



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.5872, 20185, 20222, 20228, 15432,
15433 and 17540 of 2021

J.GNANAPRAKASAM	.. Petitioner in W.P.No.5872 of 2021
M.WILSON @ THAMIZHVANAN	.. Petitioner in W.P.No.20185 of 2021
S.ARUNA	.. Petitioner in W.P.No.20222 of 2021
K.KARUNAKARAN	.. Petitioner in W.P.No.20228 of 2021
V.SOUNDAR RAJ	.. Petitioner in W.P.No.15432 of 2021
P.KALADEVI	.. Petitioner in W.P.No.15433 of 2021
M.V.SENGUTTUVAN	.. Petitioner in W.P.No.17540 of 2021
Vs	

- 1.THE SECRETARY TO GOVERNMENT OF TAMIL NADU,
FINANCE PAY CELL DEPARTMENT,
FORT ST. GEORGE,
CHENNAI - 600 009. ..1st Respondent in W.P.Nos.5872 &
17540 of 2021
- 2.THE REGISTRAR GENERAL,
HIGH COURT,
MADRAS-600 104. ..R2 in W.P.Nos.5872 & 17540 of 2021
R1 in W.P.No.20185,20222,20228,
15432,15433 of 2021
- 3.THE CHIEF JUDGE,
COURT OF SMALL CAUSES,
CHENNAI - 600 104. ..R3 in W.P.No.5872 of 2021
- 4.THE PRINCIPAL ACCOUNTANT GENERAL,
(ACCOUNTS AND ENTITLEMENTS)
NO.361, ANNA SALAI,
CHENNAI-600 018. ..R4 in W.P.No.5872 of 2021
R5 in W.P.No.20185 of 2021
R4 in W.P.Nos.20222,20228,
15432,15433 of 2021
R3 in W.P.No.17540 of 2021
- 5.THE PRINCIPAL DISTRICT JUDGE,
VELLORE. ..R2 in W.P.No.20185 of 2021



6 THE SUBORDINATE JUDGE
RANIPET, VELLORE DISTRICT.

..R3 in W.P.No.20185 of 2021
R2 in W.P.No.15432 of 2021

7 THE PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
GOVERNMENT OF TAMIL NADU,
ST.FORT GEORGE,
CHENNAI - 600 009.

..R4 in W.P.No.20185 of 2021
R3 in W.P.Nos.20222,20228 of 2021

8.THE DISTRICT MUNSIF,
POLUR,
THIRUVANNAMALAI DISTRICT.

..R2 in W.P.No.20222 of 2021

9.THE SPECIAL SUBODINATE JUDGE,
SPECIAL COURT FOR LAOP CASE,
ARAKONAM.

..R2 in W.P.No.20228 of 2021

10.THE PRINCIPAL SECRETARY,
GOVERNMENT OF TAMIL NADU, ST. FORT GEORGE,
CHENNAI - 600009.

..R3 in W.P.Nos.15432,15433 of 2021

11.THE SUBORDINATE JUDGE,
GUDIYATHAM, VELLORE DISTRICT.

..R2 in W.P.No.15433 of 2021

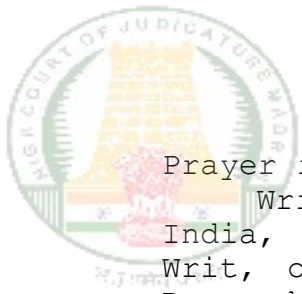
12.THE PRINCIPAL JUDGE
CITY CIVIL COURT, CHENNAI 104. ..R4 in W.P.No.17540 of 2021

Prayer in W.P.No.5872 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Respondents herein to revise the petitioners grade pay to Rs.4,200/- with effect from 01/01/2006 with monetary benefits from 01/02/2011 in compliance with the directions laid down in the covered judgment of this Honourable Court dated 21/08/2018 in W.P.No.32149 /2018.

Prayer in W.P.No.20185 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus or any other Writ, order or direction, to call for the records of the 2nd Respondent herein vide DIS No.11386/2019 /HC, dated 08/11/2019 and DIS No.11913/2019/ HC, dated 22/11/2019 and quash the same, Consequentially direct the 4th Respondent to issue revised Government Order to the selection/Special Grade of the Petitioner.



Prayer in W.P.No.20222 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus or any other Writ, order or direction, to call for the records of the 2nd Respondent herein vide DIS No.309/2020 dated 15/06/2020 and quash the same, Consequentially direct the 3rd Respondent to issue revised Government Order to the selection/Special Grade of the Petitioner.

Prayer in W.P.No.20228 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus or any other Writ, order or direction, to call for the records of the 2nd Respondent herein order dated 16/12/2019 and quash the same, Consequentially direct the 3rd Respondent to issue revised Government Order to the selection/Special Grade of the Petitioner.

Prayer in W.P.No.15432 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus or any other Writ, order or direction, to call for the records of the 4th respondent herein vide NO. PO2 / 3 / 10226355 / ADK / 94 dated 18.01.2021 and quash the same, consequentially direct the 3rd respondent to issue revised Government Order to the Selection / Special Grade of the Petitioner.

Prayer in W.P.No.15433 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus or any other Writ, order or direction, to call for the records of the 2nd respondent herein vide DIS NO. 72/2021, dated 18.01.2021 and quash the same,consequentially direct the 5th respondent to issue revised Government Order to the Selection / Special Grade of the Petitioner.

Prayer in W.P.No.17540 of 2021:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus or any other Writ, order or direction, Calling for the records pertaining to the order of the fourth respondent in his proceedings in Roc. No. 218/2021/E2/ dated 23.07.2021 and quash the same and consequentially directing the fourth respondent to revise and re-fix the Grade pay at Rs.4,200/- with effect from 01.01.2006 notionally and the monetary benefits with effect from 01.02.2011 in compliance of the direction of settled law laid down by this Honourable court in W.P.(MB) No. 12104 of 2017, dated 20.12.2017 and WP.No. 32149 of 2018, dated 14.08.2018 and further direction to the fourth respondent to forward the petitioners revised



retirement benefits and pension proposal to the third respondent for necessary orders.

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For the Petitioner

: Mr.B.Balachandar
in W.P.No.5872 of 2021

Mr.A.Murali (NA)
.. W.P.No.20185,20222,20228,
15432,15433 of 2021

Mr.J.Nagarajan (NA)
..WP.NO.17540 of 2021

For the Respondents

: Mrs.R.Anitha
Spl. Government Pleader
for R1 in W.P.No.5872,
17540 of 2021

R4 in W.P.No.20185 of 2021

R3 in W.P.No.20222,20228, 15432,
15433 of 2021

: Mr.V.Vijay Shankar
R2 and R3 in W.P.No.5872 of 2021

R1 to R3 in W.P.No.20185 of 2021

R1 & R2 in W.P.No.20222,
20228,15432,15433 of 2021

R2 to R4 in W.P.No.17540 of 2021

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The batch of writ petitions involving common question of facts and law was heard together.

2. For the sake of convenience, the facts given in W.P.No.5872 of 2021 are referred.



3. The writ petition was filed to seek a direction on the respondents for grant of grade pay of Rs.4,200/- on selection grade with effect from 1.1.2006 with all consequential monetary benefits from 1.2.2011 in the light of the judgment of this court in S.M.Kuppan v. The Principal District Judge, Dharmapuri District and others [dated 21.8.2019 in W.P.No.32149 of 2018].

4. The facts of these cases show that the petitioners were appointed on different posts like Junior Bailiff, Copyist, Junior Assistant and Process Server and after completion of required length of service, they became entitled to selection grade scale of pay. They were, accordingly, provided the grade pay of Rs.2,800/-, though, according to the petitioners, it should have been Rs.4,200/- which was given to similarly placed employees, who remained successful in the writ petition preferred and decided by this court in S.M.Kuppan, supra, where the earlier judgment delivered by the Madurai Bench of the Madras High Court in C.Jacob v. The District Judge, Sivagangai District and another [dated 20.12.2017 in W.P.(MD) No.12104 of 2017] was referred.

5. It is submitted that the petitioners are entitled to similar benefit as given by this court in the two judgments referred to above. When similar benefit was not extended to the petitioners herein, having left with no option, they have preferred these writ petitions.

6. The writ petitions have been seriously contested by learned counsel appearing for the respondents. It is submitted that as per the government order in G.O.Ms.No.162, dated 13.4.1998, the petitioners were entitled to grade pay of Rs.2,800/- on grant of selection grade, being the grade pay of the promotional post to the post on which the petitioners were working. He submits that the pay grade of Rs.4,200/- claimed by the petitioners is not given even to the highest post in the hierarchy of promotion from the post, the petitioners were appointed. The claim aforesaid has been made in reference to the government order in G.O.Ms.No.162, dated 13.4.1998, wherein corresponding pay scale of selection grade was given in the schedule for those posts where the avenue of promotion is not available. The schedule given therein was not applicable to the posts having promotional avenue like the case on hand.

7. It is the contention of learned counsel for the respondents that G.O.Ms.No.162, dated 13.4.1998 was referred by the Division Bench of this court while considering a similar issue in the case of N.Ramakrishnan v. The Member Secretary (FAC) and others [Judgment dated 11.2.2021 passed in W.A.No.312 of 2020], wherein the judgment of the Madurai Bench in C.Jacob, supra, was also considered and it was clarified that while



deciding those cases the court had not taken note of the contention of learned counsel for the respondents regarding availability of avenue of promotion as per the government order. Thereby, the Division Bench clarified the issue aforesaid in reference to the earlier judgments and did not accept the claim made by the appellant therein.

8. Learned counsel for the respondents submit that a similar view was taken by this court again in The Tamil Nadu Judicial Department Retired Junior Bailiffs' Association v. The State of Tamil Nadu and others [order dated 10.2.2022 in W.P.No.1494 of 2022], wherein this court held that despite availability of avenue of promotion if one is not entitled to promotion on account of lack of qualification, he would be entitled to the grade pay of the higher post only. The writ petition was disposed of with a direction to allow the grade pay of promotional post and not the grade pay of Rs.4,200/-.

9. Learned counsel for the respondents further submit that as against the judgments relied upon by the petitioners in S.M.Kuppan, supra, and C.Jacob, supra, review applications have been filed and are pending consideration. The prayer, accordingly, is not to apply the proposition enunciated in the aforesaid judgments and to dismiss the writ petitions preferred by the petitioners.

10. We have considered the submissions made by learned counsel for the parties and perused the records.

11. The writ petitions have been filed by the petitioners who were appointed on the post of Junior Bailiff or a corresponding post like Copyist, Process Server, etc. After jointing service and on completion of 10/20 years of service, they became entitled to the benefit of selection grade/special grade pay. The petitioners claim grade pay of Rs.4,200/-, as they were allowed the grade pay of Rs.2,800/-. The claim of grade pay of Rs.4,200/- has been made in reference to G.O.Ms.No.114 dated 6.5.2014. It is even in reference to the judgments in S.M.Kuppan, supra, and C.Jacob, supra.

12. After the judgments in S.M.Kuppan, supra, and C.Jacob, supra, were rendered, the issue was again examined by this court in the case of N.Ramakrishnan, supra, and after quoting the relevant portion in G.O.Ms.No.162, dated 13.4.1998, a similar claim made by the appellant therein was not accepted. For ready reference, paragraph (4) of G.O.Ms.No.162, dated 13.4.1998 is quoted hereunder:

"4.The Selection Grade and Special Grade will be the corresponding revised scales based on the existing pay scales of these grades. The appropriate revised scales of



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pay for Selection Grade / Special Grade are indicated in Schedule II to the Tamil Nadu Revised Scales of Pay Rules, 1998. Provided further, Selection Grade and Special Grade scales shall be regulated as below:-

- (i) For posts, having no promotional avenue, the Selection Grade and Special Grade shall be allowed as indicated in Schedule II;
- (ii) For posts having promotional posts, if the Selection Grade scale of pay indicated in the said Schedule is higher than the pay scale of promotional post, the Selection Grade should be limited to the pay scale of the first level promotion post. Similarly, if the Special Grade scale is higher than the pay scale of second level promotion post, the Special Grade scale shall be limited to the pay scale of second level promotion post only.

The existing procedure for movement to Selection Grade/ Special Grade and fixation of pay in these grades shall continue to be adopted in future in the revised scales also."

[emphasis supplied]

13. The paragraph (4) of G.O.Ms.No.162, dated 13.4.1998, quoted above, shows that for posts having avenue of promotion, if the selection grade scale of pay indicated in the said schedule is higher than the pay scale of promotion post, the selection grade should be limited to the pay scale of the first level promotion post and if the special grade scale is higher than the pay scale of second level promotion post, the special grade scale shall be limited to the pay scale of the second level promotion post only.

14. Keeping in mind paragraph (4) of G.O.Ms.No.162, dated 13.4.1998, a similar claim was rejected by the court in N.Ramakrishnan, supra. It is after clarifying that the argument in reference to G.O.Ms.No.162, dated 13.4.1998 was not considered in S.M.Kuppan, supra, and C.Jacob, supra, despite having been addressed by counsel for the respondents. The judgment in C.Jacob, supra, was rendered in a different fact situation, when recovery of the excess amount paid to the employee was sought, the court relied on the decision in State of Punjab v. Rafiq Masih, (2015) 4 SCC 344, and rejected the endeavour of the employer. Though it is a fact that grade pay



of Rs.4,200/- was permitted vide the judgments in S.M.Kuppan, supra, and C.Jacob, supra. It is not disputed that the aforesaid two judgments are under review, as stated by learned counsel for the respondents.

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15. The issue was, however, threadbare discussed by this court in the case of N.Ramakrishnan, supra. The view taken by the Division Bench in the case of N.Ramakrishnan, supra, was reiterated in The Tamil Nadu Judicial Department Retired Junior Bailiffs' Association, supra, wherein also this court came to the conclusion that the members of the petitioner association are not entitled to grade pay of Rs.4,200/-, rather would be entitled to grade pay of the promotional post. A clarification was made in reference to the subsequent government order in G.O.Ms.No.114 dated 6.5.2014, because earlier G.O.Ms.No.162, dated 13.4.1998 was applicable to the case.

16. In view of the aforesaid, we do not find that the petitioners are entitled to grade pay of Rs.4,200/- when it is not made admissible even to the highest post in the hierarchy of promotion from the posts held by the petitioners. At this stage, we need to notice that selection grade pay is given to remove the stagnation if one could not get promotion. The provision for grant of two or three selection grade pay scales has invariably been made by different State Governments. The object aforesaid has been referred because if the petitioners would have been given promotion before completion of period of 10/20 years, as the case may be, they would be entitled to the pay scale of the promotional post and not of the higher post. While granting selection grade pay, he cannot be extended the benefit more than of the promotional post and, therefore, necessary clarification in that regard was made in G.O.Ms.No.162, dated 13.4.1998 and it squarely applies to the case on hand. If the grade pay of Rs.4,200/- is given, which is not provided even to the highest post in the hierarchy, then it will result in serious consequences. Therefore, the respondents have rightly filed review applications before the Madurai Bench.

17. In view of the discussion made above, we do not find the claim made by the petitioners to be sustainable and, accordingly, the writ petition fails and is dismissed. There will be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sasi



To,

1. THE REGISTRAR GENERAL
HIGH COURT, MADRAS 600 104.

2. THE SECRETARY TO GOVERNMENT,
TAMIL NADU FINANCE PAY CELL DEPARTMENT,
FORT ST. GEORGE, CHENNAI 600 009.

3. THE SUBORDINATE JUDGE,
GUDİYATHAM, VELLORE DISTRICT.

4. THE DISTRICT MUNSIF,
POLUR, THIRUVANNAMALAI DISTRICT.

5. THE SPECIAL SUBORDINATE JUDGE,
SPECIAL COURT FOR LAOP CASE, ARAKONAM.

6. THE SUBORDINATE JUDGE,
RANIPET DISTRICT.

7. THE PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
GOVERNMENT OF TAMIL NADU,
ST. FORT GEORGE, CHENNAI - 600 009.

8. THE CHIEF JUDGE,
COURT OF SMALL CAUSES,
CHENNAI - 600 104.

9. THE PRINCIPAL ACCOUNTANT GENERAL,
(ACCOUNTS AND ENTITLEMENTS)
NO. 361, ANNA SALAI, CHENNAI - 600 018.

10. THE PRINCIPAL JUDGE, CITY CIVIL COURT, CHENNAI 104

11. THE PRINCIPAL DISTRICT JUDGE, VELLORE.

12. THE PRINCIPAL SECRETARY,
GOVERNMENT OF TAMIL NADU, ST. FORT GEORGE, CHENNAI - 600009.

Copy to:

THE REGISTRAR JUDICIAL,

MADURAI BENCH OF MADRAS, HIGH COURT, MADRAS.

+1 cc to Mr. V. Vijay Shankar, Advocate Sr. NO. 17975

+1 cc to Mr. J. Nagarajan, Advocate Sr. NO. 18051

+2 ccs to Mr. Ashok Menon, Advocate Sr. NO. 17537

W.P. Nos. 5872, 20185, 20222, 20228,
15432, 15433 and 17540 of 2021

JP (CO)

A. SK (22/03/2022)