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W.P.No.6946 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6946 of 2017

U.Murugan

... Petitioner

Vs.

Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
No.75, Mount Road,
Guindy, Chennai – 600 032.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to fix the pay of the petitioner in the Selection Grade Scale of pay of Rs.9300-34800+G.P Rs.4200 in the post of Lab Assistant from 04.08.2010 in modification of the order in Pro.No.Mu.Mu/Estt./Pa.6/23395/10 dated 01.09.2010 of the respondent.

For Petitioner : Mr.M.Ravi

For Respondent : Mrs.Vijaya Kumari Natarajan



ORDER

The order passed by the respondent in Memo, dated 01.09.2010, rejecting the petitioner's request for re-fixation of his pay in the Selection Grade scale of pay of Rs.9300-34800+Grade Pay Rs.4200 in the post of Lab Assistant with effect from 04.08.2010 is under challenge in the present writ petition.

2. The petitioner was initially appointed to the post of Lab Assistant through District Employment Exchange on 22.07.2000. The petitioner was declared to have satisfactorily completed the period of probation on 03.08.2002. Thereafter, the petitioner was granted Selection Grade in the said post with effect from 04.08.2010 and his pay was fixed at Rs.5200-20200+Grade Pay Rs.1900 from that date. The petitioner submitted several representations to the respondent, requested for re-fixation of his pay in the Selection Grade in the scale of pay of Rs.9300-34800+Grade Pay Rs.4200 as per the Government Letter (Finance Department), dated 08.11.2010. The petitioner claims that similarly placed employee M.Baskaran had filed Writ Petition in W.P.No.25931 of 2013 and by order dated 05.07.2014, this Court allowed the Writ Petition granting Selection Grade pay of Rs.9300-34800+Grade Pay Rs.4200 and Special Grade pay of Rs.9300~34800+GP



Rs.4400.

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3. Thereafter, the petitioner has once again sent a representation on 20.08.2016 to the respondent requesting for issuance of revised order granting Selection Grade scale of pay of Rs.9300~34800+Grade Pay Rs.4200/- from 04.08.2010. Since no orders were passed, the petitioner is constrained to move the present writ petition.

4. The relief sought for in the present writ petition is similar to the relief sought for by the writ petitioner in a writ petition in ***W.P.No.2652 of 2018 [A.Ayyasamy Vs. The Government of Tamil Nadu]***, which was decided by this Court on 30.09.2022.

5. The relevant paragraphs of the said order are extracted hereunder :

“3. The petitioner has challenged the rejection order dated 19.05.2017 passed by the second respondent, on the following grounds:

(a) The second respondent has totally ignored the order dated 01.07.2014 passed in W.P.No.25931 of 2013, though a specific direction was given by this Court by order dated 23.11.2016 passed in W.P.No.41079 of 2016.

(b) Similarly placed employees having got the benefits, the



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petitioner should also get the very same benefits and therefore, the Selection Grade scale of pay ought to have been revised for the petitioner also.

(c) The principle of "equal pay for equal work" cannot be violated by fixing arbitrary cut-off date. The difference in pay could happen only on the basis of the increments earned and by virtue of elevation to Selection Grade and Special Grade pay on completion of ten years and 20 years respectively, and there cannot be any difference in the pay of the employees merely with reference to the dates of appointment. The stand taken by the respondents will lead to anomalous situation, wherein the persons who have completed ten years of service in the post on 31.05.2009 will be getting much higher pay than the person who completes ten years of service in the very same post on 01.06.2009 or thereafter. Such situation is impermissible in law.

(d) The act of the respondents is arbitrary and it violates Articles 14 and 16 of the Constitution of India.

4. *A counter affidavit has been filed by the second respondent denying the contentions of the petitioner. They have stated as follows:*

(a) In the Government Letter No.63305/PC/2010-1, dated 08.11.2010 in paragraph 4(ii), it is stated that the revised Selection Grade/Special Grade of scales of pay indicated in the Annexure-I to the letter, shall be confined only to the employees who were awarded Selection Grade/Special Grade prior to 01.01.2006 and in the case of employees who have exercised their



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option to come over to the revised scales of pay on the date of their award of Selection Grade/Special Grade between 01.01.2006 and 31.05.2009 (prior to the issuance of G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009).

(b) In the Government Order No.240, Finance (Pay Cell) Department, dated 22.07.2013, it is stated that the Government has decided to implement the recommendation of the Pay Grievance Redressal Cell. Accordingly, the Government, in exercise of its powers conferred under Rule 12 of the Tamil Nadu Revised Scales of Pay Rules, 2009, granted permission to the employees as a final opportunity for exercising re-option to come over to the revised scale of pay between 01.01.2006 and 31.05.2009 as an one-time-measure in cases where option could not be exercised within the time limit to the advantage of the individual employees. However, such re-option should not in any case lead to fixation of lower pay than what has been fixed earlier, which shall be in force for a period of six months from the date of issue and it was also made clear that any request for exercising re-option from employees after the above period, shall not be entertained.

(c) The petitioner was awarded Selection Grade only on 28.06.2009, which was beyond 31.05.2009, which is the dead-line for making the request for exercising re-option to come over to the revised scale of pay. The petitioner was already awarded 3% + 3% increment in the scale of pay of Rs.5200-20200 with Grade Pay of Rs.2400/-, vide proceedings dated 17.03.2014 of the



second respondent. He is not eligible to exercise the option to come over to the revised scale of pay on the date of the award of Selection Grade between 01.01.2006 and 31.05.2009, as per G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, and the Government Letter dated 08.11.2010.

(d) In the judgment rendered by a Division Bench of this Court in the order dated 08.07.2015 in Writ Appeal No.1398 of 2013 and batch cases filed by various Heads of the Department of the Government, and also in W.P.No.23550 of 2010 and other batch cases filed by the Drivers contesting G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, the request for grant of Selection Grade/Special Grade at Rs.5000-8000 and Rs.5500-9000 to the Drivers, were dismissed by the Division Bench of this Court with a direction that the petitioners therein were only entitled for Selection Grade/Special Grade scales of pay at Rs.4000-6000 and Rs.4300-6000 as against the ordinary Grade Pay scale of Rs.3200-4900. Accordingly, all the Writ Appeals filed by Government Departments/Local Bodies were allowed and all the Writ Petitions filed by the petitioners were dismissed.

(e) The Honourable Supreme Court of India in S.L.P.(Civil) No.9560-9561 of 2019, by order dated 18.12.2019, has allowed the Ordinary Grade, Selection Grade and Special Grade scales of pay to Drivers in terms of Serial No.6 as per Schedule-II of G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, which is as follows:



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Ordinary Grade	Selection Grade	Special Grade
Rs.3200- 85-4900	Rs.4000- 100-6000	Rs.430 0-100- 6000

(f) Only in accordance with the order of this Court, dated 23.11.2016 passed in W.P.No.41079 of 2019, the representation of the petitioner in the Writ Petition has been considered and rejected under the impugned order, stating that he is not eligible for the revised scale of pay of Rs.9300-34800+Rs.4200 Grade Pay on the date of the award of Selection Grade on 28.06.2009, which was the deadline for exercising re-option of the revised scale of pay, which had already come to an end on 31.05.2009 itself.

5. Heard the learned counsel for the petitioner, learned Government Advocate appearing for the first respondent and the learned Standing Counsel appearing for the second respondent and perused the materials available on record.

Discussion:

6. The petitioner is a Lab Assistant and was awarded Selection Grade scale of pay of Rs.5200-20200+Grade Pay Rs.2400, with effect from 28.06.2009 FN and monetary effect from 01.04.2013 as detailed below:



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<i>Designation</i>	<i>Fixation</i>	<i>As on</i>	<i>Present Pay</i>	<i>3% increment</i>	<i>Pay fixed</i>	<i>With effect from</i>
Lab Assistant, Selection Grade	3% additional increment as per G.O.	28.06.2009	10,360/-	310/- (3% for the pay as on 27.04.2009 10,050- (7650 + 2400))	10670/- (8270 + 2400)	28.06.2009
Lab Assistant, Selection Grade	Increment	31.03.2010	10670/-	320/-	10990/- (8590 + 2400)	01.04.2010
Lab Assistant, Selection Grade	Increment	31.03.2011	10990/-	330/-	11320/- (8920 + 2400)	01.04.2011
Lab Assistant, Selection Grade	Increment	31.03.2012	11320/-	340/-	11660/- (9260 + 2400)	01.04.2012
Lab Assistant Selection Grade	Increment	31.03.2013	11660/-	350/-	12010/- (9610 + 2400)	01.04.2013

The next date of annual increment was also fixed for the petitioner to be effective from 01.04.2014. The petitioner is also eligible to draw the arrears with effect from 01.04.2013 and the same was also communicated to the petitioner, by proceedings dated 17.03.2014 issued by the second respondent.

7. As per G.O.Ms.No.237, Finance (Pay Cell) Department, dated 22.07.2013, only the employees who have been awarded Selection Grade/Special Grade between 01.01.2006 and 31.05.2009 alone have been given the concession to opt to come



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over to the revised scale of pay on the date of award of Selection Grade/Special Grade.

8. The Pay Grievance Redressal Cell constituted in the Government Order in G.O.Ms.No.123, Finance (Pay Cell) Department, dated 01.06.2009, did not favour granting the Pay Band and Grade Pay of the promotion post for Selection Grade/Special Grade, since this would give uneven benefit to employees existing in the same scale of pay in different Departments with different hierarchical patterns. However, the Pay Grievance Redressal Committee, considering the long standing service rendered by the employees and with the intention to recognise their service properly has recommended to grant an additional increment benefit (over and above the one increment already allowed) equivalent to 3% + 3% of basic pay (Pay + Grade pay) for award of Selection Grade / Special Grade in the revised scale of pay, which was also implemented by the Government with effect from 01.01.2006 as per G.O.Ms.No.237, Finance (Pay Cell) Department, dated 22.07.2013 referred to supra with monetary benefits from 01.04.2013.

9. The petitioner having awarded Selection Grade only on 28.06.2009, i.e. after 31.05.2009, and having got additional increment benefit (over and above the existing one increment benefit) equivalent to 3% + 3% of Basic Pay (Pay + Grade Pay) as per G.O.Ms.No.237, Finance (Pay Cell) Department, dated 22.07.2013, the question of re-fixation of scale of pay at Rs.9,300-



34800+Grade Pay Rs.4200 for the post of Lab Assistant with effect from 28.06.2009 will not arise. The second respondent has rightly rejected the petitioner's representation under the impugned order dated 19.05.2017. The order dated 01.07.2014 passed by this Court in the case of M.Baskaran Vs. The State of Tamil Nadu, represented by the Principal Secretary to Government and 3 others, in W.P.No.25931 of 2013, has no applicability to the case on hand. In the said Writ Petition, this Court dealt with G.O.Ms.No.65, Finance (Pay Cell) Department, dated 26.02.2011, which pertains to Drivers and did not pertain to Lab Assistant. The pay scales for drivers are different from the pay scales for Lab Assistants. The said G.O.Ms.No.65 has no relevance to the subject matter of this Writ Petition.

10. For the foregoing reasons, this Court does not find any merit in this Writ Petition, which is accordingly dismissed. There shall be no order as to costs."

6. In view of the fact that the case of the petitioner is also similar to that of the case (cited *supra*). Therefore, the petitioner is not entitled for the relief. Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

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Index : Yes
Speaking order

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To

The Member Secretary,
Tamil Nadu Pollution Control Board,
No.75, Mount Road,
Guindy, Chennai – 600 032.

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S.M.SUBRAMANIAM, J.

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