BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.1270 & 1337 of 2020
and
W.M.P.(MD)No.1083 of 2020

R.Chamundeeswari ... Petitioner in W.P.(MD)No.1270 of 2020

R.Lakshmi @ Saradha ... Petitioner in W.P.(MD)No.1337 of 2020

Vs.

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

2.The District Collector,
Ramanathapuram District.

3.The District Revenue Officer,
Office of Collectorate,
Ramanathapuram District. ... Respondents in both W.Ps.

Common 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 pertaining to the impugned order of the second respondent in O.Mu.H.1/40430/2019, dated 24.10.2019 and quash the same and direct the respondents herein to fix the petitioner's salary by granting the fitment benefit from 05.08.2009 onwards as per G.O.Ms.No.340, dated 26.08.2010.

For Petitioner : Mr.Porkodi Karnan
for M/s.Polax Legal Solutions

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader
(in both W.Ps)

COMMON ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents.

2. The writ petitioners are presently working as Typists in the Revenue Department / PWD department. TNPSC issued recruitment Notification No. 135 of 2007, dated 15.11.2007 calling for applications for the post of Typists and Steno Typists. The writ petitioners applied in response to the same. They wrote the written examination on 27.01.2008. They were selected and their names found place in the list of selection candidates published on 07.11.2008. They participated in the certificate verification held in December 2008. However, they were issued with appointment orders only in July / August 2009. They joined duty few days after receiving the appointment orders. The petitioners claimed that their pay fixation was not properly done.

According to them, they were denied the benefit of G.O.Ms.No.340, Finance (Pay Cell) Department dated 26.08.2010. They therefore submitted representations to the Collector. Some of the writ petitioners filed the writ petitions before this Court for directing consideration of their representations. Pursuant to the direction given by this Court on 10.03.2021, the Collector considered the writ petitioners' representation but rejected the same vide G.O.Ms.No.250 dated 03.11.2021. The said rejection order is put to challenge in these writ petitions.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petitions and submitted that the impugned G.O should be set aside and the writ petitions should be allowed as prayed for.

4. The respondents have filed a detailed counter affidavit. The learned Additional Advocate General appearing for the respondents took me through the averments set out therein.

5. His primary contention is that the cutoff date is 01.06.2009 and that the writ petitioners received the appointment orders only thereafter and that therefore, they are not entitled to the benefit of G.O.Ms.No.340, Finance (Pay

Cell), Department, dated 26.08.2010. He also placed heavy reliance on the order dated 05.07.2022 made in W.P.No.10546 of 2014. He pressed for dismissal of these writ petitions.

6. I carefully considered the rival contentions and went through the materials on record.

7. The entire issue arose on account of the belated implementation of the 6th Pay Commission Recommendations by the Government of Tamil Nadu. The Tamil Nadu issued orders for implementation of the 6th Pay Commission Recommendations only on 01.01.2009. It was come into force on 01.01.2006. This gave rise to certain pay anomalies. In order to rectify the same, One Man Commission was appointed. Orders were issued in terms of the said One Man Commission also. Three G.Os are relevant namely G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, G.O.Ms.No.258, Finance (Pay Cell) Department, dated 23.06.2009 & G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010. G.O.Ms.No.234 dated 01.06.2009 is the order implementing the revised scales of pay and allowances. G.O.Ms.No.258 dated 23.06.2009 endeavored to rectify the anomalies. To that effect, the following amendment was made:-

> **(9) Fixation of pay of employees appointed on or after 01.01.2006**
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> Fixation of pay in the revised pay structure of employees appointed as fresh recruits on or after 01.01.2006 and before 01.06.2009, their pay in the revised pay structure shall be fixed as per Rule 4(1) above with effect from the date of their joining service.

Notwithstanding the aforesaid amendment, the issues of pay anomalies still remained. To set right the same, One Man Commission was appointed. G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010 was issued by the Government after examining the recommendations of the One Man Commission to rectify the anomalies pointed out by it. The operative portion is Paragraph No.4 and it reads as follows:-

> "4. The Government has carefully examined the above recommendations of the One Man Commission and decided to rectify the anomaly as pointed out by the One Man Commission. Accordingly, Government direct that in exercise of the powers conferred under Rule 13 of the Tamil Nadu Revised Scales of Pay Rules, 2009 relax the Rule-9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants / Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 01.06.2009 and joined / appointed on a subsequent date on or after 01.06.2009 due to administrative reasons duly allowing the fitment benefit to the individual employees concerned as a special case. However, the Government direct that the above fixation benefit shall be given notional effect from the date of appointment of the individual employees concerned with monetary benefit from 01.08.2010."

8. Though the learned Additional Advocate General would call upon this Court to interpret the aforesaid Paragraph No.4 in the light of the reasons set out in Paragraph No.3, I am of the view that the plain meaning of Paragraph No.4 must be given effect to. It is not as if the issue is cropping up for the first time before the High Court.

9. The learned counsel appearing for the petitioner drew my attention to a catena of decisions passed in this regard. One such decision is dated 22.10.2021 made in W.P.(MD)No.17859 of 2014. Paragraph Nos.9 & 10 of the said order reads as follows:-

> 9.It is true that the Government Order vide G.O.(Ms)No.340, Finance Department, dated 26.08.2010, was passed on the recommendation of One Man Commission to remove the pay anomaly in the case of Junior Assistants/Agricultural Officers, who were selected prior to 01.06.2009 and appointed on or after 01.06.2009. It is not in dispute in the present case that the petitioners also were selected prior to 01.06.2009 but appointed after 01.06.2009 due to administrative reasons. Therefore, in principle, the petitioners- claim that they should be treated on par with others, who were also selected in the same process of recruitment, appears to be lawful. It is the duty of Government to remove pay anomaly, if they have reasons to believe that the disparity was due to some administrative delay.
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> 10.The decision of Government in the case of Junior Assistants/Agricultural Officers is a formal expression of the policy of the Government in matters relating to re~fixation of salary on par with persons selected by the same process but appointed after a particular date due to administrative delay. Unless, there is a strong reason to treat a particular

category of cases differently the decision vide G.O.Ms.No.340, Finance Department, dated 26.08.2010, cannot be ignored and the Government cannot reject the case of others in other departments ignoring the decision already taken in respect of a class of people. In this case, the Government Order vide G.O.Ms.No.340, Finance Department, dated 26.08.2010, was on the basis of recommendation of One Man Commission to remove pay anomaly. When it is the duty of the Government to remove pay anomaly in exercise of its sovereign function, this Court is unable to find any justification in not applying the decision of Government vide G.O.Ms.No.340, Finance Department, dated 26.08.2010 in the case of petitioners. While extending the benefit of G.O.Ms.No.340, Finance Department, dated 26.08.2010, to several other persons, this Court in W.P.(MD)Nos.15375 to 15383 of 2013, by its order, dated 03.10.2019, observed that the benefit of G.O.Ms.No.340, Finance Department, dated 26.08.2010, should be extended to similarly placed persons.

10. It is true that a different note has been struck in the order dated 05.07.2022 in W.P.No.10546 of 2014 (Secondary Grade Seniority Teachers Association Rep. by its State General Secretary Vs. Secretary to Government). But the said writ petition was filed by an Association and there is nothing on record to show that the factual matrix that is obtaining in the said writ petition is similar or same as the one in the present batch of writ petitions.

11. The only issue that calls for consideration is this. Whether the writ petitioners were recruited / selected prior to 01.06.2009 by TNPSC. If the

answer is in the affirmative, the petitioners have to be given the benefit of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010. Even the respondents cannot dispute that the writ petitioners were selected prior to 01.06.2009. To be precise, all the writ petitioners were selected in November 2008. Therefore, I have no hesitation to follow the aforesaid decision relied on by the learned counsel appearing for the petitioners. That apart, Paragraph No. 6 of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010, makes the position fully clear. It is as follows:-

> (6) The above orders allowing fitment benefit is not applicable to the new recruits in whose cases the selection list have been issued by the Tamil Nadu Public Service Commission / Employment Exchange and consequent appointment orders issued by the Heads of Department after 01.06.2009 ie., after the date of issue of notification of the Tamil Nadu Revised Scales of Pay Rules, 2009, in the G.O first read above. In such cases, the new recruits are entitled to have their pay fixed only at the minimum of the Pay Band plus grade pay applicable to the respective posts.

12. It can be seen therefrom that the Collector wanted to deny the benefit of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010 only to those who were recruited and appointed after the cutoff date ie., 01.06.2009. Admittedly, the petitioners do not fall within the scope of Paragraph No.6. Therefore, the orders impugned in the writ petitions are set aside.

13. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.10.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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