



W.P.No.27493 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27493 of 2017

1. R.Ravindran

2. V.Shanmuga Sundaram

3. S.M.Thajudeen

4. V.Pugazhendhee

5. S.Sundramourthy

6. S.Selvam

... Petitioners

-Vs-

1. Government of Tamil Nadu ,
Rep. by its Secretary,
Finance Department,
Fort St. George, Chennai 9.

2. Government of Tamil Nadu,
Rep. by its Secretary,
Higher Education Department
Fort St. George, Chennai 9.

3. The Directorate of College Education
DPI Campus Nungambakkam,
Chennai.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the respondents to implement the G.O.M.S.No.337 dt 26.8.2010 in respect of the Lab Assistant comes under the Grade XIV.

For Petitioners : Mrs.D.Malarvizhi

For Respondents : Mr.C.Jaya Prakash
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the respondents to implement G.O.M.S.No.337, Finance (Pay Cell) Department, dated 26.08.2010, in respect of Lab Assistants coming under Grade XIV.

2. The petitioners are working as Lab Assistants in Colleges. The grievances of the writ petitioners are that as per the rules, the category of Lab Assistant is falling under Class XIV and therefore, the revised scale of pay and the Grade Pay granted to the post of Superintendents, as per the G.O.M.S.No.337 dated 26.08.2010, is to be extended to these writ petitioners.



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3. The learned counsel for the petitioners relied on the Tamil Nadu General Subordinate Service wherein, the Lab Assistant is falling under Class XIV and that apart, the Government issued G.O.M.S.No.271, Finance (Pay Cell) Department, dated 26.08.2010, revising the scale of pay for the post of Laboratory Assistant and the said Government Order was not further revised in consonance with the G.O.M.S.No.337 dated 26.08.2010.

4. The learned Government Advocate appearing on behalf of the respondents states that originally the post was designated as Attender. Subsequently, it was re-designated as Laboratory Assistants in G.O.M.S.No.1984, Education Department, dated 03.12.1974 and G.O.M.S.No.415, Education Department, dated 13.03.1975, with effect from 25.02.1974. Thus, the nomenclature originally was Attender and subsequently re-designated as Laboratory Assistant. After re-designation, the scale of pay of Laboratory Assistants were fixed on par with the Records Clerks in the Ministerial Service. Thus, the comparison now made that the petitioner was not paid the salary according to Class XIV category is incorrect.



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5. From G.O.M.S.No.666 Finance Department, dated 27.06.1989, the scale of pay allowed before 01.06.1988 shows that the Attenders in Class XXII were allowed to the pay scale of Rs.475-775 and the Laboratory Assistants in Class XIV were allowed the scale of pay of Rs.555-970. Thus, the Laboratory Assistants are all along drawing a higher scale of pay than that of their counterparts in Class XXII. The learned Government Advocate reiterated that the Laboratory Assistants are fixed with the scale of pay in Class XIV, and the comparison made by the Superintendents is incorrect and not applicable.

6. The very fact remains that the Government Order issued in G.O.M.S.No.337, Finance Department, dated 26.08.2010, is a revision of salary to the post of Superintendents in Coimbatore Corporation. Therefore, the very comparison and the relief sought, based on the said G.O.M.S.No.337, dated 26.08.2010, is untenable.

7. Regarding the claim of the Laboratory Assistants for grant of Grade Pay, this Court considered the issues elaborately in a batch of writ petitions and an order was passed on 05.07.2022 and the relevant paragraphs are extracted as under:



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“7.Considering the arguments, this Court is of the considered opinion that there is no dispute that all the petitioners were appointed as Laboratory Assistants. Further, it is admitted that all the petitioners were promoted to the post of Junior Assistants/Typists, Assistants and some employees as Superintendents respectively. All the petitioners were promoted to the higher post, even prior to 01.01.2006, when the pay commission was implemented. It is further admitted that as per G.O.Ms.No.63, dated 26.02.2011, the Scale of Pay, the Selection Grade and Special Grade Pay is fixed for the post of Laboratory Assistants. This apart, the post of Laboratory Assistant has no promotional avenues. Thus, a pay protection was given to all these cadres by the Government as one time measure. Therefore, after getting promotion, the very purpose of grant of Selection Grade and Special Grade became irrelevant. Thus, the petitioners have to go to the higher post either by way of promotion or through transfer of service and further, their pay is also protected in the promoted post and thus, there is no reason for the petitioners to claim the benefit attached to the post of Laboratory Assistants. In other words, once the



petitioners are promoted to the post of Junior Assistants/Typists and further promoted to the post of Assistants, they cannot claim the Grade Pay attached to the post of Laboratory Assistants, which was given by the Government as one time measure, considering the fact that there is no promotional avenue for the post of Laboratory Assistants. The very purpose and object of granting such a Special Grade of Pay would be defeated, in the event of continuing the said pay to the petitioners, who were already promoted to the higher post of Junior Assistants and Assistants. It is made clear that once the petitioners were promoted to the post of Junior Assistants Typists and Assistants, then, the very question of stagnation, does not arise at all, as far as the petitioners are concerned. When there is no stagnation, grant of higher grade pay as applicable to the post of Laboratory Assistants cannot be claimed by the writ petitioners.

8.The petitioners referred the Government Letter, dated. 23.05.2011, which is a clarificatory letter. Further, the clarificatory letter cannot supersede the spirit of the Government Order passed in G.O.Ms.No.63, dated 26.02.2011. However, the said letter was further clarified by the



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Director of Collegiate Education in Letter Rc.No.44735/G3/2012, dated 27.02.2013 and the said clarification states that the Selection Grade and Special Grade Pay would be applicable only to the post of Laboratory Assistants.

9.Importantly, the Government, vide Letter No.4867/G2/2014-2, Higher Education (G2) Department, dated 05.06.2014, informed the Director of Collegiate Education that "such of those Laboratory Assistant who attained Selection Grade or Special Grade before 31.12.2005 and continue to work as Typist/Junior Assistant by transfer of service cannot draw pay fixed for the post of Laboratory Assistants whose revised scale of pay of Rs.5200-20200+Grade Pay Rs.2400 was fixed in the Selection Grade/Special Grade Scale of Pay of Rs.9300-34800-Grade Pay Rs.4,200 and Rs.9300-34800+Grade Pay Rs.4400", W.P.Nos 21787 of 2014 etc. batch

10.The above clarification of the Government was informed to all the Regional Joint Directors and all the Principals of Government Arts and Science Colleges as well as the Colleges of Education, vide letter, dated 22.07.2014. The said letter is impugned in all these writ petitions.



11. This Court is of the considered opinion that the Special Grade Scale of Pay was fixed to the post of Laboratory Assistants on the ground that there is no promotion for the post of Laboratory Assistants. In view of the fact that all the petitioners in these batch of writ petitions, after getting Selection Grade/Special Grade Scales of Pay in the cadre of Laboratory Assistant, have all been now working in different higher posts, after getting promotion by transfer of service as Junior Assistant/Typist/Storekeeper and now further, promoted to the post of Assistant and Superintendent and drawing salary at a level, which is more than prescribed for the existing post. Under these circumstances, the impugned orders are passed to prevent monetary loss to the State Exchequer, and unjust gain to the employees.

12. It is relevant that the Government letter No.4867/G2/2014, dated 05.06.2014, clearly stipulates that those who have reached the Selection Grade or Special Grade in the post of Laboratory Assistants and getting promotion as Typist/Junior Assistant/Storekeeper before 31.12.2005, are not eligible for the revised pay of Rs.9300+34800+Grade Pay Rs.4200/- in the



Selection Grade and Rs.9300-34800+Grade Pay Rs.4400 in the said Special Grade. When the Government clarified in Letter, dated 05.06.2014 in unambiguous terms that the Laboratory Assistants, who were already promoted to the post of Junior Assistants prior to 31.12.2005 are not eligible to draw the Special Grade Pay attached to the post of Lab Assistants, there is no reason to catre the said benefit even after getting further promotion to the post of Assistant and Superintendent.

13.At the outset all the petitioners, who were initially appointed as Laboratory Assistants were promoted by way of transfer of service to the higher post of Junior Assistant/Typist/Storekeeper even prior to 31.12.2005 i.e., before 01.01.2006 and further, promoted to the post of Assistant and some of the petitioners as Superintendents. The pay of all these petitioners were protected in the promotional post at the time of promotion and they were receiving higher scale of pay, than that of the scale of pay attached to the post of Junior Assistants on their promotion.

14.In view of the fact that the scale of pay fixed for the post of Laboratory Assistants was higher than, the scale of pay fixed for the post of



Junior Assistants during the relevant point of time, the pay protection was given by the Government as one time measure, considering the fact that they should not be deprived of pay on account of promotion. Such one time measure cannot be a ground to claim the Grade Pay attached to the post of Laboratory Assistants, even after getting promotion, further to the posts of Assistant and Superintendents.

15.It is brought to the notice of this Court that all the petitioners had further received the revised Scale of Pay as per the 6th Pay Commission recommendations. Now, all are getting the Scale of Pay as applicable to the post, in which, they are working and therefore, the claim to grant grade pay attached to the post of Laboratory Assistant is undoubtedly unsustainable.

16. The learned counsel for the petitioners made a submission that some of the juniors to the petitioners are getting more pay, than that of the petitioners. It is needless to state that Fundamental Rules stipulates that if any junior is getting more pay, the senior can submit an application for grant of equivalent pay on par with the junior by following the procedures as contemplated under the



Fundamental Rules. In this regard, a comparative statement is to be filed and the authority competent have to follow the Rules in this regard. Thus, any of the petitioners are aggrieved on account of the fact that their juniors are getting more pay, in the same cadre, then they are at liberty to approach the competent authority for the purpose of redressal of their grievances.

17. However, this cannot be a ground to assail the impugned orders now passed. The impugned orders are passed in accordance with the Government Order regarding the fixation of Scale of Pay and there is no infirmity as such. The petitioners are not entitled to claim the Scale of Pay or the Grade Pay attached to the post of Selection Grade or Special Grade Laboratory Assistants as they were already promoted and are getting the Scale of Pay attached to the promoted post. This being the factum established, the writ petitioners are not entitled for the relief as such sought for in these writ petitions.”

8. In the present case, the petitioners are also receiving the scale of pay attached to the post of Laboratory Assistant, and the petitioners were already awarded a special grade as per the scheme. This being the



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factum, no further consideration is required and accordingly, this writ
petition stands dismissed. There shall be no order as to costs.

07.11.2022

Index : Yes
Speaking order
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S.M.SUBRAMANIAM.J.,

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To

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Government of Tamil Nadu ,
Finance Department,
Fort St. George, Chennai 9.
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