IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. Nos. 23520 and 23521 of 2008
and
W.M.P. Nos. 1 and 1 of 2008

D.Poongodi ... Petitioner in W.P. No. 23520 of 2008
P.Beneet Rajappa ... Petitioner in W.P. No. 23521 of 2008

-vs-

1. State of Tamil Nadu,
Represented by
Secretary Department of Labour,
Fort Saint George,
Chennai - 600 009.

2. The Director,
Tamil Nadu Institute of Labour Studies,
Kamarajar Salai,
Chennai - 600 005.

3. The Office of the Accountant General,
Teynampet,
Chennai - 600 018. ... Respondents in both W.Ps

PRAYER IN W.P. No. 23520 of 2008: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the second respondent in his proceedings in E/424/08-1 dated 11.09.2008 and quash the same.

PRAYER IN W.P. No. 23521 of 2008: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the second respondent in his proceedings in E/424/08-2 dated 11.09.2008 and quash the same.

For Petitioners
in both W.Ps :Mr.A.Muthukumar

For Respondents
in both W.Ps :Mr.K.Magesh
Special Govt. Pleader for R1&R2

COMMON ORDER

Since the issue raised in both these writ petitions are one and the same, with the consent of the learned counsel appearing for both sides, both these writ petitions have been heard together and are disposed of by this common order.

2. Both the petitioners joined in service as Steno Typist Grade-III at the second respondent office on 31.10.1997 and 21.08.1997 respectively. Thereafter, their service were regularized with effect from the date of joining the duty.

3. According to the petitioners, they would be eligible to the promotion to the next higher category i.e., Steno Typist Grade-II and in this regard, as per Regulation 37 / Annexure III, they could be given promotion to the post of Steno Typist Grade-II which they sought for and accordingly, their cases were considered and granted such promotion on completion of three years in the feeder category i.e., with effect from 31.10.2000 by order dated 21.07.2006, which means by the respective orders passed by the second respondent to both the petitioners on 21.07.2006, they were promoted retrospectively from 31.10.2000 and 20.08.2000, i.e., immediately on completion of three years in the feeder category. Accordingly, the pay fixation also was sought to be fixed, for which, the petitioners seems to have given representation and having considered the same, the pay for these petitioners in the scale of pay meant for Steno Typist Grade-II has been fixed in respect of these petitioners with effect from the said date by proceedings dated 22.06.2007.



4. Accordingly, the petitioners were receiving the revised pay and have been working as Steno Typist Grade II.

5. When that being so, all of a sudden, the impugned order dated 11.09.2008 has been passed in respect of both the petitioners, where, according to the respondents, due to audit objection, the pay fixation made to these petitioners and the scale of pay meant for Steno Typist Grade-II with effect from

the year 2000 ought not to have been fixed and in this context, by relying upon the relevant regulation of the second respondent organization, the audit has raised an objection, that they should have been given promotion functionally only based on the seniority and if such promotion was given only on 21.07.2006, only from that date, they would be entitled or eligible to get the pay scale meant for Steno Typist Grade-II. Therefore, the same since had been wrongly fixed from the year 2000 it should have been rectified and accordingly, the impugned order was passed re-fixing the pay scale of the petitioners with effect from 21.07.2006 and accordingly, the excess pay paid to the petitioners with effect from the year 2000 as fixed already was sought to be recovered. Challenging the said order which are impugned herein, these Writ Petitions were filed by the petitioners with the aforesaid prayers.

6. Mr.A.Muthukumar, learned counsel appearing for the petitioners would submit that, in view of the Regulation 37 of the Service Regulations of the second respondent organization, the petitioners would be entitled to get promotion even prior to five years experience, that was sought to be completed in the feeder category as per the Regulation 21(3). Therefore, after considering the same only, such a promotion was given by order dated 21.07.2006, of course retrospectively from the year 2000 and based on which, the pay has been fixed by separate orders passed in this regard on 20.06.2007 and accordingly, the revised pay also was paid to these petitioners. Therefore, the same cannot be taken back merely based on the audit objection as based on such audit objection, no opportunity was given to the petitioners and no notice has been served on the petitioners before passing the impugned orders. Therefore, without hearing the petitioners, no adverse orders which will have an adverse impact of recovery of salary or reduction of salary ought not to have been passed and therefore, the impugned order is liable to be quashed, he contended.

7. Per contra, Mr.K.Magesh, learned Special Government Pleader appearing for first and second respondents, on instructions, would submit that, the audit objection has not merely been made because of the retrospective fixation of pay, but it has been made not based on the relevant regulation provided in this regard.

8. In this context, the learned Special Government Pleader appearing for the first and second respondents has relied upon the following averments made in the counter affidavit, which reads thus:

"6. Moreover, it is submitted that the three years experience as Steno Typist is the minimum requirement for promotion to the post of Personal Secretary to the Director. It does not mean that all Steno Typists having three years experience will be posted as Personal Secretary to the Director. As admitted by the petitioner himself / herself, the Senior most is promoted as the Personal Secretary to the Director and others (the next two seniors) are posted as Grade II Steno Typists. These are obvious in Circular Resolution Nos.3/ 1993 and 12/2006 and in the promotion orders given to the Writ Petitioners. The Writ Petitioner mislead the Hon'ble Court by saying that he was discharging the duties of Grade-I Steno Typist and since he was having three years experience he became eligible for promotion as Grade-I and Grade-II. In this connection it is submitted that, the Writ Petitioners have concealed the specific requirement of a minimum five years service in a particular post for promotion to the next level as provided in Clause 21(3) of Chapter 1 of the Service Regulations. The petitioner joined the service of the Institute in 1997 and so he / she had not completed the five years service in 2000 as required in Clause 21.3 to become eligible for promotion. So he cannot claim that he was eligible for promotion from Grade-III to Grade-II in the year 2000."

9. By relying upon the said averments, the learned Special Government Pleader would submit that, as per the Clause 21(3) of Chapter 1 of the regulations of the second respondent Organization, every incumbent, for internal promotion from feeder category to higher category, should have completed five years of experience as minimum and unless they have five years experience, no promotion can be considered.



10. By relying upon the aforesaid, the learned Special Government Pleader would further submit that, since five years mandatory period as experience fixed in Clause 21(3) of the Regulation, could not be violated, the petitioners are not eligible to get retrospective promotion to the next higher category of Steno Typist Grade-II from the year 2000 and therefore, on that ground itself, the retrospective promotion given and pay fixation to that respect in respect of the petitioners were unlawful and against the provision of the

regulation. Therefore, not only on the basis of the audit objection but also based on the regulation, the said retrospective promotion and fixation of pay made in this regard to the petitioners ought to have been rectified and that have been done in the impugned order. Therefore, the said impugned orders are sustainable and do not require interference from this Court, he contended.

11. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

12. Though it was argued by Mr.A.Muthukumar, learned counsel appearing for the petitioners that, as per the Regulation 37 Annexure-III, they would be entitled to get the promotion, this Court feels that, whatever stated in Regulation 37 or Annexure-III may not override the prescription given in Clause 21(3) of Chapter 1 of the Service Regulations, where it has made clear that, there shall be an experience of five years in the feeder category and without which, no promotion can be given.

13. Admittedly, no such relaxation has been given in respect of these petitioners by exercising the power of the Director under the proviso.

14. When that being so, under Clause 21(3), these petitioners should have completed five years experience, without which, they cannot be considered for promotion to the post of next higher category i.e., Steno Typist Grade-II.

15. When that being so, if these petitioners have been given promotion by order dated 21.07.2006, at the most, such promotion should have been retrospectively effected only on completion of five years period with effect from 31.10.2002 in respect of the petitioner in W.P. No. 23520 of 2008 and with effect from 20.08.2002 in respect of the petitioner in W.P. No. 23521 of 2008.



16. However, now the retrospective promotion had been given to them with effect from 31.10.2000 and 20.08.2000 retrospectively and such promotion should not have been conferred on the petitioners from that date, as admittedly, on that date, they did not fulfill the experience of five years in the feeder category.

17. Therefore, insofar as the audit objection raised in this regard to that extent atleast up to the year 2002, such promotion ought not to have been given and correspondingly, pay fixation also could not be effected, is sustainable.

18. However, this Court feels that, in view of Clause 21(3) of Chapter I of the Regulation, certainly, the petitioners would be entitled to get a further promotion of Steno Typist Grade-II atleast with effect from 31.10.2002 and 20.08.2002 respectively, as on that date, they completed five years service from the date of original joining in the service including the probation period.

19. Therefore, this Court feels that, insofar as the present effect of the impugned order is considered to re-fix the pay from the date of 21.07.2006 and not from 2000 is concerned, the same can be accepted only for the period of two years, i.e., up to 2002 and beyond which, the impugned order to give the promotion and re-fixation of the pay in the promotional post cannot be accepted and therefore, this Court is inclined to dispose of these Writ Petitions with the following orders"

> "(i) That the impugned order is sustained with the following modification that, the petitioners shall be entitled to get the revised pay on the promoted post of Steno Typist Grade-II with effect from 31.10.2002 and 20.08.2002 respectively, i.e., for W.P. Nos. 23520 and 23521 of 2008 and therefore, if at all the pay revision has to be effected, that shall be effected in the promoted post in the year 2002 and not from 2000 but at the same time, the revised pay now sought to be fixed from 21.07.2006 cannot be accepted and therefore, whatever the difference of pay to be calculated between 2002 and 2006 shall be recalculated and be paid back to the petitioners, if they were already recovered and not been paid so far.
>
> (ii) The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.
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> (iii) It is made clear that, if no recovery has been made pursuant to the impugned order because of the pendency of the Writ Petitions, the amount calculated as indicated above can be recovered upto the period 2002 and accordingly, the needful shall be undertaken."

20. With these directions, these Writ Petitions are ordered to the terms indicated above. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Secretary Department of Labour,
State of Tamil Nadu,
Fort Saint George,
Chennai - 600 009.

2. The Director,
Tamil Nadu Institute of Labour Studies,
Kamarajar Salai,
Chennai - 600 005.

3. The Office of the Accountant General,
Teynampet,
Chennai - 600 018.

+2cc to Mr.A.Muthukumar, Advocate, S.R.No.14641
+1cc to Mr.K.Magesh, Advocate, S.R.No.14594
+1cc to the Government Pleader, S.R.No.14872

W.P. Nos. 23520 and 23521 of 2008
and
W.M.P. Nos. 1 and 1 of 2008

NRL(CO)
CB(25/06/2021)