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W.P(MD)Nos.5400 and 5410 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)Nos.5400 and 5410 of 2020
and

WMP(MD)Nos.4699, 4702, 14430 and 15319 of 2020

Muthulakshmi ... Petitioner
in W.P(MD)No.5400 of 2020
P.Petchiammal ... Petitioner
in W.P(MD)No.5410 of 2020
Vs

1.The Chief Educational Officer,
Office of the Chief Educational Officer,
Thoothukudi.

2.The Block Educational Officer,
Thoothukudi Rural,
Pudukottai, Thoothukudi.

3.Tamil Nadu Public Service Commission,
Omanthoorar Government Estate,
Anna Salai, Chennai - 600 002.

... Respondents in
W.P(MD)No.5400 of 2021

1.The Chief Educational Officer,
Office of the Chief Educational Officer,
Thoothukudi.

2.Tamil Nadu Public Service Commission,
Omanthoorar Government Estate,
Anna Salai, Chennai - 600 002.

... Respondents in
W.P(MD)No.5410 of 2021

[R3 in W.P(MD)No.5400 of 2021 &
R2 in W.P(MD)No.5410 of 2021]



W.P(MD)Nos.5400 and 5410 of 2020

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records relating to the impugned proceedings in Na.Ka.No.25/A1/2019 dated .02.2020 signed on 26.02.2020 issued by the first respondent and quash the same as illegal.

For Petitioner : Mr.V.R.Shanmuganathan

For Respondents : Mr.A.Kannan,
Additional Government Pleader
R1&R2 in WP(MD)No.5400 of 2020
and R1 in W.P(MD)No.5410 of 2020

: Mr.V.Panneer Selvam,
for
R3 in W.P(MD)No.5400 of 2020
and
R2 in W.P(MD)No.5410 of 2020

COMMON ORDER

These writ petitions are filed as against the orders dated 26.02.2020 passed by the first respondent the Chief Educational Officer, Thoothukudi.

2.Vide the orders impugned in these writ petitions, the first respondent cancelled the earlier orders dated 09.08.2018 and 18.09.2008 fixing the petitioners' scale of pay at 1.86 factor, revised the scale of pay and ordered for recovery of the excess amount paid to the petitioners.



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3.The petitioners were initially appointed through Tamil Nadu Public Service Commission [in Short TNPSC] as Typists and they are now working as Assistants in the School Education Department. The petitioners were selected in the year 2008, the allotment orders were issued only on 10.07.2009 by the TNPSC. In the year 2018 by proceedings dated 07.08.2018 and 26.10.2018 the petitioners scale of pay was revised. While so, proceedings dated 10.10.2019 were issued to the petitioners that their pay was fixed in excess and therefore, the petitioners were directed to remit the excess amount. The petitioners challenged the said proceedings in W.P(MD)Nos.22133 and 22136 of 2019 and this Court allowed the writ petitions by setting aside the orders of the first respondent with liberty to the respondents to pass fresh orders after issuing notice to petitioners and also considering their objection. In pursuance of the same, the first respondent vide impugned order reiterated her earlier stand that these petitioners are not entitled for pay fixation at 1.86 factor and has also cancelled the earlier orders and ordered for recovery from the petitioners.



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4.The learned Counsel for the petitioners submits that though the petitioners were appointed on 09.10.2009, the selection process was started in the year 2007, they were provisionally selected on 07.11.2008 itself and the certificate verification was also completed in the year 2008. However, due to administrative reasons, there was a huge delay in issuing appointment orders to these petitioners.

5.While so, the Government of Tamil Nadu formed one man Committee for revising the scale of pay and the Committee recommended the Government to extend the benefit to the new recruitees, those who are appointed between 01.01.2006 and 31.05.2009, which was provided in G.O.Ms.No.234 Finance (Pay cell) Department, dated 01.06.2009 and G.O.Ms.No.258 Finance (Pay Cell) Department, dated 26.08.2010.

6.These recommendations of the one man Committee was also extended by the Government and the Government has revised the scale of pay to the Junior Assistants / Agricultural Officers selected prior to 01.06.2009 and appointed after 01.06.2009 vide G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010.



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7.The learned Counsel further submits that in this regard the petitioners and other similarly placed persons made request to the Government to extend the benefit, which was provided to the similarly placed persons in the other departments. Subsequently the Deputy Secretary of Tamil Nadu Public Service Commission, Chennai in his proceedings in Letter No.5351/PSD/-A2/2018, dated 26.10.2018 clarified that the date of selection of a candidate for appointment to the post of Steno-Typist Grade III and Typist should be taken as 07.11.2008.

8.The learned Counsel also submits that it is only after taking note of the said clarification, the earlier pay was fixed by the first respondent on 07.08.2018 and now based on certain audit objections, without ascertaining the correct position, the first respondent cancelled the earlier pay fixation and ordered for recovery. These petitioners have also challenged the said proceedings in W.P(MD)Nos.22133 and 22136 of 2019 and this Court allowed the writ petitions on 21.10.2019 by setting aside the same with liberty to the respondents to pass fresh orders after issuing notice to petitioners and also



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considering their objections. But, without any reference to the objections raised by the petitioners and also without any reference to G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 and the clarification letter dated 26.10.2018, the first respondent has passed the impugned order and ordered for recovery.

9.According to the learned Counsel for the petitioners the benefits were extended to other departments like Medical Department, Agriculture Department, whereas Education Department alone is taking such a stand that these petitioners are not entitled for the scale of pay at 1.86 factor.

10.The learned Additional Government Pleader appearing for the first respondent based on the counter affidavit filed by the first respondent submits that the petitioners were provisionally selected for recruitment as per intimation order dated 10.07.2009, i.e., after 01.06.2009 as per Memo No.4310/PSD-A/2007 dated 10.07.2009 of the Under Secretary of the Tamil Nadu Public service Commission Therefore as per para 6 of G.O.Ms.No.340 Finance (Pay Cell)



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Department dated 26.08.2010, the petitioners are not entitled to fix their pay as per fitment benefit of G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009. Hence, cancellation of earlier defective orders vide the impugned orders is correct. The petitioners claim that they were provisionally selected in the year 2008, appointment orders were issued after 01.06.2009 due to administrative reasons of the TNPSC. The one man Committee, which examined the disparity in the pay of Junior Assistants / Agricultural Officers recruited by the TNPSC in March 2009 and May 2009 and who joined after 01.06.2009, recommended compensation of monetary loss incurred by the employees by relaxing Rule 9 of the Tamil Nadu Revised Scales of Pay Rules 2009 in favour of the incumbents. On the request of the similarly placed persons, the Government vide G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010 has passed the order 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.



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Accordingly, the Government direct that in exercise of the powers conferred under Rule-13 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 dated 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, 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."

11.The petitioners have also relied on the clarification issued by the Tamil Nadu Public Service Commission, dated 26.10.2018 to the Director of Medical Education, Chennai - 600 010, which reads as follows:

"I am directed to invite kind attention to the reference cited and to state that a commission had approved the list of candidates



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selected for both the posts of Typist and Steno-Typist, Grade-III included in Group IV Services, selection for the year 2006-2007. Subsequently and the candidates selected for the post of Typist and Steno-Typist were allotted Unit Wise and the Unit Wise allotment list for the post of Typist and Steno - Typist Grade-I were published on 10.07.2009 and 02.06.2009 respectively. Accordingly the Unit Wise allotment letters were forwarded to the HODs / Unit Officers concerned for issuing appointment orders.

I am therefore directed to clarify that the date of selection candidates for appointment to the post of Steno-Typist Grade-II and Typist should be taken 07.11.2009 and the copy of the selection list may be obtained from the Director of Medical and Rural Health Services."

12.A reading of the above provisions reveal that in the selection process there was a delay in issuing appointment orders on administrative reasons and therefore, the benefits were extended to the individual concerned as a special case. Hence, the petitioners claim that they are also entitled for such benefits.



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13.Considering G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, the first respondent fixed the scale of pay in the year 2018. However, the first respondent without issuing any notice to the petitioners, passed an order that the petitioners are not entitled for the pay fixation at 1.86 factor as per fitment benefit and also ordered for recovery of the excess amount paid to them. Challenging the said orders the petitioners filed writ petitions in W.P(MD)Nos.22133 and 22136 of 2019, this Court allowed the writ petitions by setting the said orders and granted liberty to the respondents to pass orders afresh after considering the objections of the petitioners. However, the respondents without appreciating G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 and without even getting any clarification from the Tamil Nadu Public Service Commission, rejected the objections of the petitioners that they are not entitled for the benefit.

14.Though the first respondent has relied on paragraph No.6 of the Government Order in G.O.Ms.No.340 Finance (Pay Cell) Department



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dated 26.08.2010, the impugned orders came to be passed without verifying the preceding paragraphs of the said Government Order. The first respondent has also stated in the Counter affidavit that the said selection process of the Tamil Nadu Public Service Commission is not covered in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010.

15.It appears that the impugned order has been passed without verifying the applicability of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 and without verifying the clarification letter dated 26.10.2018 and not even discussing the same in the impugned order.

16.In the light of the above discussion, these writ petitions are allowed and the matter is remitted back to the first respondent to take a decision afresh after obtaining clarification from TNPSC based on the paragraph Nos.4 to 6 of the Government Order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 as expeditiously as possible. No costs.



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Consequently, connected miscellaneous petitions stand closed.

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Index : Yes / No
Internet : Yes / No

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Chief Educational Officer,
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B.PUGALENDHI , J.

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