is to be granted to the petitioner and accordingly, the further revision is also to be effected.

5.The learned Additional Government Pleader appearing on behalf of the respondents 1 to 3 and 6 objected to the contentions of the petitioners by stating that the petitioner's husband was



not working in the cadre of Laboratory Assistant during his superannuation. He was promoted either by way of promotion or through transfer of service to the higher post of Junior Assistant and Assistant and as Superintendent. The promotion was granted prior to the crucial date of 01.01.2006. In other words, even before the implementation of pay commission on 01.01.2006, the petitioner's husband was either promoted or appointed by way of transfer of service to the post of Junior Assistants/Typists and he was further promoted to the post of Assistants and to the post of Superintendent. He was receiving the benefits attached to the post of Junior Assistants/Typists, Assistants and to the post of Superintendent respectively. Therefore, many comparisons made out by the petitioner to grant grade pay attached to the post of Laboratory Assistant itself are untenable.

6.The learned Additional Government Pleader for the respondents 1 to 3 reiterated that considering the fact that there is no promotional avenue for the post of Laboratory Assistant, the Government granted Selection Grade and Special Grade in the higher scale of pay. The Grade Pay was fixed as one time measure. However, the said Grade Pay is applicable so long as the petitioner continue in the post of Laboratory Assistant and once he is promoted to the higher post, then his pay was protected in the higher post and he is not entitled to claim the Grade Pay attached to the post of Laboratory Assistant. This apart, after promotion to the post of Junior Assistants/Typists and Assistants and Superintendents, pay protection was given to the petitioner. Now, he has received the benefits attached to the higher post also. His promotion was effected even prior to 01.01.2006. Thus, he cannot now claim the Grade Pay attached to the post of Laboratory Assistant in a higher post, which is totally irrelevant and not permissible with reference to the Government Orders in this regard.

7.Considering the arguments, this Court is of the considered opinion that there is no dispute that the petitioner's husband was appointed as Laboratory Assistant. Further, it is admitted that he was promoted to the post of Junior Assistant. The petitioner's husband was promoted to the higher post, even prior to 01.01.2006, when the pay commission was implemented. It is further admitted that as per G.O.Ms.No.63, dated 26.02.2011, the Scale of Pay, the Selection Grade and Special Grade Pay is fixed for the post of Laboratory Assistant. This apart, the post of Laboratory Assistant has no promotional avenues. Thus, a pay protection was given to all these cadres by the Government as one time measure. Therefore, after getting promotion, the very purpose of grant of Selection Grade and Special Grade became irrelevant. Thus, the petitioner's husband has to go in the higher post either by way of promotion or through transfer of



service and further, his pay is also protected in the promoted post and there is no reason for the petitioner's husband to claim the benefit attached to the post of Laboratory Assistant. In other words, once the petitioner's husband is promoted to the post of Junior Assistant/Typist and further promoted to the post of Assistant, he cannot claim the Grade Pay attached to the post of Laboratory Assistants, which was given by the Government as one time measure, considering the fact that there is no promotional avenue for the post of Laboratory Assistants. The very purpose and object of granting such a Special Grade of Pay would be defeated, in the event of continuing the said pay to him, who was already promoted to the higher post of Junior Assistant and Assistants. It is made clear that once the petitioner's husband was promoted to the post of Junior Assistants/Typists and Assistants, then, the very question of stagnation, does not arise at all as far as the petitioner is concerned. When there is no question of stagnation, grant of higher grade pay as applicable to the post of Laboratory Assistant cannot be claimed by the writ petitioner.

8.The petitioners referred the Government Letter, dated 23.05.2011, which is a clarificatory letter. Further, the clarificatory letter cannot supersede the spirit of the Government Order passed in G.O.Ms.No.63, dated 26.02.2011. However, the said letter was further clarified by the Director of Collegiate Education in Letter Rc.No.44735/G3/2012, dated 27.02.2013 and the said clarification states that the Selection Grade and Special Grade Pay would be applicable only to the post of Laboratory Assistants.

9.Importantly, the Government, vide Letter No.4867/G2/2014-2, Higher Education (G2) Department, dated 05.06.2014, informed the Director of Collegiate Education that "such of those Laboratory Assistant who attained Selection Grade or Special Grade before 31.12.2005 and continue to work as Typist/Junior Assistant by transfer of service cannot draw pay fixed for the post of Laboratory Assistants whose revised scale of pay of Rs.5200-20200+Grade Pay Rs.2400 was fixed in the Selection Grade/Special Grade Scale of Pay of Rs.9300-34800+Grade Pay Rs.4,200 and Rs.9300-34800+Grade Pay Rs.4400".

10.The above clarification of the Government was informed to all the Regional Joint Directors and all the Principals of Government Arts and Science Colleges as well as the Colleges of Education, vide letter, dated 22.07.2014. The said letter is impugned in this writ petition.

11.This Court is of the considered opinion that the Special Grade Scale of Pay was fixed to the post of Laboratory Assistants



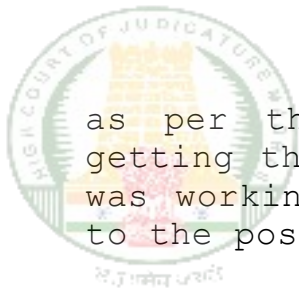
on the ground that there is no promotion for the post of Laboratory Assistants. In view of the fact that the first petitioner's husband, after getting Selection Grade/Special Grade Scales of Pay in the cadre of Laboratory Assistant, has all been now working in different higher posts, after getting promotion by transfer of service as Junior Assistant/Typist/Storekeeper and now further, promoted to the post of Assistant and Superintendent and drawing salary at a level, which is more than prescribed for the existing post. Under these circumstances, the impugned order is passed to prevent monetary loss to the State-Exchequer.

12.It is relevant that the Government letter No.4867/G2/2014, dated 05.06.2014, clearly stipulates that those who have reached the Selection Grade or Special Grade in the post of Laboratory Assistants and getting promotion as Typist/Junior Assistant/Storekeeper before 31.12.2005, are not eligible for the revised pay of Rs.9300+34800+Grade Pay Rs.4200/- in the Selection Grade and Rs.9300-34800+Grade Pay Rs.4400 in the said Special Grade. When the Government clarified in Letter, dated 05.06.2014 in unambiguous terms that the Laboratory Assistants, who were already promoted to the post of Junior Assistants prior to 31.12.2005 are not eligible to draw the Special Grade Pay attached to the post of Lab Assistants, there is no reason to cadre the said benefit even after getting further promotion to the post of Assistant and Superintendent.

13.At the outset all the petitioners, who were initially appointed as Laboratory Assistants were promoted by way of transfer of service to the higher post of Junior Assistant/Typist/Storekeeper even prior to 31.12.2005 i.e., before 01.01.2006 and further, promoted to the post of Assistant and some of the petitioners as Superintendents. The pay of the first petitioner's husband was protected in the promotional post at the time of promotion and he was receiving higher scale of pay, than that of the scale of pay attached to the post of Junior Assistants on his promotion.

14.In view of the fact that the scale of pay fixed for the post of Laboratory Assistants was higher than, the scale of pay fixed for the post of Junior Assistants during the relevant point of time, the pay protection was given by the Government as one time measure, considering the fact that they should not be deprived of pay on account of promotion. Such one time measure cannot be a precedent so as to claim the Grade Pay attached to the post of Laboratory Assistants, even after getting promotion, further to the post of Assistant.

15.It is brought to the notice of this Court that first petitioner's husband had further received the revised Scale of Pay



as per the 6th Pay Commission recommendations. Now, all are getting the Scale of Pay as applicable to the post, in which, he was working and therefore, the claim to grant grade pay attached to the post of Laboratory Assistant is undoubtedly unsustainable.

16.The learned counsel for the petitioners made a submission that some of the juniors to him are getting more pay, than that of the petitioners. It is needless to state that Fundamental Rules stipulates that if any junior is getting more pay, the senior can submit an application for grant of equivalent pay on par with the junior by following the procedures contemplated under the Fundamental Rules. In this regard, a comparative statement is to be filed and the authority competent have to follow the Rules in this regard. Thus, any of the petitioners are aggrieved on account of the fact that their juniors are getting more pay, then they are at liberty to approach the competent authority for the purpose of enhancement of their pay on par with their juniors.

17.However, this cannot be a ground to assail the impugned orders now passed. The impugned order is passed in accordance with the Government Order regarding the fixation of Scale of Pay and there is no infirmity as such. The petitioners are not entitled to claim the Scale of Pay or the Grade Pay attached to the post of Selection Grade or Special Grade Laboratory Assistants as he was already promoted and was getting the Scale of Pay attached to the promoted post. This being the factum established, the writ petitioners are not entitled for the relief as such sought for in the writ petition.

18.Accordingly, the Writ Petition stands dismissed. It is made clear that the petitioner's husband already retired from service and he was a pensioner and died in the year 2011. Hence, the recovery cannot be imposed from his pension or pensionary benefits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

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Sub Assistant Registrar(CS)

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To

1.The Principal Secretary,
Finance (pay cell) Department,
Fort St.Goerge, Secretariat,
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.

4.The Treasury Officer,
Madurai.

+1 cc to Mr.R.Subramanian , Advocate SR.No.26143

+1 cc to The Special Government Pleader Sr.No.26266

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