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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.8404 OF 2014

- 1.V.Shanmugam
- 2.S.Selvaraj
- 3.G.Loganathan
- 4.N.Ganapathy
- 5.K.Srinivasan

..Petitioners

vs.

1. Directorate of Public Health
and Preventive Medicines,
Teynampet, Chennai-600006.
2. Deputy Director of Health Services
Beach Road, Cuddalore-607001.
3. Medical Officer,
Government Primary Health Centre,
Veeraperumanallur,
Cuddalore District.
4. The Senior Entomologist,
Zonal Entomological Team,
Cuddalore, Cuddalore District.
5. The District Treasury Officer,
Cuddalore,
Cuddalore District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to implement the Ordinary Grade, Selection Grade and Special Grade Scales of Pay as indicated in Schedule -II of the Tamil Nadu Revised Scales of Pay Rules, 1998 at Rs.4000-6000, Rs.5000-8000 and Rs.5500-9000 respectively to the petitioners drivers from the respective dates of completion of 10 years of service in the ordinary grade



and 10 years in the Selection Grade, with all consequential monetary benefits pay all arrears within a stipulated time period.

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For Petitioners : Mr.M.Ravi

For Respondents : Mr.P.Anandakumar, GA

O R D E R

The learned counsel for the writ petitioners submitted that the writ petitioner serving as drivers in various wing of Public Health Department, Cuddalore district and they have no promotional avenues. Based on the recommendations of the Official Committee 1998, the Government issued orders in G.O.Ms.NO. 162 Finance (Pc) Department dated 13.04.1998, extending the benefits of higher Selection Grade Scale of Pay at Rs.5000-8000 and Special Grade Scale of Pay at Rs.5000-9000 to drivers working in different Government Departments and undertakings, who have no promotional avenue.

2. The learned counsel for the petitioner further submitted that the petitioners herein have put more than 10 years of service and they are eligible for higher scale of pay as per the said G.O and as per the VI Pay Commission, the scale of pay of the drivers is as follows;

(I). Ordinary Grade - Rs.4000-6000, (II). Selection Grade - Rs.5000 - 8000 and (III). Special Grade - Rs.5500 - 9000.

3. The learned counsel for the petitioners has further submitted that the Hon'ble Division Bench of this Court had rendered decision in W.A.Nos. 383 to 391 dated 01.09.2009, holding that the authorities are bound to implement the Selection Grade and Special Grade Scale of Pay as indicated in Schedule -II of the Tamil Nadu Revised Scales of pay Rules 1998. Based on the said decision of the Hon'ble Division Bench of this Court, the petitioners herein had made representations dated 03.06.2013 to the respondents to implement the scale of pay as indicated in the Schedule II of the Tamil Nadu Revised Scales of pay Rules 1998 notified in G.O.Ms.No. 162, Finance (PC) Department, dated 13.04.1998 and disburse the arrears in the light of the decision made by the Hon'ble Division Bench of this Court in W.A.Nos. 383 to 391 dated 01.09.2009. Since no action has been taken by the respondents, the present writ petition is filed.



4. On the other hand, the learned Government has submitted that the Hon'ble Supreme Court in a recent decision in the case of K.Singaravelu & Others Vs. District Collector, Tiruppur, reported in (2020) 3 SCC 133, held that the person who are working as drivers in the department are entitled to the Ordinary Grade, Selection Grade and Special Grade scales of pay in terms of Sl.6 of the Schedule -II of G.O.Ms. 162, Finance (Pay Cell) Department, dated 13.04.1998. Therefore, in the light of the aforesaid decision of the Hon'ble Supreme Court, the present writ petition is liable to be dismissed.

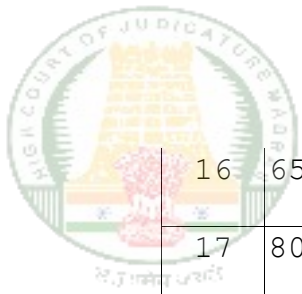
5. In view of the aforesaid submissions of the learned Government Advocate, it is relevant to extract the relevant paragraphs of the aforesaid decision of the Hon'ble Supreme Court. Accordingly, paragraph nos. 11, 18(1) and 21 to 28 are extracted hereunder;

"11. It would be useful to refer to Schedule II in this regard:

SCHEDULE - II

REVISED SELECTION GRADE AND SPECIAL GRADE SCALE OF PAY

Sl. Nos. (1)	Ordinary Grade (2)	Selection Grade (3)	Special Grade (4)
	Rs	Rs	Rs
1	2550-55-2660-60-3200	2650-65-3300-70-4000	2750-70-3800-75-4400
2	2610-60-3150-65-3540	2750-70-3800-75-4400	3050-75-3950-80-4590
3	2650-65-3300-70-4000	3050-75-3950-80-4590	3200-85-4900
4	2750-70-3800-75-4400	3050-75-3950-80-4590	3200-85-4900
5	3050-75-3950-80-4590	4000-100-6000	4300-100-6000
6	3200-85-4900	4000-100-6000	4300-100-6000
7	3625-85-4900	4300-100-6000	4500-125-7000
8	4000-100-6000	5000-150-8000	5500-175-9000
9	4300-100-6000	5000-150-8000	5500-175-9000
10	4500-125-7000	5300-150-8300	5900-200-9900
11	5000-150-8000	5500-175-9000	6500-200-10,500
12	5300-150-8300	6500-200-10,500	8000-275-13,500
13	5500-175-9000	6500-200-10,500	8000-275-13,500
14	5900-200-9900	8000-275-13,500	9100-275-14,050
15	6500-200-10,500	8000-275-13,500	9100-275-14,050



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16	6500-200-11,100	9100-275-14,050	10,000-325-15,200
17	8000-275-13,500	9100-275-14,050	10,000-325-15,200
18	9100-275-14,050	10,000-325-15,200	12,000-375-16,500

(emphasis supplied)

18.1. The Single Judge in V. Mariappan v. State of T.N. [V. Mariappan v. State of T.N., 2008 SCC OnLine Mad 1382] and the Division Bench in State of T.N. v. V. Mariappan [State of T.N. v. V. Mariappan Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad)] both set aside the Order dated 1-10-2007 based on the fact that the claimed higher pay scales had already been granted and were still being received by certain other drivers in several government departments, as per GOMs No. 162. Further, and more importantly, it was held that the letter dated 31-12-1998 wherein such higher pay scale fixations were deemed to be erroneous, would not have the effect of reducing the entitlement of drivers, as such a letter could not act as a substitute for modification of the G.O. itself. Thus, even though the Court did not give any express direction to grant the higher pay scales as per Serial No. 8 of Schedule II to the 1998 Rules, we find that the same was implicit in the Court's directions for fixing the pay scales in terms of GOMs No. 162. In other words, it cannot be said that the High Court in State of T.N. v. V. Mariappan [State of T.N. v. V. Mariappan Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad)] did not affirm the drivers' claim that they were entitled to the higher Selection and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively.

21. Against this backdrop, we find substance in the submission of the respondents that the appellants are not lawfully entitled to the claimed Selection Grade and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively in terms of GOMs No. 162.

22. The only question to be settled, therefore, is whether the appellants are entitled to claim parity with the drivers who have so far been granted benefits vide the orders of the High Court and this Court, as mentioned supra in para 4.



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23. In this respect, we find that the High Court in the impugned judgment was correct in concluding that the appellants cannot claim such relief on the strength of Article 14 of the Constitution of India, when once it has been found that they are not lawfully entitled to the same. It is well-settled by now that a person cannot invoke Article 14 to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place. Article 14 embodies the concept of positive equality alone, and not negative equality, that is to say, it cannot be relied upon to perpetuate an illegality or irregularity. In fact, this Court has opined that this principle extends to orders passed by judicial fora as well. Thus, the jurisdiction of a higher court cannot be invoked on the basis of a wrong order passed by a lower forum. In this respect, it would be fruitful to refer to the following passage from the decision of this Court in *Basawaraj v. LAO* [*Basawaraj v. LAO*, (2013) 14 SCC 81] : (SCC p. 85, para 8)

"8. 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 other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons 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 claimed 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 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 similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn. v. Jagjit*



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Singh [Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745] , Anand Buttons Ltd. v. State of Haryana [Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164] , K.K. Bhalla v. State of M.P. [K.K. Bhalla v. State of M.P., (2006) 3 SCC 581] and Fuljit Kaur v. State of Punjab [Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455] .)”

This proposition was also recently affirmed by a three-Judge Bench of this Court in State of Odisha v. Anup Kumar Senapati [State of Odisha v. Anup Kumar Senapati, (2019) 19 SCC 626 : 2019 SCC OnLine SC 1207] .

24. Thus, it is evident that the appellants cannot claim the Selection Grade and Special Grade scales of pay of Rs 5000-8000 and Rs 5500-9000 respectively, solely on the strength of earlier decisions of the High Court, without showing how they, themselves, are entitled to such benefit in the first place. In such a situation, we are of the considered view that the appellants can only be granted the benefit of the Selection Grade and Special Grade scales of pay to which they are lawfully entitled in terms of GOMs No. 162 i.e. Rs 4000-6000 and Rs 4300-6000 respectively.

25. Therefore, in view of the foregoing discussion, we find no reason to interfere with the impugned judgment [Director of Sericulture Deptt. v. K. Kumar, 2015 SCC OnLine Mad 4746 : (2015) 4 CTC 241] . The instant appeals are hereby dismissed, and the impugned judgment is confirmed.”

6. It is also useful to mention the Ordinary Grade, Selection Grade and Special Grade scales of pay for the post of Driver as per Annexure -I of G.O.Ms.No. 304, Finance (Pay Cell) Department, dated 28.03.1990 and Schedule -II of G.O.Ms. No. 162, Finance (Pay Cell) Department, dated 13.04.1998, which are as follows;

Grade	G.O.Ms.No.666 Finance (Pay Cell) Dept., dated 27.06.1989 (w.e.f. 1.6.88)	G.O.Ms.No. 304 Finance (Pay Cell) Dept., dated 28.03.1990 (w.e.f. 1.6.88)	G.O.Ms.No. 162 Finance (Pay Cell) Dept., dated 13.04.1998 (w.e.f. 1.6.88)
Ordinary Grade	950-1500	975-1660	3200-4900



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Grade	G.O.Ms.No.666 Finance (Pay Cell) Dept., dated 27.06.1989 (w.e.f. 1.6.88)	G.O.Ms.No. 304 Finance (Pay Cell) Dept., dated 28.03.1990 (w.e.f. 1.6.88)	G.O.Ms.No. 162 Finance (Pay Cell) Dept., dated 13.04.1998 (w.e.f. 1.6.88)
Selection Grade		1200-2040	4000-6000
Special Grade		1320-2040	4300-6000

7. As per the above Annexure -I of G.O. Ms.No. 304, Finance (Pay Cell) Department, dated 28.03.1990, the revised Selection Grade and Special Grade Scales of pay with effect from 01.01.1996 is Rs.4000-6000 and Rs.4300 - 6000 respectively. According to G.O.Ms.No. 162, Finance (Pay Cell) Department dated 13.04.1998, it has been clearly ordered that the pay has been revised on a 'pay scale to pay scale basis' . Hence, the ordinary grade scale of pay for the post of driver was ordered as Rs.3200-4900 as against the pre-revised scale of pay of Rs.975-1660. Hence, the petitioners are entitled for the Selection grade Scale of pay at Rs.4000-6000 and Special Grade Scale of pay at Rs.4300-6000 with reference to the Ordinary Grade Scale of Pay of Rs.3200-4900 as indicated in Schedule -II, Table Sl.No. 6 of the Tamil Nadu Revised Scales of Pay Rules, 1998 as ordered in G.O.Ms.No. 162, Finance (Pay Cell) Department, dated 13.04.1998.

8. In view of the aforesaid Government Orders and the ratio laid down by the Hon'ble Supreme Court in the decision cited supra, the writ petitioners herein are entitled to the benefit of the Selection Grade and Special Grade scales of pay in terms of G.O. Ms No. 162 i.e. Rs 4000-6000 and Rs. 4300-6000 respectively and the claim of the petitioners seeking corresponding Selection grade at Rs.5000-150-8000 and Special Grade at Rs.5500-175-9000 cannot be accepted and the same is liable to be rejected.

9. In the result, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The Directorate of Public Health
and Preventive Medicines,
Teynampet, Chennai-600006.
2. The Deputy Director of Health Services
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Cuddalore District.
5. The District Treasury Officer,
Cuddalore,
Cuddalore District.

+1cc to the Government Pleader, S.R.No.7342

W.P.No.8404 of 2014

NRL(CO)
RLP(25/03/2022)