



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.5174 of 2016

and

W.M.P. (MD)Nos.4629 and 4630 of 2016

N.Basheer Ahamed

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Higher Education (G2) Department,
Secretariat, Chennai - 9.

2.The Principal Account General (A&E),
Accountant General Office,Chennai - 18.

3.The Director of College Education,
E.V.K.Sampath Maligai,
College Road, Chennai - 6.

4.The Joint Director of Collegiate
Education,
Madurai region, Madurai-625 020.

5.The M.S.S. Wakf Board College,
represented by its Secretary,
K.K.Nagar,
Madurai-625 020.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of second respondent pertaining to its proceeding No.P22/12211228/1/PPO No.R2211228/EDA, dated 21.07.2014 and to quash the same and consequently to direct the respondents to sanction and disburse the pensionary benefits in accordance with the proposal of the fourth respondent, dated .03.2014, within a time frame that may be stipulated by this Court.



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For Petitioner : Mr.S.C.Herold Singh
For R1, R3 and R4 : M/s.D.Farjana Ghoushia
Special Government Pleader
For R2 : Mr.P.Gunasekaran
For R5 : No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash impugned proceeding No.P22 / 12211228 / 1 / PPO No. R2211228 / EDA, dated 21.07.2014 and consequently to direct the respondents to sanction and disburse the pensionary benefits in accordance with the proposal of the fourth respondent, dated .03.2014, within a time frame that may be stipulated by this Court.

2.The petitioner was appointed as a Lab Assistant on 01.06.1977 in the M.S.S. Wakf Board College, Madurai. The petitioner was granted Selection Grade Lab Assistant from 03.06.1987 with a pay scale of Rs.610-20-730-25-955-30-1075. Subsequently, the petitioner was promoted as Junior Assistant on transfer of service on 02.04.1991 and was getting a scale of pay of Rs.975-25-30-115-1660. On completion of ten years, the petitioner was granted Selection Grade in the year 2001 and then, Special Grade Junior Assistant from 02.04.2011. The petitioner retired as a Special Grade Junior Assistant on 13.03.2014.

3.The grievance of the petitioner is that originally the petitioner was appointed as a Lab Assistant. Since there was no promotional opportunity, the Lab Assistants were granted an opportunity to shift on transfer to the post of Junior Assistant. The petitioner opted for the promotion as Junior Assistant on transfer and thereafter, serving as Junior Assistant, the petitioner was granted Selection Grade then, Special Grade. The Special Grade Lab Assistants were paid a sum of Rs.9300-34800+4400 (grade pay), as per the provisions of Tamilnadu Revised Scales of Pay Rules, 2009, wherein, the Lab Assistants were granted a salary of Rs.5,200-20,200+2400 (grade pay). Since the Grade Pay for the Lab Assistant was more than Junior Assistant, the petitioner is seeking to fix the Grade Pay granted to the Lab Assistant. But, once the petitioner has opted for promotion on transfer to Junior Assistant, the petitioner cannot claim to fix the scale of pay applicable to the



Lab Assistant.

4.A similar issue was considered by this Court and a detailed order has been passed rejecting the claim of the petitioner and the relevant portion of the order is extracted below:

"18.However, this cannot be a ground to assail the impugned orders now passed. The impugned orders are passed in accordance with the Government Order regarding the fixation of Scale of Pay and there is no infirmity as such. The petitioners are not entitled to claim the Scale of Pay or the Grade Pay attached to the post of Selection Grade or Special Grade Laboratory Assistants as they were already promoted and are getting the Scale of Pay attached to the promoted post. This being the factum established, the writ petitioners are not entitled for the relief as such sought for in these writ petitions."

5.Recording the same, the present Writ Petition is also dismissed.

6. However, the learned Counsel appearing for the petitioner submitted that when the issue was considered earlier, it was ordered to consider their case for the purpose of enhancing the pay on par with juniors and the relevant portion of the order is extracted below:

"17.The learned counsel for the petitioners made a submission that some of the juniors to the petitioners are getting more pay, than that of the petitioners. It is needless to state that Fundamental Rules stipulates that if any junior is getting more pay, the senior can submit an application for grant of equivalent pay on par with the junior by following the procedures contemplated under the Fundamental Rules. In this regard, a comparative statement is to be filed and the authority competent have to follow the Rules in this regard. Thus, any of the petitioners are aggrieved on account of the fact that their juniors are getting more pay, then they are at liberty to approach the competent authority for the purpose of enhancement of their pay on par with their juniors."

(*)7. Therefore, if the petitioner is aggrieved on the fact that his junior is getting more pay, then the petitioner is at the liberty to approach for the purpose of enhancing of his pay on par with his junior. If the petitioner is already retired from service, the recovery cannot be imposed from the pension or pensionary benefits.



8. Accordingly, the Writ Petition is dismissed with the liberty as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

(*) Corrected as per the order of this Court dated 01/12/2022 made in WP(MD)No.5174 of 2016

Sd/-

Assistant Registrar (AD II)

// True Copy //

/01/2023

Sub Assistant Registrar(CS)

Tmg

To

(*) To be substituted to the order already despatched on 11/01/2022

1. The Secretary,
Higher Education (G2) Department,
Secretariat, Chennai - 9.

2. The Director of College Education,
E.V.K.Sampath Maligai,
College Road, Chennai - 6.

3. The Joint Director of Collegiate
Education,
Madurai region, Madurai-625 020.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-39013[F] dated 16/12/2021)

+1 CC to M/s.SPL GP (SR-38881[F] dated 15/12/2021)

W.P. (MD)No.5174 of 2016
14.12.2021

MGJ(10.01.2022) 4P 6C
RD(04/01/2022) 4P 6C