

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.312 of 2020

N.Ramakrishnan ... appellant /Petitioner

Vs

1.The Member Secretary (FAC) /
District Judge,
Tamil Nadu State Legal Service Authority,
High Court Campus, North Fort Road,
Chennai 104.

2.The Accountant General (Accounts & Entitlement)
Teynampet, Chennai 18

3.Pay and Accounts Officer,
High Court, Chennai 104

4.The Treasury Officer,
Pension Pay Office,
Veterinary Hospital Campus,
Nandanam, Chennai 35.

5.State of Tamil Nadu,
through its Secretary,
Finance Department,
St.George fort,
Chennai 600 009.

(R5 impleaded vide order of court dated 24/09/2020 made in W.A.No.312/2020) ... respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 03.12.2019 passed in W.P.No.33694 of 2019.

Prayer in WP.No.33694 of 2019: Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified Mandamus to call for records of the 1st respondent dt 31.12.2013 in Order TNSLSA No. 7777 / E / 2009 and

for 1st respondent

Mr.V.Vijay Shankar,
for 2nd respondent

JUDGMENT

(Delivered by SENTHILKUMAR RAMAMOORTHY, J)

Appellant is the unsuccessful writ petitioner. The writ petition challenging the order dated 08.11.2010 of the 1st respondent to the writ petition and payment of his grade pay as a Selection Grade Assistant in the pay scale of Rs.9300-10800 from 01.01.2006 and for all monetary benefits. The writ petition was dismissed largely on the ground that the learned Single Bench noticed that the fixation of scale of pay was issued in the year 2013 and the appellant challenged such fixation of pay in 2010. The writ petition was filed in these facts and circumstances.

For Respondents :: Mr.V.Jayaprakash Narayanan,
State Government Pleader,
for 1st respondent

Mr.V.Vijay Shankar,
for 2nd respondent

(Delivered by SENTHILKUMAR RAMAMOORTHY, J.)

2. The writ petition was dismissed largely on the ground of laches. The learned Single Bench noticed that the notification fixing the scale of pay was issued in the year 2013, whereas the appellant challenged such fixation of pay in 2019. The writ appeal is filed in these facts and circumstances.

and that his grade pay was erroneously fixed at Rs.4,200/-.

ed that his grade pay was erroneous instead of Rs.4,200/-.

W.P.(MD) No.12104 of 2017, the Court referred to the contention of the first respondent therein that the increased scale of pay would not apply in case there is a promotional avenue and would be restricted to the scale of pay applicable to the next promotional post. However, this contention was not answered by the Division Bench which confined its findings to the first clause of paragraph 4 of the applicable Government Order viz., G.O.Ms.No.162 dated April 13, 1998 (G.O.Ms.No.162). However, in view of the fact that these contentions were canvassed before the Hon'ble Division Bench of this Court, learned counsel for the appellant contends that the said judgments squarely cover the fact situation of the appellant and that the principle laid down in judgments would extend to the appellant.

5. Learned counsel for the second respondent, on the other hand, contends that clause (ii) of G.O.Ms.No.162 is squarely applicable to the present case. Consequently, he contends that the appellant is only entitled to grade pay of Rs.2,800/- and not Rs.4,200/-. He also points out that the admitted position is that the appellant seeks the benefit in respect of the period when he was a Junior Administrative Assistant, which is a post with a promotional avenue. Therefore, he submits that the appeal is liable to be rejected.

6. Upon considering the rival contentions, it is evident that the main issue to be decided is whether the appellant is making a claim with regard to a post which had a promotional avenue or not. Paragraph 4 of G.O.Ms.No.162 is relevant in this connection and it is set out below :-

4.The Selection Grade and Special Grade will be the corresponding revised scales based on the existing pay scales of these grades. The appropriate revised scales of pay for Selection Grade / Special Grade are indicated in Schedule II to the Tamil Nadu Revised Scales of Pay Rules, 1998. Provided further, Selection Grade and Special Grade scales shall be regulated as below:-

(i) For posts, having no promotional avenue, the Selection Grade and Special Grade shall be allowed as indicated in Schedule II;

(ii) For posts having promotional posts, if the Selection Grade scale of pay indicated in the said Schedule is higher than the pay scale of promotional post, the Selection Grade should be limited to the pay scale of the first level promotion post. Similarly, if the Special Grade scale is higher than the pay scale of second

level promotion post, the Special Grade scale shall be limited to the pay scale of second level promotion post only.

The existing procedure for movement to Selection Grade/ Special Grade and fixation of pay in these grades shall continue to be adopted in future in the revised scales also.

7. Keeping in mind the above paragraph 4, the case of the appellant should be examined. In paragraph 7 of the affidavit in support of the writ petition, the appellant states that he was awarded the Selection Grade in the cadre of Junior Administrative Assistant on 27.06.1999 and, therefore, became entitled to the increase by way of revision of pay. Therefore, it is clear that the claim is in respect of the period when the appellant was a Junior Administrative Assistant. In paragraph 4 of the aforesaid affidavit, the appellant states that he was promoted to the post of Senior Administrative Assistant on 01.08.2006. From these averments, there can be no doubt that the post of Junior Administrative Assistant was a promotional post and, indeed, the appellant was promoted from such post to that of Senior Administrative Assistant. Consequently, it is beyond doubt that clause (ii) of Paragraph 4 gets triggered. Once clause (ii) is triggered, the pay scale of the person in the Selection Grade post would be limited to the pay scale of the first level promotional post. Mr. Vijay Shankar points that this is precisely what was done in this case and, as a consequence, the grade pay of the appellant was limited to Rs.2,800/- although it would ordinarily have been Rs.4,200/- if it had not been a promotional post. The appellant has been unable to effectively refute this contention of the respondents. The judgment of the Madurai Bench of this Court in W.P.(MD) No.12104 of 2017 did not consider the import of clause (ii) of paragraph 4 of G.O.Ms.No.162 and record a find by interpreting the said clause. Instead, the Court relied on State of Punjab v. Rafiq Masih [(2015) 4 SCC 344] to reject the employer's endeavour to recover excess payments. The subsequent judgment in W.P.No.32149 of 2018 followed the earlier judgment and, once again, did not examine clause (ii) of paragraph 4 and enter findings thereon. Therefore, these judgments do not advance the appellant's cause.

8. As such, we find that the appellant is not entitled to the relief prayed for. Although the writ court decided the matter largely on the question of laches, even if the claim is examined on merits, we find that the appellant is not entitled to the grade pay that he requests for. In this connection, it may also be noticed that the appellant did not challenge G.O.Ms.No.162 dated 13.04.1998 which imposes this limitation as regards a promotional post.

9. For all these reasons, W.A.No.312 of 2020 fails and the same is dismissed. There will be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Member Secretary (FAC) /
District Judge,
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Veterinary Hospital Campus,
Nandanam, Chennai 35.
- 5.The Secretary,
Finance Department,
St.George Fort,
Chennai 600 009.

+1cc to Mr.N.A.Nissar Ahmed, Advocate SR.8117
+1cc to Mr.V.Vijaya Shankar, Advocate SR.8204
+1cc to the Government Pleader SR.8063

W.A.No.312 of 2020

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