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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27287 of 2018

K.Barathy ... Petitioner

Vs.

1. The Principal,
   Government College of Architecture and Sculpture,
   Mamallapuram – 603 104,
   Kancheepuram District.

2. The Commissioner,
   Directorate of Art & Culture Department,
   Tamil Development Department Building 2nd Floor,
   Tamil Salai, Egmore,
   Chennai – 600 008.

3. The Secretary to Government,
   Tourism, Culture and Religious Endowments Department,
   Fort St.George,
   Chennai – 600 009. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent made in the proceedings

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Na.Ka.No.676/A/2015 dated 20.04.2018, quash the same and direct the respondents to fix the basic pay of the petitioner in the category of Typist at Rs.5960/- as on 07.09.2009 as per G.O.Ms.No.340, Finance Department, dated 26.08.2010 and to disburse the arrears of pay and allowances along with interest for the belated payment and thereafter to fix the pay of the petitioner in accordance with the Seventh Pay Commission Recommendations.

For Petitioner : Mr.R.Baskaradoss

For Respondents : Mr.K.Tamilvendan
Government Advocate

ORDER

The writ on hand has been filed questioning the validity of the order impugned dated 20.04.2018, rejecting the claim of the petitioner to re-fix his basic pay in the category of Typist at Rs.5,960/- as on 07.09.2009 as per G.O.Ms.No.340, Finance Department, dated 26.08.2010.

2. The petitioner states that he was selected by the Tamil Nadu Public Service Commission for appointment to the post of typist in Tamil Nadu Ministerial Service. He was selected on 08.12.2008, however, there

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was a delay in issuing an order of appointment and the petitioner joined the service on 07.09.2009 as typist in the office of the Principal, Government Fine Arts College, Kumbakonam.

3. The grievance of the writ petitioner is that an One Man Commission was appointed to rectify the pay anomaly and based on the recommendations of the One Man Commission, the Government issued G.O.(Ms).No.340, Finance (Pay Cell) Department, dated 26.08.2010. The petitioner is falling under the purview of the Government Order and therefore, he is eligible for refixation of pay in the category of typist in order to rectify the anomaly on par with his juniors.

4. The learned counsel for the petitioner made a submission that the benefit of revised pay, based on G.O.(Ms).No.340, Finance (Pay Cell) Department, dated 26.08.2010, was granted to the similarly placed persons including the typists working in other departments, who were selected along with the writ petitioner in the year 2008. Thus, the petitioner is also to be extended the same benefit. The reason stated in the order impugned is not in accordance with the spirit of

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G.O.(Ms).No.340, Finance (Pay Cell) Department dated 26.08.2010 and thus, the said benefit is to be extended.

5.The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the case of the petitioner was considered in detail by the competent authorities. However, it was found that he was appointed on 07.09.2009 and therefore not falling under the purview of the G.O.(Ms).No.340 Finance (Pay Cell) Department dated 26.08.2010, for the purpose of granting re-fixation of pay in the cadre of Typist.

6.It is contended that the Government order issued in G.O.(Ms).No.340 Finance (Pay Cell) Department dated 26.08.2010 is not applicable to the writ petitioner.

7.The report submitted by the first respondent pursuant to the order of this Court dated 22.03.2022 in W.P.No.22787 of 2018 reveals that G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 as an exception to the general rule and the same is issued to remove the Pay

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Anomaly and Pay Disparity between the Senior and Junior selected in the same batch of selection who happen to receive the appoint order at different dates and able to join before 01.06.2009 in some cases and in other cases the Senior, who obtained more marks/rank-wise in the selection process were happened to join after 01.06.2009 and consequently lost their benefit of Fitment Table – multiplying factor of 1.86 and consequently drew lessor pay than the junior who were given the benefit of Fitment Table, such anomalies has to be removed. Therefore the One Man Commission has recommended the removal of such pay anomaly. Since the implementation of the recommendations of One Man Commission involves order of relaxation of rule, the Government of Tamil Nadu under the G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 has invoked rule 13 of Tamil Nadu Revised Scales of Pay Rules, 2009 and relaxed the Rule-9 by considering the case of Senior, i.e., who obtain more marks in the selection process who are assigned to senior rank on the basis of marks. In this case, there is no reference to the Pay Anomaly and Pay Disparity between Junior and Senior selected in the same batch. Therefore, the petitioner case cannot be considered as just case deserved to be considered for relaxation of rule

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in his favour. Therefore, the petitioner is not entitled for the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010.

8.The above report reveals that there is no reference to the Pay Anomaly and the pay disparities between junior and senior selected in the same batch. Thus, the petitioner's case cannot be considered as a just and cannot be granted the benefit of relaxation of rule in his favor.

9. Accordingly, the petitioner was held as not entitled for the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010. The scope of judicial review in the matter of revision or refixation of pay is limited. The Hon'ble Supreme Court of India in the case of ***State of Haryana and others vs. Charanjit Singh and Others*** reported in ***(2006) (9) SCC 321***. The learned Three Judges Bench of the Honb'le Apex Court ruled that “application of the principle of “equal pay for equal work” requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility.

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Functions may be the same but the responsibilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determiner by an expert body. These are not matters where a writ Court can lightly interfere".

10.Regarding the fixation of pay or revision of pay or grant of equal pay for equal work, the Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to the section of employees and the Government while taking a decision has ignored factors, which are material and resolved for decision in the matter. Even in case where, the Court holds that the order passed by the Government to be unsustainable, then ordinarily a direction should be given to the State Government or the Authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.

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11.Fixation of scale of pay and revision involves monetary implications. Thus, the courts are expected to be cautious and the correctness are always to be verified by the competent authorities who are all well versed in fixation of pay and establishment matters. The power of judicial review under Article 226 of the Constitution of India is to be exercised only if there is a pattent illegality or injustice.

12. In the present case, this Court issued a direction to verify the correctness of the Fixation done in favour of the writ petitioner. Pursuant to the order passed in W.P.No.22787 of 2018, a detailed scrutinization was done by the competent authority and a decision was taken and the said decision was filed by way of a report before this Court. The report reveals that the petitioner is not eligible to avail the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010.

13. This being the decision arrived by the competent authorities, this Court is not inclined to interfere with the decision taken. However, the petitioner if could able to raise any additional grounds or

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point out error in the matter of fixation, the petitioner is at liberty to approach the competent authorities with sufficient and acceptable evidence enabling the authorities to reconsider his case and to ascertain the correctness of fixation.

14.The learned counsel for the petitioner made a submission that the cases of similarly placed persons were considered in a writ proceedings.

15.The question of similarity cannot be considered in all circumstances. The facts are to be independently considered by the competent authorities and by the Courts for the purpose of grant of relief in the matter of Fixation of Pay or Revision of Pay.

16. Regarding the claim of the litigants based on the similar orders, the Hon'ble Division Bench of this Court in the case of ***The Director of Sericulutre Department Salem and Others vs. A.Kumar and Others*** reported in ***2015 4 CTC 241*** held as follows:

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34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R. Antulay v. R.S. Nayak [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of

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admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

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41. In Union of India v. Kartick Chandra Mondal [(2010) 2 SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 65], held that Article 14 is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in Kartick Chandra Mondal was subsequent to the decision in Maharaj Krishan Bhatt and the decision in Maharaj Krishan Bhatt is also referred to in Kartick Chandra Mondal.

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17. In the case of ***Basawaraj and Others vs. Special Land Acquisition Officer*** reported in ***2013 14 SCC 81***, the Hon'ble Supreme Court made an observation that "It is a settled legal proposition that article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in the other cases. The said provisions does not envisage negative equality, but has only a positive aspect. Thus, if some other similarly situated person have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite , which cannot be claim in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour or any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14

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cannot be stretched too far for otherwise it would make functioning of administration impossible.

18. Therefore, the Courts have repeatedly held that the fixation of pay is a technical matter which has to be done by an expert body, who all are well versed in the establishment matters. Only if, patent illegality or violations are established, the Courts would interfere with such decisions and not otherwise. Therefore, the fixation cannot be done by the High Court in a writ proceedings by invoking the power of judicial review under Article 226 of the Constitution of India.

19. With these observations, the writ petition stands disposed of. No costs.

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Index:Yes
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S.M.SUBRAMANIAM, J.

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To

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   Directorate of Art & Culture Department,
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