



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.4475 of 2015

WEB COPY
V.Jeyamani

... Petitioner

Vs.

1.The Secretary to Government of Tamilnadu,
Highways and Minor Ports Department,
Secretariat,
Chennai-600 009.

2.The Director General (Highways),
Chepauk,
Chennai-600 005.

3.The Divisional Engineer (H),
Highways Department,
Trichy-620 020.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to grant selection grade and special grade to the petitioner on the basis of the Judgment of the Division Bench of this Court in W.A.Nos.383 to 391 of 2009, dated 01.09.2009 within a reasonable time.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

ORDER

The learned counsel for the petitioner made a submission that the petitioner is entitled for selection grade and special grade pay with reference to the Government Order issued in G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998.

2.The grievance of the writ petitioner is that he is working in a non promotional post and therefore, the selection grade and special grade pay in the next scale of pay is to be granted with reference to the G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998. The petitioner is a retired driver served in the Department of Highways.

3.With reference to the grant of selection grade and special grade for drivers in the Government Department, the Hon'ble Division Bench delivered a Judgment which was taken by way of an appeal. The Hon'ble Supreme Court has now settled the issues with reference to the grant of selection grade and the special grade with reference to G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998. The Hon'ble Supreme Court of India, in **Civil Appeal**



Nos.9533 and 9537 of 2019 dated 18.12.2019, passed the following issues:-

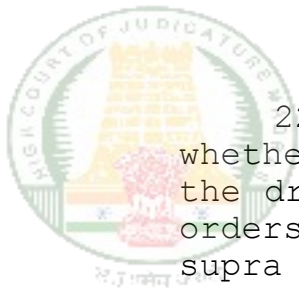
"20. In our considered opinion, apart from claiming parity with similarly placed individuals, the Appellants have been unable to justify how and why they are entitled to the Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500- 9000 as specified in Serial No. 8 of Schedule II to the 1998 Rules, in terms of G.O. Ms. No. 162. On the other hand, on perusing the series of revisions made to the pay scales applicable to drivers employed with the State Government, we find that the applicable pay scales for the Selection Grade and Special Grade would be as per Serial No. 6 of Schedule II to the 1998 Rules, i.e. Rs. 4000-6000 and Rs. 4300-6000 respectively.

20.1 As the High Court has also noted in the impugned judgment, the pay scales of the Appellants can be traced back to G.O. Ms. No. 666, Finance dated 27.06.1989, by which the State Government issued the Tamil Nadu Revised Scales of Pay Rules, 1989, implementing the recommendations of the Vth Tamil Nadu Pay Commission. Under these rules, the original and revised pay scales of 30 common categories of posts were specified. The scale of pay for drivers was mentioned at Serial No. 11 in the first part of the Schedule to these rules, having been revised from Rs. 610-1075 to Rs. 950-1500.

20.2 The next revision came through G.O. Ms. No. 818, Finance, dated 09.09.1989, whereby drivers' pay scale was increased to Rs. 975-1660. Later, under G.O. Ms. No. 304, Finance dated 28.03.1990, Special Grade and Selection Grade scales of pay were introduced for persons who had completed 10 years and 20 years of service respectively. For the post of drivers carrying the Ordinary Grade pay scale of Rs. 975-1660, the Selection and Special Grade brackets were set as Rs. 1200- 2040 and Rs. 1320-2040 respectively.

20.3 Finally, when the 1998 Rules were introduced through G.O. Ms. No. 162, the post-wise determination of pay scales was replaced by a pay scale-to-pay scale basis determination. As already seen in Schedule I of the said rules, the pay scale of Rs. 975-1660 applicable to drivers was revised to Rs. 3200- 4900. For this, the corresponding Selection and Special Grades specified in Schedule II were Rs. 4000-6000 and Rs. 4300-6000 respectively.

21. Against this backdrop, we find substance in the submission of the Respondents that the Appellants are not lawfully entitled to the claimed Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively in terms of G.O. Ms. No. 162.



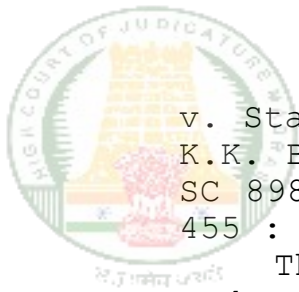
22. The only question to be settled, therefore, is whether the Appellants are entitled to claim parity with the drivers who have so far been granted benefits vide the orders of the High Court and this Court, as mentioned supra in paragraph 5.

23. In this respect, we find that the High Court in the impugned judgment was correct in concluding that the Appellants cannot claim such relief on the strength of Article 14 of the Constitution of India, when once it has been found that they are not lawfully entitled to the same. It is well-settled by now that a person cannot invoke Article 14 to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place. Article 14 embodies the concept of positive equality alone, and not negative equality, that is to say, it cannot be relied upon to perpetuate an illegality or irregularity. In fact, this Court has opined that this principle extends to orders passed by judicial fora as well. Thus, the jurisdiction of a higher court cannot be invoked on the basis of a wrong order passed by a lower forum. In this respect, it would be fruitful to refer to the following passage from the decision of this Court in *Basawaraj v. Land Acquisition Officer*, (2013) 14 SCC 81:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be

claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.

Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn. v. Jagjit Singh* [(1995) 1 SCC 745 : AIR 1995 SC 705] , *Anand Buttons Ltd.*



v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937].)"

This proposition was also recently affirmed by a 3-Judge Bench of this Court in State of Odisha v. Anup Kumar Senapati (Civil Appeal No. 7295/2019, judgment dated 16.09.2019).

24. Thus, it is evident that the Appellants cannot claim the Selection Grade and Special Grade scales of pay of Rs. 5000- 8000 and Rs. 5500-9000 respectively, solely on the strength of earlier decisions of the High Court, without showing how they, themselves, are entitled to such benefit in the first place. In such a situation, we are of the considered view that the Appellants can only be granted the benefit of the Selection Grade and Special Grade scales of pay to which they are lawfully entitled in terms of G.O. Ms. No. 162, i.e. Rs.4000- 6000 and Rs.4300- 6000 respectively.

25. Therefore, in view of the foregoing discussion, we find no reason to interfere with the impugned judgment. The instant appeals are hereby dismissed, and the impugned judgment is confirmed."

4. In view of the Judgment of the Hon'ble Supreme Court of India in **Civil Appeal Nos.9533 and 9537 of 2019 dated 18.12.2019** (cited supra), the case of the petitioner and his selection grade and special grade pay is to be regulated and accordingly, the fixation is to be done suitably whatever applicable to the case of the petitioner with reference to the services rendered.

5. With these observations, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government of Tamilnadu,
Highways and Minor Ports Department,
Secretariat,
Chennai-600 009.



2.The Director General (Highways),
Chepauk,
Chennai-600 005.

3.The Divisional Engineer (H),
Highways Department,
Trichy-620 020.

+1 CC to M/s.GP (SR-23147[F] dated 27/11/2020)

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