



W.P.(MD)No.13256 of 2012

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.09.2022**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13256 of 2012

and

M.P.(MD)Nos.1 & 2 of 2012

G.Kothandaraman

... Petitioner

Vs.

1. The Block Development Officer,
Orathanadu,
Thanjavur District.
2. The District Collector,
Thanjavur District,
Collectorate, Thanjavur.
3. Director of Rural Development Authority,
Panagal Building, Saidapet,
Chennai – 600 018.
4. The Accountant General,
Office of the Accountant General (A&E),
Tamil Nadu,
261, Annal Salai,
Chennai -600 018.

... Respondents



W.P.(MD)No.13256 of 2012

WEB COPY

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the fourth respondent in PO3/1/303008g4/REV/2011-2012, dated 19.04.2011, quashing the same and directing the fourth respondent to revise the petitioner's last drawn pay as Rs.6,200/- instead of Rs.5,750/- and providing the petitioner with all the benefits including pension re-fixation, Pension Commutation, Commutes value of Pension, reduced pension, Death Cum Retirement Gratuity, Family Pension and other benefits and the Net Qualifying service of 28 years 11 months 18 days.

For Petitioner : Mr.S.K.Mani

For R1 to R3 : Mr.D.Farjanan Ghoushia
Special Government Pleader

For R4 : Mr.P.Gunasekaran

ORDER

This Writ Petition is filed to quash the impugned order, dated 19.04.2011 and consequently, directing the fourth respondent to revise the last drawn pay as Rs.6,200/- instead of Rs.5,750/- and to providing all the benefits including re-fixation, Pension Commutation, Commutes



W.P.(MD)No.13256 of 2012

value of Pension, Reduced Pension, Death Cum Retirement Gratuity, Family Pension and other benefits and the Net Qualifying service of 28 years 11 months 18 days.

2. The brief facts of the case as stated in the affidavit is that the petitioner was working as an Assistant in the Department of Rural Development and was promoted as an Extension Officer (Athi Dravida) on 31.08.1998. The petitioner's annual increment for the Assistant post fell on 01.10.1998. As per the Fundamental Rule 22(b) provides that the petitioner shall exercise option for fixing the pay in the lower post i.e., Assistant and the annual increment pay i.e., 01.10.1998 in the post of Assistant. The petitioner is eligible to get 5% of personal pay with effect from 01.09.1998 and the petitioner has exercised the option. Hence, the petitioner's pay was fixed as below:

- (a) Date of promotion as Extension Officer: 31.08.1998 A.N.*
- (b) Existing pay as on 01.09.1998 for the lower post:*
4000-100-6000
- (c) Add: 5% Personal pay as on 01.09.1998 in lower post: Rs.*
245/- (as per the option of the employee)
- (d) Pay after adding one regular increment as on 01.10.1998:*
Rs.5000+245=Rs.5,245/-



W.P.(MD)No.13256 of 2012

WEB COPY

Therefore, the petitioner's pay was fixed for the post of Extension Officer following Rule 22(b) as follows:

4. Then the petitioner pay was fixed for the post of Extension Officer following FR 22(b) as follows:

<i>(1) Pay as on 01.10.1998</i>	<i>Rs.5000+245 (P.P.) Rs.5,245.00</i>
<i>(2) Add:5% minimum benefit 5245x5/100</i>	
<i>(in the promoted post)</i>	<i>Rs. 262.25</i>

Rs.5,507.25

*(3) Pay to be fixed in the next stage in the scale of pay:
5600-5000-150-8000*

(4) Date of next increment : 01.07.1999

3. The petitioner has opted for voluntary retirement which was permitted by the second respondent, vide proceedings, dated 31.07.2002. Thereafter, the proposal for retirement benefits were forwarded to the fourth respondent.

4. The contention of the petitioner is that the fourth respondent ignoring the Fundamental Rule 22(b) reversed the entire process and has



W.P.(MD)No.13256 of 2012

denied the 5% personal pay and the increment fixed for the earlier post of Assistant was removed. The order of the fourth respondent dated 19.12.2002 has stated that the pay fixed with effect from 01.10.1998, allowing 5% with effect from 01.09.1998 was not in order and the petitioner is not eligible for the 5% personal pay, accordingly directed to recover the excess amount paid and to refix as per the eligibility criteria. Moreover, the date of next increment was held as 01.10.1998, 01.10.1999 and 01.10.2000 etc. The contention of the petitioner is that because of the option that he exercised within one month of the promotion to the post of Extension Officer, he became eligible for 5% personal pay and increment in the previous lower post as Assistant and consequently, the petitioner's next increment in the promoted post fell on 01.10.1998. The impugned order passed by the fourth respondent has declined the claim of the petitioner by ignoring the option that the petitioner has exercised and it is his right to get 5% personal pay by notionally keeping the petitioner in the Assistant post as per the option in Fundamental Right 22(b) for the purpose of this personal pay advantage. Then the next increment in the promoted post was fixed from



W.P.(MD)No.13256 of 2012

01.10.1998, but by mistake, 5% personal pay advantage upon the option exercised by the petitioner was ignored. This mistake has been calculated to the tune of Rs.4,658/- and entered in the service register and the impugned order directs the other respondents to recover the amount.

5. The fourth respondent has filed a counter stating that the petitioner while serving as Assistant was promoted on 01.09.1998 to the post of Extension Officer. On promotion, the petitioner exercised option for fixation of pay on the date of his next increment in the lower post of Assistant due on 01.10.1998. However, the first respondent at the time of fixing the pay had allowed 5% personal pay on the pay as on 01.09.1998 in the lower post and then fixed the pay under Fundamental Right 22(b) as follows:

Pay of the official as Assistant on 01.09.1998 -Rs.4900(4000-100-6000)

Pay fixed as per FR 22 (a)(i) on 01.09.1998 -Rs.5000+245(5%PP as per G.O.664)

Fixation on 01.10.1998 on the date of next increment in the lower post

*- Rs.5000+245+262.25
(minimum benefit of 5%)*

Regulation of = Rs.5507.25

Subsequent increment = Rs.5600(5000-150-8000)

Regulation of subsequent increments:



W.P.(MD)No.13256 of 2012

1.10.98-5750

1.10.99-5900

1.10.2000-6050

1.10.2001-6200

Voluntary retirement on 1.7.2002

Subsequently, the fourth respondent has detected the error in fixation of pay on promotion as Extension Officer and the same was informed to the first respondent to rectify the said mistake, vide letter, dated 19.12.2002. The mistake in fixation is pointed out by the fourth respondent is that the petitioner is not entitled to 5% personal pay as per G.O.Ms.No.664 Finance (Pay Cell), dated 01.08.1992, read with G.O.Ms.No.497 Finance, dated 15.09.1998. As per G.O.Ms.No.664, 5% personal pay is applicable in respect of only four categories of employees moving from pre-revised scale of pay as noted below:

		775-1030
1	475-775	950-1500
2	610-1075	975-1660
3	705-1230	1200-2040
4	905-1545	1600-2660



W.P.(MD)No.13256 of 2012

6. The petitioner as on 01.09.1998 was holding the post of Extension Officer and was drawing pay in the scale of 5000-150-8000 for which the pre-revised scale applicable was 1400-40-2600. Since the said scale of pay and pre-revised scale of pay does not fall under the four categories of scale of pay mentioned in G.O.Ms.No.664, the petitioner is not entitled to 5% personal pay. However, the same was granted to the petitioner and hence, the fourth respondent has directed to recover the same.

7. The learned Counsel appearing for the fourth respondent submitted that the petitioner is entitled to annual increment in the post of Assistant. However, in the meanwhile, the petitioner was promoted to the post of Extension Officer. In such circumstances, Fundamental Rules 22(b) is applicable and petitioner has exercised option and thereafter, the scale of pay was fixed after including the said increment which is applicable to the post of Assistant. However, the petitioner is not entitled to the benefits of G.O.Ms.No.664, which is exclusively granted to the post of Assistants, who are drawing the scale of pay as mentioned



W.P.(MD)No.13256 of 2012

in G.O.Ms.No.664. Therefore, the respondents prayed to dismiss the writ petition.

8. The first respondent has also filed a counter affidavit and reiterated the contents stated in the counter affidavit filed by the fourth respondent.

9. Heard Mr.S.K.Mani, the Learned Counsels appearing for the petitioner, Mrs.D.Farjanan Ghoushia, the Learned Special Government Pleader appearing for 1 to 3 respondents and Mr.P.Gunasekaran, the Learned Counsel appearing for 4th respondent and perused the records.

10. The issue raised in this writ petition is that whether the petitioner is entitled to scale of pay and personal pay that is applicable in the post of Assistant. The petitioner was promoted from Assistant to the post of Extension Officer on 31.08.1998. The petitioner is entitled to the “Annual Increment” for the post of Assistant which is due on 01.10.1998. Since the petitioner was promoted just two months before

9/21



W.P.(MD)No.13256 of 2012

the date of annual increment, the petitioner has an option under Rule 22(b) of the Fundamental Rules to fixing the annual increment in the scale of pay in the lower post on the date of i.e. 01.10.1998. The petitioner would be benefited by such annual increment along with the promotion. The petitioner has exercised the said option, and the pay after adding regular increment of Rs.245/-, petitioner's salary was fixed as on 01.10.1998 is Rs.5000+245. There is no dispute between the petitioner and the respondents for the increase in scale of pay along with increment.

11. The issue raised by the petitioner is to add 5% personal pay as on 01.09.1998 in lower post for Rs.245/-. The claim of the petitioner is that the petitioner was promoted to the post of Extension Officer on 31.08.1998 and benefits of personal pay of 5% was fixed from 01.09.1998 i.e. the very next day after his promotion. The petitioner submits that for applicability of the personal pay to the post of Assistant, the petitioner has every right to exercise option as stated in the Fundamental Rules 22(b). However, the respondents denied the claim stating that the option granted under Fundamental Rules 22(b) is



W.P.(MD)No.13256 of 2012

applicable to the scale of pay by taking the annual increment. The said option cannot be applied for granting personal pay, since the personal pay is attached to the said post alone. In other words, the personal pay attached to the post of Assistant cannot be granted as personal pay to the post of Extension Officer and the fourth respondent relied on G.O.Ms.No.644, Finance (Pay Cell), dated 24.08.1992. The personal pay was granted exclusively for the categories of staff where the pre-revised scale of pay is mentioned in the said Government Order. Moreover, the said Government Order also states that the personal pay is sanctioned under exceptional circumstances as one-time transitional measure for the categories in the specified scales. The relevant portion of the said G.O.Ms.No.664, Finance Department is extracted hereunder:

GOVERNMENT OF TAMIL NADU

FINANCE (PAY CELL) DEPARTMENT

G.O. Ms. No.664 Dated : 24.08.1992

Read :

- 1. G.O. Ms. No. 6666, Finance (Pay cell) Department, dated 27-6-1989.*
- 2. G.O. Ms. No. 451, P & AR Department, dated 31-10-90*
- 3. G.O. Ms. No. 293, P & AR Department, dated 12-08-91*

11/21



W.P.(MD)No.13256 of 2012

4. G.O. Ms. No.595, Finance (Pay cell) Department, dated 01-8-92.

WEB COPY

Order: No.664, Finance (Pay Cell) Department dated 24th August 1992.

Based on the recommendations of the Fifth Tamil Nadu Pay Commission orders were issued in the Government order categories of posts in Government and local bodies. The Fifth Pay Commission's recommendations followed one basis principle that pay scales in the State may be brought in line with equivalent scales of pay in the Centre. This was a radical reform involving the change over from about 17 scales in the state to 25 Central Scales of pay. Further the old scheme of selection Grade and special grade was dispensed with and a new scheme introduced. Since the guiding principles was to move over to equivalent Central scales of pay some consequent changes in horizontal relativities which prevailed in the state were inevitable.

2. The main grievance has been voiced by Record Clerks, Junior Assistants, Assistants and Superintendents. Their case was referred to the official committee constituted in the Government Order second read above. Orders were issued on the report of the Committee in the Government Order fourth read above. In these orders the request for further revision of scales of pay by the ministerial staff categories has been rejected. Instead a scheme of promotions for the ministerial staff on a rationalized basis has been announced. Government has also made its intention clear that the guiding principle of the fifth Pay Commission's recommendations namely to move over to central scales of pay will be adhered to Various Government Employees' Associations have continued to urge the Government that at least some alternative means should be found to redress their main grievance namely that certain comparable categories prior to the Fifth Pay Commission have moved to higher scales of pay. In Making a major transition to the new pay scale system as incorporated in the Central scales of pay some difficulties are inevitable. The effort should be to iron out such difficulties without disturbing the realization of the main objective to shift to Central scales of pay.

3. The issues involved have been further discussed with the various Employees' Associations. They have accepted the position that any further scale revision would not be possible in view of the change over to Central



W.P.(MD)No.13256 of 2012

scales of pay. At the same time they have requested the Government to extend some means of alleviating and compensating their relative change in emoluments. After detailed discussions, it has been agreed upon that the Government will not accept any plea for further revision of scales of pay beyond the equivalent Central Scales of pay. Hence there shall be no further revision of scales of pay of all categories in the new scales of pay namely Rs. 775 – 1030, Rs.950 – 1500, Rs.975 – 1660, Rs.1200 – 2040 and Rs.1600 – 2660. These scales for the categories therein are therefore treated as final and firmly settled.

4. At the same time the plea of these employees for Government to extend some sympathetic consideration has been taken note of Government consider that these categories should be positively motivated in undertaking important items of work entrusted to them. Further job responsibilities of these categories require due recognition. Keeping in mind the importance of the job responsibilities attached to the categories in these scales of pay and the need to positively motivate these categories to undertake their responsibilities, Government have decided to grant a personal pay at five percent of the basic pay to all categories of staff in the following scales of pay. Government accordingly direct that five percent of the basic pay computed as on 01-8-92 be granted as personal pay to the following:-

- i) All categories of staff in the pre revised scales of pay at Rs.475 – 775 moving over to the revised scale of pay of Rs.775 – 1030.
- ii) All categories of staff in the pre revised scale of pay of Rs.610 – 1075 moving over to the revised scale of pay of Rs. 950 – 1500 or Rs.975 – 1660.
- iii) All categories of staff in the pre-revised scale of pay of Rs.705 – 1230 moving over to the revised scale of pay of Rs.1200 – 2040, and
- iv) All categories of staff in the pre-revised scale of pay of Rs.905 – 1545 moving over to the revised scale of pay of Rs.1600 – 2660.

5. The personal pay is sanctioned under exceptional circumstances as an one time transitional measure for all the categories in the specified scales. It will apply also to the employees in the revised selection Grade and Special Grade of these categories. The personal pay will be computed as on 01-08-92 and will be continued as such in the event of promotion within these categories. The fraction of personal pay shall be rounded off to the nearest rupee (ie), 50 paise and above shall be treated as a rupee and below 50 paise shall be



W.P.(MD)No.13256 of 2012

ignored. It will not apply to any promotion beyond the scale of pay of Rs.1600 – 2660. This personal pay will be absorbed in the fitment procedure evolved whenever the next pay commission is constituted. There shall be no entitlement for this personal pay from any other categories in any other scale. This scheme of personal pay is exclusive to the specified scales of pay keeping in mind the job responsibilities attached to the categories in these scales of pay.

6. These orders shall also apply to the employees of local bodies and non-teaching staff of aided educational institutions.

7. These orders shall take effect from 1st August, 1992.

(By order of the Governor)

*N. NARAYANAN,
Secretary to Government.*

12. The fourth respondent has also relied on G.O.Ms.No.497, Finance Department, dated 15.09.1998, wherein, it has been stated that 5% personal pay was recommended to the post of Record Clerks, Junior Assistants, Assistants and Superintendents. It has also been specifically stated that personal pay shall not be applied to any promotions beyond the scale of pay of Rs.5500-9000. It has also been specifically stated that there shall be no entitlement for this personal pay from any other category in any other scale. This scheme of personal pay is exclusive to



W.P.(MD)No.13256 of 2012

the specified scales of pay, keeping in mind, attached to these categories as laid down in the G.O.Ms.No.664. The relevant portion of the G.O.Ms.

No. 497 is extracted hereunder:

FINANCE (PAY CELL) DEPARTMENT

GO. (Ms) No. 497 Dated: 15.09.1993.

Read:

- 1. G.O. Ms. No. 664, Finance (PC) Department, Dated : 24-8-92.*
- 2. G.O. Ms. No. 873, Finance (PC) Department, Dated : 27-12-93.*
- 3. G.O. Ms. No. 162, Finance (PC) Department, Dated : 13-4-98.*
- 4. G.O. Ms. No. 170, Finance(PC) Department, Dated: 21-4-98.*

ORDER :

The One Man Commission constituted in the Government Order fourth read above, to examine the anomalies, if any, in the implementation of revised scales of pay among other things, has recommended revision of scale of pay of Teachers on par with Central Government Teachers. Accordingly, the Government has issued orders revising the pay scales of teachers. Further, the One Man Commission taking into account the representations made by various Associations to revise the scales of pay of Ministerial categories for the reason that wide difference had crept in between the pay scales of Teachers and Ministerial categories while adopting Central Scales of pay, has recommended for grant of 5% of pay as personal pay to Record Clerks, Junior Assistants, Assistants and Superintendents. Representations have also been made by certain Associations requesting improvement in the pay scales of Ministerial categories or for grant of 5% of pay as personal pay.

- 2. The Government has carefully examined the representations of*

15/21



W.P.(MD)No.13256 of 2012

Associations of employees in the light of the recommendations of the One Man Commission. The Government, after taking note of the fact that the Ministerial categories have already been granted with appropriate Central scales of pay, consider that any further revision of scales of pay will distort the pay structure already evolved. Therefore, Government has decided to grant personal pay at the rate of 50% of basic pay as on 1-9-98 as an alternative benefit to all categories of employees who have been granted with 5% personal pay prior to 1-1-96 in the pre-revised scales of pay as ordered and modified in the Government Orders first and second read above.

*3. The personal pay is sanctioned as one time benefit and shall not be altered once fixed as on 1-9-98 in the event of promotion/reversion and movement to Selection Grade/Special Grade. It will apply also to the employees in the Selection Grade and Special Grade of the respective categories. The personal pay will be computed on basis pay only as on 1-9-98. The fraction of personal pay shall be rounded off to the nearest rupees (i.e.) 50 paise and above shall be treated as a rupee and below 50 paise shall be ignored. **The personal pay shall not apply to any promotion beyond the scale of pay Rs. 5500-9000.** The personal pay shall be considered as pay for all purposes such as Pension, Dearness Allowance, House Rent Allowance and City Compensatory Allowance **There shall be no entitlement for this personal pay from any other category - in any other scale. This scheme of personal pay is exclusive to the specified scales of pay, keeping in mind the job responsibilities attached to these categories as laid down in the Government Order first read above.***

4. These orders shall also apply to the employees of Local Bodies and non-teaching staff of Aided Educational Institutions.

5. These orders shall take effect from 1st September, 1998.

(By order of the Governor)



WEB COPY



W.P.(MD)No.13256 of 2012

*GIRIJA VAIDHYANATHAN,
Special Secretary to Government*

13. On perusal of the Government Order and the rival submissions, this Court is of the considered opinion that personal pay is attached to the said posts stated in the G.O.Ms.No.664 alone. Also the personal pay is not applicable to any scale of pay apart from scales of pay mentioned in the G.O.Ms.No.664. The petitioner's scale of pay in the pre revised scale of pay is Rs.4900/- and this scale of pay is not mentioned in the said G.O.Ms.No.664. Therefore, this Court is of the considered opinion that the petitioner is not entitled to the personal pay as per G.O.Ms. No. 664.

14. The contention of the petitioner is that since the petitioner has assumed the promoted post as Extension Officer the next day of granting personal pay, the petitioner is having an option to exercise under Fundamental Rules 22 (b). The respondents replied that such option is



W.P.(MD)No.13256 of 2012

eligible for fixing the scale of pay after granting annual increment and the petitioner has exercised the option and availed the increment that would be applicable in the lower post. The respondents further replied that such option is not applicable for personal pay, since the personal pay is attached to certain post along with certain conditions. In the present case the said two Government Orders, G.O.Ms.No.664 and G.O.Ms.No. 497 specifically states that it is one time measure granted to the said post, said scale of pay and it has also specifically denied the personal pay for any other scale of pay. The petitioner's scale of pay is not within the scale of pay mentioned in the said G.O.s In such circumstances, the claim of the petitioner to grant personal pay by exercising option granted under Fundamental Rules 22(b) is erroneous and will never arise. Therefore, this Court is of the considered opinion that the fourth respondent is absolutely right in declining the personal pay granted under G.O.Ms.No. 664.

15. The learned Counsel for the petitioner submitted that in counter in para 3, the respondents stated that the petitioner is eligible to



W.P.(MD)No.13256 of 2012

exercise the option, but in para 5 of the counter, it is stated that the petitioner cannot exercise option. On perusal of the counter, this Court is of the considered opinion that the petitioner has misunderstood the counter. The fourth respondent has categorically stated that the petitioner is eligible to exercise option only for the “**scale of pay**” and not eligible to exercise option for “**personal pay**”. There is no discrepancy in the counter and hence, the contention of the petitioner is rejected.

16. The learned Counsel for the petitioner submitted that since the petitioner has retired from service and is aged about 67 years and hence, the respondents cannot recover the amount which is already paid to the petitioner. It is seen that while admitting this writ petition, this Court has granted an interim order not to recover the amount. This Court is of the considered opinion that the mistake committed by the respondents in wrongly granting 5% personal pay applicable to the post of Assistant and the petitioner has not misrepresented. Therefore, the amount already granted cannot be recovered. However, the respondents shall re-fix the



W.P.(MD)No.13256 of 2012

amount as per the impugned order.

WEB COPY

17. With the above said direction, this Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

05.09.2022

Index : Yes / No
Internet : Yes / No
jbr

To

1. The Block Development Officer,
Orathanadu,
Thanjavur District.
2. The District Collector,
Thanjavur District,
Collectorate, Thanjavur.
3. Director of Rural Development Authority,
Panagal Building, Saidapet,
Chennai – 600 018.

20/21



WEB COPY



W.P.(MD)No.13256 of 2012

S.SRIMATHY, J

jbr

4. The Accountant General,
Office of the Accountant General (A&E),
Tamil Nadu,
261, Annal Salai, Chennai -600 018.

Order made in
W.P.(MD)No.13256 of 2012

05.09.2022