

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.04.2021

Delivered on : 29.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.8440 of 2016

A.Naseema Bee

... Petitioner

Vs

1. State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance Department,
Secretariat,
Chennai - 600 009.
2. State of Tamil Nadu,
Rep. by its Secretary to Government,
P & AR Department,
Secretariat,
Chennai - 600 009.
3. Government Data Centre,
Rep. by its Commissioner,
Chennai - 600 025.
4. The Administrative Officer,
Government Data Centre,
Chennai - 600 025.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, call for the records of the first respondent in Government Letter No.57493/CA/2015 dated 18.01.2016 and consequential order of the fourth respondent in Proc.No.10684/A1/2015 dated 24.02.2016 and to quash the same as being illegal and unsustainable.

For Petitioner : M/s N.Kavitha Rameshwar

For Respondents : Mrs. Narmadha Sampath, AAG
assisted by Mr.J.Ramesh AGP

O R D E R

Questioning the order dated 18.01.2016 passed by the first respondent and the consequential order dated 24.02.2016 passed by the fourth respondent, the petitioner has come up with this writ petition.

2.The facts of the case as averred in the writ petition are as follows:

2.1 The petitioner was appointed as Typist in the Government Data Centre by order dated 03.07.1987 through the Tamil Nadu Public Service Commission and she joined duty on 06.07.1987 and was placed in the scale of pay of Rs.610-730-955-1075 with effect from the date of joining. She completed the period of probation on 05.07.1989 and her services were regularised in the post of Typist with effect from 06.07.1987. The petitioner was re-designated as Junior Assistant and placed in the scale of pay of Rs.975-25-1150-30-1660 by order dated 20.12.1990 and she joined as such on 08.01.1991 in the office of the third respondent. Subsequently, she was promoted as Assistant on 13.02.1992.

2.2 The petitioner was once again selected by TNPSC in Group-IV Services through the examination held in 1989 for appointment as Typist in the Tamil Nadu Secretariat Service and was allotted to the Finance Department by order dated 11.03.1992. Pursuant to the same, she was relieved from the third respondent's office on 23.04.1992 so as to take up appointment as Typist in the Finance Department of the Secretariat. However, she was relieved from the Tamil Nadu Secretariat Service on the Afternoon of 29.09.1992 for re-appointment as Assistant in the Government Data Centre, the third respondent herein, by order dated 29.09.1992.

2.3 It is the grievance of the petitioner that at the time of working in the Secretariat, all employees working in her parent department were granted 5% personal pay by virtue of G.O.Ms.No.664 Finance (PC) Department, dated 24.08.1992. But the petitioner was denied the said benefit. Her representation seeking the said claim was also rejected.

2.4 According to the petitioner, she was promoted as Supervisor Grade II from Selection Grade Assistant and joined duty as such on 11.11.2011 with a pay of Rs.13980+4800 GP in the scale of pay of PB2 9300-34800+4800 (GP), whereas her junior one M.Edison who was promoted as Supervisor Grade-II from Special Grade Assistant, was placed in the pay of Rs.15140+4300 GP on 11.06.2012.

2.5 The petitioner made a representation to the third respondent detailing about the pay anomaly between her and the said M.Edison, and due to the same, her pay was stepped up on par with that of her junior with effect from 01.07.2012 at Rs.16320+4800 in the scale of pay of Rs.9300-34800+4800 GP in

accordance with Ruling 2 of Fundamental Rule 22-B. After doing this exercise, the third respondent sent the papers to the first respondent for ratification, but the same was rejected by order dated 23.07.2015. Feeling aggrieved, the petitioner filed a review petition on 12.10.2015, which was also rejected on 18.01.2016 by the first respondent, without going into the details of her representations. On the basis of this order, the fourth respondent has passed an order on 24.02.2016 cancelling the stepping up of the petitioner's pay on par with that of her junior M.Edison, with a further direction to recover an amount of Rs.1,56,001/- in one lump sum from the petitioner, which amount has accrued from excess pay done.

With the above background, the present writ petition has been filed for the aforesaid relief.

3.The learned counsel for the petitioner has submitted that the anomaly of junior M.Edison drawing more pay than the senior, i.e., the petitioner, happened due to the petitioner getting promotion from Selection Grade of the lower post, without stepping into Special Grade, and the junior M.Edison after stepping into the Special Grade of the lower post before getting promotion, attracts Ruling 2 of the Fundamental Rules 22-B, which provides that in such cases, the pay of the senior officer in the higher post should be stepped upto a figure equal to the pay fixed for the junior officer in that higher post and the stepping up should be done with effect from the date of promotion or appointment of the junior. The said Rule further states that this benefit would accrue to the senior only if both the junior and senior officers belong to the same cadre and the post in which they have been promoted, is identical and in the same cadre; and the scale of pay of the lower and higher post in which they are entitled to draw pay, should be identical. The learned counsel has further submitted that the impugned orders are arbitrary and capricious, vitiated by error apparent on the face of the record and as such, the same are liable to be set aside. The impugned order seeking recovery of the excess amount of Rs.1,56,001/- from the petitioner in one lump sum without even issuing a show-cause notice is clearly violative of the principles of natural justice.

4.The learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in Food Corporation of India and others vs. Bhartiya Khadya Nigam Karamchhari Sangh and another, [(2012) 2 SCC 307] wherein, in respect of classification with regard to pay, increment / grant of incentives, it has been held that the fundamental objective was to motivate and encourage in-service employees to acquire professional qualifications for their career progression, which would also enable the appellant FCI, to build a reserve of qualified professionals from within organisation to back up key

positions which would ultimately strengthen management; classification between employee obtaining higher qualification after joining service and an employee already in possession of such qualification before joining service bears just and rational nexus to the object sought to be achieved and does not amount to discrimination offending Articles 14 and 16 of the Constitution of India; besides, the said incentive was in the form of special increment as "personal pay" to be merged in pay at the time of promotion and had no bearing on inter se seniority and / or future promotion.

5.A Counter affidavit has been filed by the third respondent, on behalf of all the respondents in which it is stated that though the petitioner and her junior M.Edison have been placed in the Assistant Panel for the year 1991-1992, the feeder post for both of them differs (ie.) Junior Assistant and Typist. The petitioner and M.Edison were not travelling on the same line from the beginning itself and hence, the petitioner is misleading this Court that M.Edison was junior to her. It is also stated that the petitioner was temporarily promoted to the post of Assistant on 13.02.1992 and in the itinerary period, she was selected by TNPSC under Group IV Services Exam held in the year 1989 for appointment as Typist in Finance Department in the Tamil Nadu Secretariat Service. As desired by the petitioner, she was relieved from the Government Data Centre to take up appointment in the above mentioned Typist post on 08.04.1992 AN and consequently, she was appointed as Typist in Finance Department on 09.04.1992 FN, but very soon the petitioner wanted to go back to the Government Data Centre and accordingly she made an application to that effect and only thereafter, she was relieved from the Finance Department. Therefore, as per the willingness of the petitioner and the provisions under Rule 9-B of the General Rule for the Tamil Nadu State and Subordinate Services, she was relieved from the Tamil Nadu Secretariat Service and reappointed as Assistant in the Government Data Centre on 30.09.1992 FN.

6.It is also stated in the counter affidavit that the Government has sanctioned 5% personal pay to the employees drawing pay in the five certain categories in the time scale of pay as on 01.08.1992 under exceptional circumstances as an one time transitional measure for all the categories in the specified scales; as the petitioner was working in Finance Department in the Secretariat Service and she did not comply the criteria as mentioned in the above said Government order, she was not sanctioned with 5% personal pay; even though the petitioner and the said Edison have been promoted to the post of Assistant, the feeder post for both of them differs, ie., Junior Assistant and Typist and hence the petitioner was not eligible for the 5% personal pay in the post of Assistant; and the

petitioner was promoted to the post of Supervisor Grade II from the post of Selection Grade Assistant unlike the said Edison, who was promoted to the post of Supervisor Grade II from the post of Special Grade Assistant.

7.It is further stated in the counter that the petitioner has already given an undertaking in writing that she is willing to repay the excess amount paid, if on later date, the fixation was found to be at fault and hence the third respondent has no option except to re-fix the pay of the petitioner appropriately and also to recover the excess payment paid to the petitioner. Therefore, there is no requirement for this Court to interfere with the orders impugned herein.

8.Reiterating the averments made in the counter affidavit filed by the respondents, the learned Additional Advocate General has argued the matter to support the orders passed by the respondent authorities.

9.Heard both sides and perused the materials available on record.

10.The issue involved herein is relating to pay anomaly and the same lies in a narrow campus. As the facts are undisputed, this Court need not traverse into the same in detail.

11.As regards the claim of the petitioner, the learned counsel for the petitioner relies upon ruling 2 of Fundamental Rule 22-B wherein it is stated that in these type of cases, the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay fixed for the junior officer in that higher post and the stepping up should be done with effect from the date of promotion or appointment of the junior. It is her further submission that the said Rule further states that this benefit would accrue to the senior only if both the junior and senior officers belong to the same cadre and the post in which they have been promoted, is identical and in the same cadre; and the scale of pay of the lower and higher post in which they are entitled to draw pay, should be identical.

12.On the other hand, the learned Additional Advocate General appearing for the respondents contended that though the petitioner and M.Edison have been placed in the Assistant Panel for the year 1991-1992, the feeder post for both of them differs (ie.) Junior Assistant and Typist and further, the petitioner was promoted to the post of Supervisor Grade II from the post of Selection Grade Assistant unlike the said Edison who was promoted to the post of Supervisor Grade II from the post of Special Grade Assistant. According to her, the Government has sanctioned 5% personal pay to the employees drawing pay in the

five certain categories in the time scale of pay as on 01.08.1992 under exceptional circumstances as an one time transitional measure for all the categories in the specified scales; as the petitioner was working in Finance Department in the Secretariat Service and she did not comply the criteria as mentioned in the above said Government order, she was not sanctioned with 5% personal pay. Therefore, the respondent authorities rejected the petitioner's representation seeking 5% personal pay and also ordered recovery of the excess amount paid to the petitioner.

13. After taking note of the arguments advanced on either side, this Court is of the view that the judgment of the Supreme Court, in Food Corporation of India (cited supra) comes to the aid of the petitioner, wherein, in paragraphs 12 to 16, it was held as under:

"12. Before examining the issue at hand on the touchstone of the aforesaid principle envisaged in Article 14 of the Constitution, it would be apposite to refer to the relevant portions of the Circular dated 29th July, 1985. These read as follows:

"The Food Corporation of India, since its inception, has been pursuing the policy of Management Development by providing suitable training facilities both within the Corporation as well as by nominating its employees to short-term professional courses, work-shops, seminars, conferences etc. organized by leading management institutions in India and abroad.

2. These efforts can get an uplift and possibly be supplemented to a great extent by the involvement of its employees in acquiring professional management qualifications on their own. In order, therefore, to fill the basic gaps to acquire knowledge, the matter has been under consideration for introducing suitable incentive scheme for motivating the employees of the Corporation to encourage them to acquire professional qualifications for rapid career advancement and enabling the Corporation to build a reserve of qualified professionals from within to back up key positions and to improve the overall performance and efficiency of the organization. This will further create an atmosphere of "professionalism" in the working of the Corporation. With this end in view it has been decided with the approval of

the Board of Directors to introduce the following incentive scheme with effect from 1st April, 1984.

3. The following courses of study have been approved for grant of the two increments as indicated in subsequent pages.

(a)

(b) High professional qualifications viz. MBA, ACA, AMIE, LLB, BL, ACS etc. All the above courses (Diplomas/Degrees) should be at least of two years duration.

4. The following are the details of the scheme for grant of incentive:-

ELIGIBILITY:

All regular employees of the Corporation would be eligible for benefit under the Scheme subject to the following terms and conditions:-

(i) The scheme would apply to all regular employees of the Corporation except deputationists/those employed on contract basis/ casual or on tenure basis.

(ii) Employees covered under (i) above should have acquired or may acquire higher professional qualifications from recognised institutions/Universities during the course of their service in the FCI with prior permission from the competent authority of the Corporation. The acquisition of said qualification should be useful to the Corporation in its operations.

(iii) - (viii) *सत्यमेव जयते*

(ix) In cases where the employees, who join the higher post under direct recruitment and where for such higher post the prescribed minimum qualification is the same as acquired by the employee while in the lower post, the incentive already granted to him/her in the lower post would not be allowed to continue on his/her appointment to the higher post.

INCENTIVE ADMISSIBLE:

Employees fulfilling the eligibility conditions referred to above would only be

entitled to the benefits under the scheme. The incentives offered under this Scheme would be in the form of two special increments as 'personal pay', to be merged in pay at the time of promotion to the next higher grade. This incentive would be admissible only on written orders by the competent authority on merit of each case. The incentive in the form of two increments would be granted starting from first day of the following month when the employee concerned has been declared to have passed the listed Courses or the date of enforcement of this scheme whichever is later.

ENTITLEMENT :

In order to overcome the administrative difficulties and financial implications in implementation of the Scheme with retrospective effect covering all the cases of eligible employees who might have acquired such higher management or professional qualifications prescribed in this Scheme once or more than once in the past and might be holding higher post on promotion or direct recruitment within the Corporation, the employees would be entitled to the incentive under this scheme with effect from 1.4.1984 only. Eligible employees would be entitled to draw incentive increments at the rates applicable to their present pay scales. Arrears of incentive increments shall be payable. In the case of past cases, eligible employees should apply within six months from the date of the Scheme is circulated. In case of employees who may acquire any of the above qualifications hereafter, they may apply as and when they acquire the higher qualifications in the prescribed Proforma enclosed."

13. It is manifest from a bare reading of the above-mentioned portions of Circular that the fundamental objective of the Circular is to provide an incentive to the in-service employees in order to motivate and encourage them to acquire professional qualifications in various courses, spelt out in the Circular, for their career progression and at the same time enable the FCI to build a reserve of qualified professionals from within the organisation to back up key positions. Evidently, the incentive will not only

improve their overall performance and efficiency in the organisation, but also, in the final analysis would strengthen the management with the advent of an atmosphere of professionalism in the FCI.

14. Our attention was also drawn to Circular No. 27 of 2000, dated 11th September, 2000, empowering the competent authorities to grant higher start/advance increments to newly recruited employees at par with the pay drawn in their previous employment before joining the FCI. It is therefore, plain that the provision to grant extra benefit to a new recruit possessing higher qualifications was already in existence. It is also pertinent to note that the said Circular and the benefit which is sought to be given under any of the Circulars, referred to above, is not assailed by the respondents. Their only grievance is that there is no justification in depriving the persons, who already possess the higher qualifications from the benefit of extra incentives, which are being granted to the in-house employees.

15. We are of the opinion that bearing in mind the aforesaid fact situation and the objective sought to be achieved by issuance of the said Circular, there is substantial merit in the stand of the FCI. The classification adopted by the FCI is between an employee obtaining a higher qualification after joining service and an employee who already possessed such qualification before joining the service. As aforesaid, the main purpose of this classification is to grant an incentive to the employees already in service in the FCI to motivate them to acquire higher qualifications for their own benefit as well as of their employer viz. the FCI. We are convinced that the classification sought to be made by the FCI between the two sets of employees bears a just and rational nexus to the object sought to be achieved by introducing the said incentive scheme. Judged from this point of view, in our opinion, grant of the incentive in relation to the in-service employees, in no way amounts to discrimination between the in-service employees and the employees recruited with higher qualification, offending either Articles 14 or 16 of the Constitution, particularly when the incentive is in the form of a special increment as 'personal pay' to be merged in pay at the time of promotion to the next higher grade and thus, having no bearing on the inter-se seniority and/or to the future promotion to the next higher grade.

16. The decisions of this Court in B. Manmad Reddy & Ors. Vs. Chandra Prakash Reddy & Ors. [(2010) 3 SCC 314 : (2010) 1 SCC (L&S) 1169] and Food Corporation of India & Ors. Vs. Ashis Kumar Ganguly & Ors. [(2009) 7 SCC 734 : (2009) 2 SCC (L&S) 413], on which reliance was placed by learned counsel for respondents are clearly distinguishable on facts inasmuch as these decisions deal with cases relating to employees being classified into separate categories for the purpose of promotion on the basis of the source from which they were drawn and increments being given only to the Central Government employees on being absorbed into the corporation respectively, which is not the case here. However, it is important to note that in both these cases, it was observed that the doctrine of equal pay for equal work is not an abstract doctrine. Article 14 of the Constitution permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Courts should interfere with the administrative decisions pertaining to pay fixation and pay parity only when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."

14. The above judgment of the Supreme Court squarely covers the issue involved in the present case. It is settled principles of law that a senior cannot be paid a lesser salary than his junior and in such circumstances even if there was a difference in the incremental benefits in the scale given to the senior and the junior, such anomaly should not have been allowed to continue and ought to have been rectified. Applying the ratio decidendi laid down in the aforesaid decision, the impugned orders are liable to be set aside as being illegal and unsustainable and are accordingly, set aside.

15. In the result, the writ petition is allowed. Consequently, the respondent authorities are directed to set right the pay anomaly of the petitioner with that of her junior and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Finance Department,
Secretariat,
Chennai - 600 009.

2.The Secretary to Government,
State of Tamil Nadu,
P & AR Department,
Secretariat,
Chennai - 600 009.

3.The Commissioner,
Government Data Centre,
Chennai - 600 025.

4.The Administrative Officer,
Government Data Centre,
Chennai - 600 025.

+1cc to Ms.Kavitha Rameshwar, Advocate, S.R.No.26655

W.P.No.8440 of 2016

UM(CO)
CB(13/07/2021)



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