IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.22185 OF 2021
AND
W.M.P.NOS.23414 AND 23415 OF 2021

(Through Video Conferencing)

1. J.Babu
2. G.Maheshwaran
3. C.Rajasekar
4. M.Kanagaeswari
5. S.T.Ambika
6. K.Malarvizhi
7. J.Sagaya Mary Vijaya
8. E.P.Selvi
9. R.Nagendran
10. S.Velusamy
11. P.Selvaraj
12. A.Kalirathinam
13. R.Sudhamathi
14. V.Ravi
15. K.Thirupathy
16. A.Ganesan
17. M.Rajasekaran
18. S.Venugopal
19. V.Abimanyu
20. N.Soodamani

... Petitioners

.Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Finance Department,
   Fort St. George,
   Chennai 600 009.

2. The Commissioner,
   Commercial Tax,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

3. The Additional Commissioner (Administrative),
Office of the Principal Secretary/
Commissioner of Commercial Tax,
Chepauk,
Chennai - 600 005.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Third Respondent in Proceedings No.H21/13551/2018, dated 09.06.2020 and quash the same and consequently direct the Respondents to refix the pay and allowances of the Petitioners by extending the benefit of fitment Table as per Rule 4 (1) of the Tamil Nadu Revised Scales of pay Rules 2009 by extending the benefit of G.O.Ms.No.340 Pay cell dated 26.08.2010 as was done with respect to individuals selected along with the Petitioners and appointed prior to 01.06.2009 as per the Judgement of this Court in W.P.(MD) No.15375 of 2013, etc., batch dated 03.10.2019.

For Petitioners : Ms.Dakshayani Reddy

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The short point that arises for consideration in this Writ Petition is whether the Petitioners are entitled to the benefits of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 and G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009.

2. All these Petitioners were employed on contract basis in lieu of the employees who were removed from service en masse in the year 2003. Thereafter, the Government decided to give a fresh opportunity to the Petitioners, who were employed on contract basis and therefore, the Tamil Nadu Public Service Commission, conducted an examation on 06.12.2007. The Petitioners also participated in the examation conducted on 17.02.2008 and their results were published by TNPSC on 16.07.2008. Due to various administrative reasons, the Petitioners who cleared the exam conducted by the TNPSC were deputed and allotted to various departments including Commercial Taxes Department only in the year 2010.

3. It is the case of the Petitioner that only some of the person who cleared exams with them were absorbed into regular services prior to 01.06.2009, whereas services of person like Petitioners were regularised later in the year 2010, as a result of which the Petitioners have been denied the benefits of G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 and subsequent G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010.

4. Appearing on behalf of the Petitioner, learned counsel for the Petitioner has drawn attention to para No.4 of G.O.Ms.No.340 dated 26.08.2010, which reads as under:

> "4.The government has carefully examined the above recommendations of the One Man Commission and decided to rectify the anomaly as pointed out by the One Man Commission. Accordingly, Government direct that in exercise of the powers conferred under Rule-13 of the Tamil Nadu Revised Scale of Pay Rules, 2009 relax the Rule-9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants/Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 01.06.2009 and joined/appointed on a subsequent date on or after 01.06.2009 due to administrative reasons duly allowing the fitment benefit to the individual employees concerned as a special case. However, Government direct that the above fixation benefit shall be given national effect from the date of appointment of the individual employees concerned with monetary benefit from 01.08.2009."

She submits that the Government, after considering the plight of person like Petitioners decided to relax Rule 9 of Tamil Nadu Revised Scales of Pay Rules, 2009 in exercise of the powers conferred under Rule 13 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants/Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch, prior to 01.06.2009 and joined/appointed on or after 01.06.2009, duly allowing the fitment benefit to the individuals due to administrative reasons.

5. Learned counsel for the Petitioner further submits that the Government after considering the above issued the following orders:

> "6.The above orders allowing fitment benefit is not applicable to the new recruits in whose cases the selection list have been issued by the Tamil Nadu Public Service Commission/Employment Exchange and consequent appointment orders issued by the Heads of Department after 01.06.2009 i.e. after the date of issue of notification of the Tamil Nadu Revised Scale of Pay Rules, 2009 in the G.O. first read above. In such cases, the new recruits are entitled to have their pay fixed only at the minimum of the Pay Band plus Grade applicable to the respective posts."

Learned counsel for the Petitioner submits that dealing with an identical situation employed as Agricultural Officers, the Madurai Bench of this Court by its order dated 03.10.2019 in W.P (MD) Nos.15375 to 15383 of 2013 1236 0f 2014 and 8913 and 8914 of 2018 held as follows:

> "7.After admitting that the delay in appointment was purely due to Administrative reasons, it may not be proper for the Respondent to pass the impugned order as reproduced earlier. Similarly placed Government servants were given the benefit of G.O.Ms.No.340, dated 26.08.2010. Even though the Petitioners were appointed after the crucial date, the selection was pursuant to the same/single process and the delay in Petitioners' appointment was due to administrative reasons, particularly in view of the pendency of the Court proceedings, as it is admitted by the Respondents. As per G.O.Ms.No.340 Finance (Pay Cell Department), dated 26.08.2010, the benefit was extended to all categories of posts recorded by the TNPSC in the same page prior to 01.06.2009 and joined on subsequent date on or after 01.06.2009 due to administrative reasons. When the Government order itself has been read and understood by the Respondents earlier in some of their communications rightly, the impugned order ignoring the facts, purpose and object of G.O.MS.No.340 is liable to be quashed. The Petitioners who were to be appointed before 01.06.2009 were appointed some time later not on account of their fault or lapse, but due to administrative reasons which can be explained only by the concerned authorities.

> 8.It is also brought to the notice of this Court that the Respondents have extended the benefit of G.O.Ms.No.340, in respect of two other persons who were also appointed in 2013 and that the delay in their appointment is due to administrative reasons. Further the Petitioners have also produced the copy of the documents to show that seven other persons who were appointed after 01.06.2009, were also given benefit of G.O.Ms.No340, 26.08.2010. As a matter of fact, the prayer in all the Writ Petitions also based on the relief that was granted to similarly placed persons. Hence, the Petitioners are entitled to the relief as prayed for.
>
> 9.Accordingly, these Writ Petitions are allowed and the impugned orders dated 14.11.2013, which are passed by the first Respondent in the respective Writ Petitions are set side. The Respondents are directed to re-fix the pay and allowance on par with the Petitioners' batch-mates who had joined prior to 01.06.2009 and who were given the benefit of G.O.Ms.No.340, dated 26.08.2010 with all monetary benefits and attendant benefits. This exercise shall be done by the Respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

Learned Counsel for the Petitioner further submits that the said decision has also been accepted by the Government in various orders dated 09.06.2020 and 11.01.2021 bearing reference No.FSE1/88389/2013, etc., and therefore, submits that the similar benefits ought to be given to the Petitioners.

6. Learned counsel for the Petitioners submits that, the reasons given in the impugned order dated 09.06.2020 is unsustainable inasmuch as it is contrary to the Government order in G.O.Ms.No.234 Finance (Pay Cell) Department, dated 01.06.2009 and G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010.

7. Learned counsel for the Petitioner has also produced a copy of clarifications obtained by one of the person, who wrote exams along with the Petitioners namely C.Rajasekarn, wherein the Respondents clarified as under:

"கடந்த 2007–ல் நடைபெற்ற தொகுதி–IV சிறப்பு போட்டித் தேர்விற்கான மதிப்பெண் பட்டியல் 16.7.2008 அன்று தேர்வெழுதிய அனைவருக்கும் ஒரே அறிவிப்பில் வெளியிடப்பட்டுள்ளது எனத் தெரிவிக்கப்பட்டுள்ளது."

Learned counsel for the Petitioner therefore, submits that the Petitioners are entitled to the same benefit in as much as the delay in recruiting the Petitioners in the year 2010 and 2011 was not on account of any fault of the Petitioners but on account of the administrative reasons.

8. Appearing on behalf of the Respondents, learned counsel for the Respondents submits that the Petitioners were appointed after the cut off date (i.e.,) 01.06.2009 and therefore, the Petitioners are not entitled for the benefits of G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010.

9. The learned counsel for the Respondents further submits that Petitioners are entitled only to the benefits after they have joined duty and not before the said date and therefore, submits that neither the benefit under G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 nor the decision of the Madurai Bench of this High Court in W.P.(MD).Nos.15375 to 15383 of 2013, 1236 Of 2014 and 8913 and 8914 of 2018 dated 03.10.2019 cannot be applied to the facts of this case.

10. Heard the learned counsel for the Petitioners and Respondent. Perused the impugned order and G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010.

11. The Government has specifically issued the above G.O.Ms.No.340 to deal with the situation under contemplation in this Writ Petition. Para 4 of the said Government Order reads as under:

> "4.Since the Petitioners were not selected along with other candidates prior to 26.02.2009 and their appointment alone was postponed due to administrative reasons, the Petitioners wanted the benefit of sixth pay commission, as per Government Order in G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010. It is seen that the Agricultural Officers working in Agricultural Department have submitted a representation before the one man commission and the one man commission has examined the disparity in the pay recorded in March 2009 and May 2009 and those who joined on or after 01.06.2009. The recommendation of one man commission was that the

pay for the persons who had been appointed after 01.06.2009 should also be the same as those who were appointed earlier and that they are eligible to avail the benefit of sixth pay commission based on the recommendation of the one man commission. The Government acknowledged the fact that the Petitioners are also entitled to avail the benefit of sixth pay commission as the delay in appointment was due to administrative reasons."

The Government had itself recognised that certain person were put to disadvantange as they were recruited/appointed on a subsequent date, after 01.06.2009, due to administrative reasons and therefore, decided to allow the fitment benefit to these individual employees concerned as a special case. It has been clarified in paragraph 4 that the benefit will be given from the date of appointment of the individual employees concerned with monetary benefit from 01.08.2010.

12. The Petitioners herein were appointed on various dates starting from 20.01.2010 and on various dates long after the above G.O.Ms.

13. Facts of the case indicate that most of the Petitioners have been appointed after the cut of date, as per G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010. The Madurai Bench of this High Court on 03.10.2019 in W.P.(MD).Nos.15357 to 15383 of 2013, 1236 Of 2014 and 8913 and 8914 of 2018 has noted that the benefits were extended by the Government even for those who were appointed in the year 2013.

14. The Court has also observed that documents were produced before it to show that seven other person who were appointed after 01.06.2009 were given the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010. Therefore, there cannot be any discrimination among these employees on account of the administrative delay in deputing them to various departments of the Government, after they cleared the exams and results were published on 16.07.2008. The benefit of scheme in G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 has to be extended to person like Petitioners vide G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010. The petitioners deserve similar treatment, cannot be denied of the benefit.

15. In the light of the above discussion, this Writ Petition stands allowed, by directing the Respondents to give benefits of G.O.Ms.No.340 Finance (Pay Cell) Department dated

26.08.2010 to the Petitioners from the date of their appointment, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(DIGITS)

//True Copy//

Sub Assistant Registrar

jeni/sai

To

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

2. The Commissioner,
   Commercial Tax,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

3. The Additional Commissioner (Administrative)
   Office of the Principal Secretary/
   Commissioner of Commercial Tax,
   Chepauk,
   Chennai - 600 005.

+1cc to Ms.Dakshayani Reddy, Advocate, S.R.No.57478

W.P.NO.22185 OF 2021

AK-II(CO)
PBS/24/11/2021