



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2022

Pronounced on : 06.06.2022

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.16028 of 2010

K.Anjayan

... Petitioner

Versus

1. The District Collector of Thanjavur and  
Director of Saraswathi Mahal Library,  
Thanjavur, Thanjavur District

2. The Administrative Officer  
Saraswathi Mahal Library,  
Thanjavur, Thanjavur District

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying for Writ of Mandamus, to direct the respondents to restore the 5% personal pay with effect from 01.08.1992 and fix the petitioner's pay accordingly and grant him all consequential benefits.

For Petitioner : Mr.P.Rajendran

For Respondents : Mr.M.Alagu Gowtham

ORDER

The petitioner, who was working as Binder under the second respondent at the Saraswathi Mahal Library was initially appointed on 11.06. 1989. The pre-revised scale of pay for the said post of Binder in the fifth pay commission was Rs.505 -845. However, since the pre-revised scales of pay starting from Rs.475 -775 upto Rs.705 - 1230 were not given an appropriate hike at the time of revision of scales in the sixth pay commission, the Government took note of the anomaly and issued G.O.MS.No.664, dated 01.08.1992 whereby it ordered to compensate the loss. It was decided to grant 5% personal pay to those affected employees. However in the said government order, four scales of pay were specifically mentioned and the scale of pay below the scale fixed for the petitioner and similarly, the scale of pay above the petitioner's scale of pay were mentioned. However, the in-between scale of pay drawn by the petitioner is



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not specifically mentioned. It is useful to extract the relevant portion of the G.O.(M.S).No.664, which reads as follows:-

"4.At the same time the plea of these employees for Government to extend some sympathetic consideration has been taken note of, Government consider that these categories should be positively motivated in undertaking important items of work entrusted to them. Further job responsibilities of these categories require due recognition. Keeping in mind the importance of the job responsibilities attached to the categories in these scales of pay and the need to positively motivate these categories to undertake their responsibilities, Government have decided to grant a personal pay at five per cent of the basic accordingly direct that five per cent of the basic pay computed as on 1.8.92 be granted as personal pay to the following:-

(i) All categories of staff in the pre-revised scales of pay at Rs.475-775 moving over to the revised scale of pay of Rs.775-1030.

(ii) All categories of staff in the pre-revised scale of pay of Rs.610-1075 moving over to the revised scale of pay of Rs.950-1500 or Rs.975-1660.

(iii) All categories of staff in the pre-revised scale of pay of Rs.705-1230 moving over to the revised scale of pay of Rs.1600-2660. "

2. The said Government Order was issued to redress the grievances of the employees in the scales of pay of Rs.475 -775 up to Rs.705 - 1230. Since the petitioner was in between he was also granted personal pay with effect from 1.08.1992 as per the said government order. Subsequently an order was passed on 13.04.1999, which is simply in the form of Memorandum ordering recovery of the 5% of pay, which was granted to the petitioner. The petitioner, therefore, approached this Court, challenging the said order by W.P.No.3149 of 2000. This Court allowed the said Writ Petition by quashing the recovery order in the following terms:-

" In view of the same, this writ petition is allowed and the impugned order of recovery is set aside. At this juncture, the learned counsel for the petitioner submitted that now the respondents have stopped paying the special pay to the petitioner. In my considered



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opinion, the said grievance cannot be redressed in this writ petition. The petitioner is, therefore, at liberty to workout his remedies regarding the same elsewhere in the manner known to law."

3. The petitioner, therefore, made a representation on 11.01.2010, to restore the said benefit of 5% personal pay, which was not granted and therefore, the present Writ Petition is filed.

4. The respondents are resisting the Writ Petition by filing a counter affidavit that the recovery order was passed on account of the audit objections. It is the case of the respondents that the scale of pay of the petitioner was not specifically mentioned in the said G.O.MS.No.664, so as to grant him the 5% personal pay.

5. Heard Mr.P.Rajendran, and Mr.P.Manoj Kumar, Learned Counsel for the petitioner, and Mr.M.Alagu Gowtham, Learned Government Advocate appearing for the respondents.

6. The learned counsel for the petitioner would submit that the question involved in this writ petition was decided by a Division Bench of this Court in W.P.No.20156 of 2000 etc, by Judgment dated 10.03.2006, in which, this Court after taking into account the purpose for which the government order was passed and the various averments in the counter affidavit, has held that the benefit of 5% personal pay, was intended to be given to all the employees affected by scales of pay for which appropriate revision was not given and when both higher and lower scales than that of the petitioner is expressly mentioned it was only a omission in the government order leading to anomaly. Considering the innocuous omission of in-between scales of pay and going into the details as to the replacement of scales, this Court has held that those employees, whose cadre/pay scales are not specifically mentioned in the Government order, but, whose pay are in-between, are also eligible for 5% personal pay, by holding that the stand taken by the respondent is illogical and arbitrary and there is no rational basis for rejecting the claim of the petitioners therein. Therefore, he submitted that this Writ Petition is liable to be allowed. The learned counsel also placed several other decisions, in which the order of the Division Bench is followed and similar reliefs have been granted to the petitioners therein.



7. Per contra, the Learned Government Advocate appearing for the respondents would submit that another Division Bench of this Court in Y.Immanuel Vs. The Government of Tamil Nadu<sup>1</sup>, considered the very same question and held that the State Government has duly applied its mind and contemplated providing financial assistance for the four categories mentioned therein. Therefore nothing extra can be read into the same and held that the petitioner, who may be in between but their scales of pay are not mentioned in the Government order and rejected the claim. Then the petitioner filed an appeal before the Hon'ble Supreme Court of India and the Special Leave Petition was dismissed on 21.08.2017. Therefore, the contention of the Learned Government Advocate is that the later Division Bench Judgment, which was confirmed by the Honourable Supreme Court, has to be followed by this Court.

8. In reply thereof, the Learned Counsel for the petitioner submitted that the order of the Hon'ble Supreme Court is simpliciter dismissing the Special Leave Petition, without any additional words or observations and therefore it cannot be said that the view of the above Division Bench has been confirmed by the Supreme Court. It is his contention that there is a conflict between the two co-equal Division Bench and it would be open for this Court to follow the Division Bench, in which, the matter is considered more appropriately in detail with correct reasoning.

9. I have considered the rival submissions made on behalf of either side and perused the material records of the case.

10. It may be seen that the petitioner's case is covered by both the Judgements cited supra and the views being conflicting. In this regard, as far as the first contention of the Learned Government Advocate that the view taken in the latter Division Bench was confirmed by the Hon'ble Supreme Court of India is concerned, I am unable to accept the same. The order of the Hon'ble Supreme Court in the Special Leave Petition reads as follows:-

"Delay condoned. The special leave petition is dismissed."

11. In this regard the legal position is now well-settled by the Judgment of the Hon'ble Supreme Court of India, in Kunhayammed and Ors, Vs. State of Kerala and Another<sup>2</sup>, and the relevant portion of paragraph No.27 reads thus:-

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1. W.P.No. 6754 of 2015 by judgement dated 10.03.2017



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"27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal."

12. Therefore, there is neither any merger nor it should be construed that the ratio laid down in the later Division Bench Judgment has been declared as the law affirmed by the Supreme Court and therefore, it would still be the Judgement of the Division Bench of this Court. Therefore, the submission of the Learned Government Advocate that the latter Division Bench Judgment should be followed due to dismissal of the Special Leave Petition, stands rejected.

13. The Learned Counsel on either side would now, therefore, submit that the law on the point is that where there are two division benches with the conflicting view the procedure to be adopted are well-considered and laid down by the Judgement of this Court in A.Ramalingam Vs. State of Tamil Nadu<sup>3</sup>. It is useful to extract the relevant portion of the paragraphs Nos.37 to 40 of the said Judgement hereunder:-

"37. .... In this regard, the learned counsel for the petitioners have relied upon a Full Bench Judgment of the Patna High Court reported in AIR 1987 Patna 191, in Amarshingh Yadav and another v. Shanti Devi and others.

38. One of the questions posed before the Full Bench for resolvment is as follows:

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2. 2006 SCC page 359

3. W.P.(MD).No.14365 of 2014 etc, dated 09.07.2018.



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(1) Where there is a direct conflict between two decisions of the Supreme Court, rendered by co-equal Benches, which of them should be followed by the High Court and the Court below??.

39. After elaborate consideration, the Full Bench has given its answer, which reads thus:

?24. To conclude on this aspect, it is held that where there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that Judgment which appears to it to state the law more elaborately and accurately. The answer to question (1) posed at the outset is rendered in these terms.?

40. Therefore, the principle was, as enunciated in the said Full Bench Judgment of the Patna High Court that, if two conflicting decisions are available, rendered by co-equal benches, the High Court must follow the Judgment, which appears to it to state the law more elaborately and accurately."

14. As a matter of fact, the law was also laid down by the Full Bench of this Court in R. Rama Subbarayalu Reddiar Vs. Rengammal<sup>4</sup>, in which, it was held that as under:-

"4. .... Where, however, there is a conflict between two decisions of the High Court, the rule to be adopted is as follows :-

Where the conflict is between the judgment of a single Judge and a Bench or between a Bench and a larger Bench, the decision of the Bench or the larger Bench as the case may be, will have to be followed. But where the conflict is between two decisions both pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decision came to the conclusion that both' of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one. To enable the subordinate Court to do so, the two apparently conflicting decisions must directly



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relate to and expressly decide the question that arises before the Court; otherwise a subordinate Court should follow that ruling which specifically deals with the point. It will not be open to it for example to follow the other decision which only impliedly or indirectly or by way of a mere observation gave expression to a contrary view.... "

(emphasis supplied)

15. In this case, I have already found that both the Judgements expressly and elaborately deal with the matter substantially and directly in issue in this Writ Petition. The latter Division Bench in Y.Immanuel case<sup>5</sup>, had taken a view that in the matter of conferring the benefit of the pay scale, it is for the Government to decide and when it has mentioned the four pay scales expressly, then the others who do not fit in the four pay scales cannot claim benefit, as the Government also would have also considered the revision in respect of the other scales and taken a decision.

16. On the contrary the earlier Division Bench in V.Rathinagiri and Ors., Vs. State of Tamil Nadu<sup>6</sup>, also considered the issue in detail after extracting the entire Government order and the stand of the Government in the counter affidavit, the Court took into consideration the very purpose of the 5% personal pay granted and found that both pay scales, which is higher than that of the petitioner and lesser than that of the petitioner are included and the revision for the in-between scale also in the sixth pay commission suffered the same.

17. Therefore, the earlier Division Bench came to the conclusion that it is an omission and anomaly and held that omission of the in-between scales, would amount to discrimination, violative of Article 14 and, thus, held that the in-between scale holders will also be entitled to the benefit, as otherwise, it would amount to the misconception and misreading of the said Government order.

18. I am therefore inclined to accept the Judgement of the earlier Division Bench dated 10.03.2006, in V.Rathnagiri and

5 W.P.No. 6754 of 2015, dated 10.03.2017

6 W.P.Nos.20156 and 13143 of 2000, dated 10.03.2006



Ors., Vs. State of Tamil Nadu<sup>7</sup>, which to my mind is more correct in dealing with the issue on hand.

19. I am also inclined to follow the said Judgement for yet another reason that the earlier Division Bench was not brought to the notice of the later Division Bench at all.

20. This apart, both prior to and after to the decision in Y.Immanuel case<sup>8</sup> and the decision in V.Rathanagiri<sup>9</sup>, is followed by another Division Bench in W.P.(MD).No.13665 of 2013, in the Judgement dated 20.03.2017; yet another Division Bench of this Court in W.P.No.22447 of 2018, Judgement dated 24.06.2019; and a Learned Single Judge in the batch of Writ petitions in WP.Nos.28505 & 28611 of 2006 etc, in the Judgment dated 26.06.2008. It is also brought to the notice of this Court that there are several other individual cases also which were allowed on the basis of the earlier Division Bench. Therefore, I am inclined to follow the Judgement of V.Rathinagiri and Ors., Vs. State of Tamil Nadu and Ors.<sup>10</sup>, and on the basis of the same, the Writ Petition deserves to be allowed.

21. Since the petitioner is now superannuated, pending the Writ Petition, I am inclined to allow the Writ Petition, on the following terms:-

(i) The 5% personal pay granted to the petitioner on 01.08.1992, which was later discontinued after the order dated 13.04.1999 shall be granted to the petitioner and the petitioner will be entitled to all the arrears and consequential benefits, including further revision of pay, on the strength of such personal pay;

(ii) The petitioner will not be entitled to the interest on arrears;

(iii) The respondents shall carry out the exercise of re-fixing the pay of the petitioner from the relevant date till the date of superannuation and effect all consequential revisions of

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<sup>7</sup> W.P.Nos.20156 and 13143 of 2000, dated 10.03.2006

<sup>8</sup> W.P.No. 6754 of 2015, dated 10.03.2017

<sup>9</sup> W.P.Nos.20156 and 13143 of 2000, dated 10.03.2006

<sup>10</sup> W.P.Nos.20156 and 13143 of 2000, dated 10.03.2006



pay of the petitioner, including revision of the retiral benefits and pension in accordance with law and pay all the arrears to the petitioner, within a period of four months from the date of receipt of a copy of this order.

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(iv) However, there shall be no order as to costs.

Sd/-  
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The District Collector of Thanjavur and  
Director of Saraswathi Mahal Library,  
Thanjavur, Thanjavur District.
2. The Administrative Officer  
Saraswathi Mahal Library,  
Thanjavur, Thanjavur District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.32452  
+1cc to the Government Pleader, S.R.No.32555

W.P.No.16028 of 2010

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