



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM

and

THE HON'BLE MRS.JUSTICE S.ANANTHI

W.P. (MD)No.13996 of 2013

and

M.P. (MD)No.3 of 2013

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1. M.Usharani
2. P.Lakshmi
3. M.Dhanabalan
4. Krishnaveni
5. S.Valarmathi
6. N.Kalaiselvi
7. P.Bhuvaneswari
8. S.Chellapandian
9. N.Hakkim
10. S.Murugesan
11. T.Kannan
12. S.Palanikumar
- 13.P.Chandra

... Petitioners

-Vs-

- 1.The Secretary to Government,
Home (Courts-V) Department,
Secretariate, Chennai - 9.

2. The Registrar General,
High Court, Chennai.

3. The District Judge,
Sivagangai, Sivagangai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a ***Writ of Certiorarified Mandamus***, calling for the records connected with the impugned order passed by the 1st Respondent in Letter No. 57791/Cts. V/2010- 10 dated 31.07.2012 which was received on 29.07.2013 and quash the same and consequently direct the 1st Respondent to merge the posts of Readers/Examiners with that of Junior Assistants based on the proposal forwarded by the 2nd Respondent dated 20.07.2010 on the analogy of merger of posts of copyists with that of typist in terms of G.O. Ms.No. 1006 dated 03.07.2007 with effect from 03.07.2007 .

For Petitioners : Mr.S.Govindan
For R-1 : Mr.A.K.Manikkam
Standing Counsel for Government
For R-2 & R-3 : Mr.K.Samidurai



ORDER

[Order of the Court was made by **T. S. SIVAGNANAM, J.,**]

This writ petition has been filed by thirteen (13) writ petitioners, who are working as Examiners and one of them as Reader in various Courts in Sivagangai District.

2. The prayer sought for in the writ petition is to quash the communication sent by the first respondent in Government Letter No.57791/Cts.V/2010-10 dated 31.07.2012, in and by which the first respondent rejected the proposal sent by the High Court for merger of the posts of Examiners/Readers with that of Junior Assistants as not feasible.

3. The Thirteenth writ petitioner is one P.Chandra, who has already a Junior Assistant then working in District Munsif cum Judicial Magistrate Court, Ilayankudi. Since the grievance expressed by the twelve other writ petitioners is not identical with that of the thirteenth petitioner, she is deleted from the array of parties.

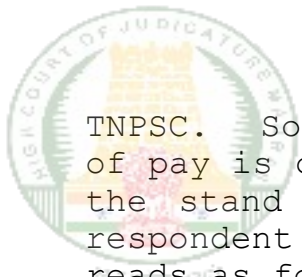
4. The petitioners 1 to 12 were originally appointed as Readers/Examiners on various dates from 1996 and were granted selection Grade on completion of ten years of service and continued to work in same post, without further promotion as Assistants and Superintendents like similarly placed Junior Assistants in other departments.

5. The Petitioners 1 to 12 would state that both posts of Readers/Examiners and Junior Assistants carry the same scale of pay, the work performed are identical and there cannot be any discrimination among the Readers/Examiners and Junior Assistants. Further, by placing reliance on the decision of this Court in the case of **Tvl.Y.Immanuvel and 32 others vs. Government of Tamil Nadu represented by the Commissioner and Secretary to Government, Home (Services - I) Department and others [1996 Writ L.R. 180]**, it is submitted that extending the benefits of pay scale of Junior Assistants to Readers and Examiners had to be complied with and merely because the Junior Assistants are recruited by the Tamil Nadu Public Service Commission [hereinafter referred to as "TNPSC" for short], while Readers/Examiners are not recruited through TNPSC, it cannot constitute a justification for discrimination against the Readers/Examiners. It is submitted that the said decision in the case of **Y.Immanuvel** supra was implemented by the Government by issuing the G.O.Ms.No.1193, Home (Courts V) Department, dated 07.08.1995 extending the benefit of revision of pay on par with that of the Junior Assistants with effect from 01.06.1988. Therefore, the petitioners 1 to 12 would state that for all purpose, Readers/Examiners should be treated as equivalent to that of Junior Assistants and the posts have to be merged with Junior Assistants.



6. The petitioners 1 to 12 would further state that another category of post which carries the identical scale of pay and similar nature of duties and responsibilities is the post of Copyists. The Association of Judicial copyists filed W.P.No.15467 of 1995 and W.P.No.18071 of 1996 for revision of scale of pay of Copyists from Rs.825-15-900-20-1200 to Rs.975-25-1150-30-1660 on par with the scale pay of Typists with effect from 01.06.1988. The said writ petitions were ordered and the Government, by G.O.Ms.No.774, Home (Courts V) Department, dated 02.06.1994 implemented the order by revising the scale pay of Copyists with that of Typist, with effect from 01.06.1988 and made it applicable only to those Copyists, who had passed higher grade typing in English and Tamil. Subsequently, by G.O.Ms.1006, Home (Courts V) Department, dated 03.07.2007, the post of Copyist was merged with the post of Typist in the Tamil Nadu Judicial Ministerial Service. The (1 to 12) petitioners' grievance is that the Copyists who were far juniors than the petitioners were promoted as Assistants on account of merger by G.O.Ms. 1006, Home (Courts V) Department, dated 03.07.2007, whereas the petitioners who were similarly placed were not considered for further promotion as Assistants as they were not merged with the post of Junior Assistants, though they were having identical scale of pay. The petitioners 1 to 12 further state that one K.A.Baskaran, who was a Reader/Examiner filed a writ petition before this Court in W.P.(MD)No.5969 of 2008 for merger of the post of Examiners/Readers in the Category 6 - Class IV with that of Junior Assistants in Category 5 - Class IV for the consideration of promotion to the post of Assistants in Category 4 - Class IV of Tamil Nadu Judicial Ministerial Service. The writ petition was disposed of by the Hon'ble Division Bench of this Court, by order dated 28.04.2009, directing the said petitioner to move before the administrative side of the High Court. Accordingly, the said petitioner, K.A.Baskaran submitted a representation expressing the grievance of the Readers/Examiners vide a representation dated 10.07.2009. The said representation was received by the High Court and the second respondent/Registrar General of the High Court sent a proposal dated 20.07.2010 to the first respondent by forwarding the representation of K.A.Baskaran, wherein he sought for merger of the post of Reader/Examiner with that of Junior Assistants on the same lines that of the merger of the post of the Copyists with that of Typists. The first respondent instead of accepting the proposal submitted by the High Court has returned the proposal as not feasible of consideration. This communication dated 31.07.2012 is impugned in this writ petition.

7. Two reasons have been assigned in the impugned communication. Firstly, there is a difference in scale of pay. The second reason assigned is the source of recruitment is not identical, in the sense Junior Assistants have been recruited through TNPSC, whereas the Reader/Examiner are not recruited through



TNPSC. Sofar as the first ground regarding disparity in the scale of pay is concerned, the same is no longer an issue, in the light of the stand taken by the counter affidavit filed on behalf of the respondent dated 03.11.2017. The relevant portion of the counter reads as follows:

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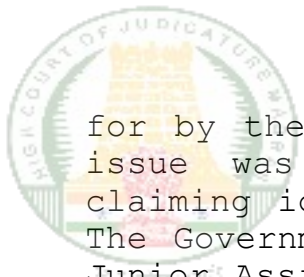
.....Accordingly, Government issued orders in G.O.(Ms)No.956, Home (Cts.V) Department, dated 08.11.2013, directing the scales of pay of certain category of posts in the High Court Service / Tamil Nadu Judicial Ministerial Service shall be revised including the post of Copyist / Reader / Examiner as below:-

Sl.N o.	Name of the Post	Existing Scale of Pay + Grade Pay	Recommendati ons of the Pay Grievance Redressal Cell
**	*****	*****	*****
2.	Copyist, Examiner and Reader, Senior Balliff (Judicial Ministerial Service) Madras High Court, Madurai Bench.	Rs.5200-20200 + 2400	Rs.5200-20200 + 2400 Notional effect from 01.01.2006 and Monetary benefit w.e.f. 01.04.2013
**	*****	*****	*****

7. It is submitted that as per the orders issued by the Government in the G.O. Mentioned above, the scale of pay of Typist, Copyist, Reader, Examiner and Junior Assistant have been fixed at Rs.5200-20200+2400 notionally from 01.01.2006 with monetary benefit from 01.04.2013."

8. In the light of the order passed by the Government in G.O.Ms.No.956, Home (Courts-V) Department, dated 08.11.2013, one of the reasons assigned by the first respondent for rejecting the proposal of the High Court does not survive any longer and therefore, to that extent, the same has to be quashed and accordingly quashed.

9. The second aspect is whether merely because the recruitment is through two sources, can it be a ground to deny the relief sought
<https://hcservices.ecourts.gov.in/hcservices/>



for by the petitioners as that of similarly placed persons? This issue was raised by the Government, when the Reader/Examiner claiming identical scale of pay on par with the Junior Assistants. The Government rejected such request solely on the ground that the Junior Assistants are recruited through TNPSC and Readers/Examiners are not recruited through TNPSC. This was put to challenge and in the decision in the case of **Y.Immanuvel** supra, it was held that the stand taken by the Government amounts to discrimination and not justifiable. The operative portion of the judgment reads as follows:

"18. As the anomaly as between the Junior Assistants and the petitioners in their scale of pay in the Selection Grade was brought about from the date on which the Fifth Pay Commission made its recommendations which were accepted and implemented by the Government, the petitioners are entitled to the benefit of such revised scales of pay with effect from the date on which such benefits were accorded to the category of Junior Assistants in the Courts. The scale of Pay of the Drivers and Constables Grade I, which was the same as that of the Readers/Examiners at the entry point having been revised by the Fifth Pay Commission to the level equal to that of the Junior Assistant, it is but just to fix the scale of pay of Readers/Examiners who are not in the Selection Grade on par with that of Junior Assistants who are not in the Selection Grade, with effect from the date on which the Fifth Pay Commission recommendations were implemented in respect of Junior Assistants."

10. The observations/findings contained in the above decision will squarely apply to the case on hand as well. The only distinction being the petitioners 1 to 12 seek for merger, for which proposal was forwarded by the Registrar General of the High Court to the Government and rejected solely on the ground that source of recruitment is not through TNPSC. The representation given by K.A.Baskaran who was the petitioner in W.P.(MD)No.5969 of 2008, who was similarly placed person as that of the petitioners 1 to 12 herein was forwarded to the Government by not a simple proposal, but the High Court had recorded its views and pointed out as to how it could be discrimination. The relevant portion of the proposal of the High Court is as follows:

"The discrimination / anomalous situation had cropped up after the merger of the posts of Copyist with that of Typist that there are posts carrying identical scale of pay and are having eligibility; for promotion ahead of / along with those working



in the posts of Copyists in Class V to the post fall under the category 5 of Class IV as per the provisions of extant rules. However, it is the State Government/ the rule framing authority, to set right the position by issuance of clarifications/fresh orders of merger, considering those posts for which the scale of pay/educational qualification/nature of work are already identical and are in existence in the Tamil Nadu Judicial Ministerial Service."

11. Thus, the proposal which emanated from the Registrar General sought for necessary orders of the Government. The question would be whether the Government can sit on appeal over such a decision or refuse to accept the proposal of the High Court. This issue is no longer *res-integra* as the recommendations of the Chief Justice of the High Court are to be given due diligence and atmost consideration by the State Government. The Article 229 of the Constitution of India vests in the High Court control over its staff in order to free the Court from any interference from the Government in relation to the administration of the Court. The nature of the work performed by the officials in the Court is best known to the Court and not to the Government and when a recommendation is made by the Hon'ble Chief Justice to the effect that the work performed by the Readers/Examiners employed in Court is similar to that of the Junior Assistants in the Court, and the scale of pay of the two posts should be identical, it is not permissible for the Government to disregard the recommendation and persist in holding a contrary view (**Y.Immanuvel's case**). Therefore, the impugned communication sent by the first respondent is clearly without jurisdiction. Identical reason was tested for its correctness in the case of **Y.Immanuvel** supra and it was held that it is discriminatory and such decision was implemented by the Government and pay scales were also revised. Therefore, the order impugned calls for interference.

12. Accordingly, this writ petition is allowed and the impugned order is quashed and the first respondent is directed to pass appropriate orders by merging the posts of Readers/Examiners with that of the post of Junior Assistants and effect necessary amendment to the Rules, within a period of six months from the date of receipt of a copy of this order.

13. One issue which will arise for consideration is whether from what date such merger should take place. The writ petition was filed in the year 2013 and obviously by now, the twelve writ petitioners might have been promoted. If any order is passed by this Court directing retrospective implementation of the merger, then it will result in a cascading effect as and may impact the promotions which have been granted to other persons, who were initially appointed as Copyists and thereafter, merged with Typists.



Therefore, in order to avoid any anomalous situation to arise, we direct that the merger shall be done perspectively, from the date on which the Government notifies.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

sm/ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary to Government,
Home (Courts-V) Department,
Secretariate, Chennai - 9.
2. The Registrar General,
High Court, Chennai.
3. The District Judge,
Sivagangai, Sivagangai District.

+1 CC to M/s.GP (SR-23711[F] dated 23/07/2021)

W.P. (MD) No.13996 of 2013
22.07.2021

RD(5.08.2021) 7P 5C