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W.P.Nos.21787 of 2014 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition Nos.21787 to 21792, 22103 to 22106, 22250 to 22255, 23206 to

23211, 23839 to 23841, 23843, 23844, 25124 to 25127,

25340, 25735 to 25739, 26168 to 26173, 26394 to 26396,

26415, 30934 to 30936 & 31112 to 31116 of 2014

and

M.P.Nos.3 to 3 of 2014 in W.P.Nos.21787 to 21792 of 2014,

M.P.Nos.1+1 to 3+3 of 2014 in WP Nos.22103 to 22106 of 2014 and WMP

Nos.21880 & 20182 of 2018 in W.P.Nos.22103 & 22105 of 2014,

M.P.Nos.1+1 to 3+3 of 2014 in WP Nos.22250 to 22255 of 2014,

M.P.Nos.1+1 to 3+3 of 2014 and WMP Nos.2348 to 2350, 7855,

7856 & 7816 of 2018 in WP Nos.23206 to 23211 of 2014,

M.P.Nos.3 + 3 of 2014 in W.P.Nos.23839 to 23841, 23843, 23844 of 2014,

M.P.Nos.3+3 of 2014 in WP Nos.25124 to 25127 of 2014 and WMP Nos.28105

to 28107 of 2017 and 8285 of 2018 in WP Nos.25124 to 25127 of 2017,

M.P.Nos. 1 to 3 of 2014 and WMP No.1368 of 2018 in WP No.25340 of 2014,

M.P.Nos. 3 + 3 of 2014 in WP Nos.25735 to 25739 and WMP No.1351 of 2018 in

WP No.25738 of 2014, W.M.P.No.1352 of 2018 in W.P.No.25739/2014,

M.P.Nos.3+3 of 2014 and WMP Nos.28108 to 28113 of

2017 in WP Nos.26168 to 26173 of 2014,M.P.Nos.3 +3 of 2014 in WP Nos.26394

to 26396 and 26415, and WMP No.20177 of 2018 in WP No.26395 of 2014,

M.P.Nos. 1+1 to 3+3 of 2014 and WMP Nos.28117 to 28119 of 2017 in

WP Nos.30934 to 30936 of 2014 and M.P.Nos.1+1 & 2+2 of 2014

in WP Nos.31112 to 31116 of 2014



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WP No.21787 of 2014

Tony Augustin

... Petitioner

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-Vs-

1. The Government of Tamil Nadu,
represented by the Secretary
Higher Education (G2) Department,
Secretariat, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road, Chennai - 6.
3. The Joint Director of Collegiate Education,
Chennai Region,
Chennai - 15.
4. The Secretary,
Women's Christian College,
College Road, Chennai - 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Letter No.4867/G2/2014-2 dated 5.6.2014 issued by the 1st respondent and consequential proceedings in Na.Ka. No.15641/ B2/2011 dated 22.7.2014 issued by the 2nd respondent quash the same and direct the respondents to continue to pay the Scale of Pay of Rs.9300-34800 + Grade Pay of Rs.4200/-.

1	Mr.R.Subramanian	For Petitioner	in all WPs.
2.	Mr.V.Arun, AAG, Assisted by Mrs.S.Anitha, Special Govt. Pleader.	For R1 to R3	in WP Nos.21787 to 21792, 22103 to 22106, 22250 to 22255, 23206 to 23211, 23839 to 23841, 23843, 23844, 25124



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			to 25127, 25340, 25735 to 25739, 26168 to 26173, 26394 to 26396, 30934 to 30936 and 31112 to 31116 of 2014
		For R2	in WP No.26415 of 2014
3	Ms.T.S.Selva Rani	For R1	in WP No.26415 of 2014
4	Ms.H.Mary Sowmi Rexi for M/s.Isaac Chambers	For R4	in WP Nos.21787 to 21791 of 2014
5	Mr.A.Jenasenan	For R4	in WP No.21792/14
6	Mr.M.Ravi	For R4	in WP No.23839/14
7	Mr.V.Raghavachari	For R4	in WP No.25124 & 25127/14
8	Ms.Shanmugavalli Sekar	For R4	in WP Nos.25126/14 and 25738 of 2014
9	Mrs.Hema Muralikrishnan	For R4	in WP Nos.31112 to 31116 of 2014
10	No appearance	for R4	in WP.No.22103 to 22106, 22250 to 22255, 23206 to 23211, 23840, 23841, 23843, 23844, 25125, 25340, 25735 to 25737 and 25739, 26168 to 26173, 26394 to 26396, 30934 to 30936 of 2014
		for R3	WP No.26415 of 2014

COMMON ORDER

The common issues are raised in all these batch of writ petitions.

The orders passed declining grant of Grade Pay attached to the post of Lab Assistants, are under challenge in these batch of writ petitions.

2.The grievances in nutshell put forth by the petitioners in these writ petitions are that they are entitled for the Grade Pay attached to the



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post of Special Grade Laboratory Assistants with reference to the Government Orders passed in G.O.Ms.No.63 as well as the consequential clarifications issued by the Government in letter, dated 23.05.2011.

3. Admittedly, all the writ petitioners were appointed as Laboratory Assistants in the Department of Collegiate Education. There is no promotional avenue available for the post of Laboratory Assistants. Thus, the Selection Grade and Special Grade was granted to the employees working in the post of Laboratory Assistants by fixing the next higher scale of pay applicable to the promotional post.

4. The learned counsel for the petitioners mainly contended that as per the Government Orders passed in G.O.Ms.No.63, Finance Department, dated 26.02.2011, the Scale of Pay fixed for the Laboratory Assistants was revised. Consequently, the clarification was issued in letter, dated 23.05.2011, granting the Selection Grade and Special Grade Pay and accordingly, the Special Grade of Pay fixed for the post of Laboratory Assistant was Rs.9,300-34,800+Grade pay of Rs.4,400/-. The petitioners are entitled for the said Grade Pay and therefore, the impugned orders passed imposing recovery is also irregular. The learned



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counsel for the petitioners reiterated that as per the clarification, the Special Grade Pay is to be granted to all these writ petitioners and accordingly, the further revision is also to be effected.

5.The learned Additional Advocate General appearing on behalf of the respondents 1 to 3 objected to the contentions of the petitioners by stating that the petitioners are not working in the cadre of Laboratory Assistants as of now. All the petitioners were promoted either by way of promotion or through transfer of service to the higher post of Junior Assistant and Assistant and few persons as Superintendents. The promotions were granted prior to the crucial date of 01.01.2006. In other words, even before the implementation of pay commission on 01.01.2006, all the petitioners were either promoted or appointed by way of transfer of service to the post of Junior Assistants/Typists and they were further promoted to the post of Assistants and to the post of Superintendents. All the petitioners are now receiving the benefits attached to the post of Junior Assistants/Typists, Assistants and to the post of Superintendents respectively. Therefore, comparisons made out by the petitioners to grant grade pay attached to the post of Laboratory Assistant itself are untenable.



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6.The learned Additional Advocate General for the respondents 1

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to 3 reiterated that considering the fact that there is no promotional avenue for the post of Laboratory Assistant, the Government granted Selection Grade and Special Grade in the higher scale of pay. The Grade Pay was fixed as one time measure. However, the said Grade Pay is applicable so long as the petitioners continue in the post of Laboratory Assistants and once they are promoted to the higher post, then their pay was protected in the higher post and they are not entitled to claim the Grade Pay attached to the post of Laboratory Assistants. This apart, after promotion to the post of Junior Assistants/Typists and Assistants and Superintendents, pay protection was given to all the petitioners. Now, they have received the benefits attached to the higher post also. Their promotions were effected even prior to 01.01.2006. Thus, they cannot now claim the Grade Pay attached to the post of Laboratory Assistants in a higher post, which is totally irrelevant and not permissible with reference to the Government Orders in this regard.

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



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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



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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 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



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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".

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



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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 cater the said benefit even after getting further promotion to the post of Assistant and Superintendent.



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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



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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



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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.

18. Accordingly, all these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

05.07.2022

Index: Yes/No
Speaking/Non-speaking order.
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To

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Government of Tamil Nadu,
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Secretariat, Chennai - 600 009.
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S.M.SUBRAMANIAM, J.

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