



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.1033 of 2019

and

WMP(MD)No.14904 of 2019

D.Usharani

... Petitioner

Vs.

1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.

2.The Chairman,
Board of Trustee,
Gandhigram Institute of Rural Health
and Family Welfare Trust,
Soundaram Nagar,
Ambathurai,
Gandhigram Post - 624 302,
Dindigul District.

3.The Director,
Gandhigram Institute of Rural Health
and Family Welfare Trust,
Soundaram Nagar,
Ambathurai,
Gandhigram Post - 624 302,
Dindigul District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the Respondents 2 and 3 to grant 5% basic pay as personal pay to the petitioner in the cadre of Steno-Typist, based on G.O.Ms.No.143 Finance (Pay Cell) Department, dated 03.06.2014 and to revise the salary of the petitioner accordingly and pay the arrears consequent upon such re-fixation of salary, within a specified time frame that may be fixed by this Court.



For Petitioner :Mr.G.Kannan
For M/s.Veera Associates

For Respondent-1:Mr.D.Sadiq Raja
Addl.Govt.Pleader

For R2 & R3 :Mr.V.Karthikeyan
For Mr.V.Vijayasankar

O R D E R

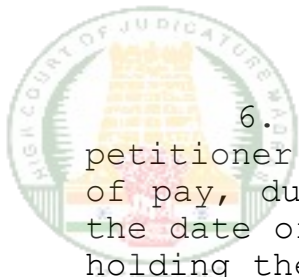
As per the amended prayer, the petitioner seeks a direction to direct the respondents 2 and 3 to grant 5% basic pay as personal pay in the cadre of Steno-Typist, based on G.O.Ms.No.142, Finance (Pay Cell) Department, dated 03.06.2014 and revise the salary of the petitioner and pay the arrears consequent upon such re-fixation of salary.

2. The petitioner was an employee of the 3rd respondent Gandhigram Institute of Rural Health and Family Welfare Trust. She was working as Office Superintendent and retired from service on 31.03.2017 on attaining the age of superannuation. The petitioner states that she is eligible for 5% personal pay granted by the Government of Tamil Nadu for the post of Steno-Typist.

3. The learned counsel for the petitioner states that as far as the pay and allowances of the 3rd respondent Institute is concerned, the scale of pay for which expenditure is met out by the grants of the Government shall be as prescribed by the Government of Tamil Nadu.

4. Pertinently, the Rule specifically states that the scale of pay for the post for which expenditure is met out by the grants of the Government of Tamil Nadu. Therefore, only in respect of the post where the expenditure is met out from the grants of the State Government, then alone the State Government Pay would be applicable and not in respect of other posts, which are all created under the Rules constituted by the 3rd respondent or otherwise.

5. It is not made clear whether the post of Office Superintendent, which was held by the petitioner, was falling under the above Rule and the grants are sanctioned by the State Government or not. This apart, the 5% personal pay was granted to the Tamil Nadu State Government employee to rectify the pay anomaly in the 5th Pay Commission, which was given effect to from 01.06.1988.



6. There is an enormous delay on the part of the writ petitioner in claiming the 5% personal pay after several revisions of pay, due to implementation of subsequent Pay Commission. As on the date of filing of the writ petition, the petitioner was not even holding the post of Steno-Typist. She has holding the post of Office Superintendent. Therefore, she has not claimed the 5% personal pay, which was specifically granted for the post of Stenographers/Typist working in the State Government.

7. The learned counsel for the petitioner relied on the Government Order passed by the State Government in G.O.Ms.No.143, Finance (Pay Cell) Department, dated 03.06.2014. However, the said Government Order was issued pursuant to the orders passed by the Hon'ble High Court in batch of writ petitions, which were filed in the year 2007, 2010 etc., However, the 5% personal pay to the Steno-Typist Grade-III was granted as on 01.08.1992 and 01.09.1998. Therefore, any Government Orders passed subsequently based on the Court orders cannot provide a fresh cause of action for the writ petitioner to claim the 5% personal pay and such chain cannot be created by the litigant for the purpose of creating the cause of action. The original cause of action arose soon after the Pay Commission. Government Orders are implemented in the year 1998 itself. Several litigations were filed subsequently and based on the Court order, G.O.Ms.No.143 was passed and based on the said Government Order, the petitioner cannot claim at latter point of time. In any event, as on the date of the claim, the petitioner was not holding the post of Steno-Typist. She was further promoted to the post of Office Superintendent and retired from service. The writ petition itself was filed after attaining the age of superannuation.

8. The learned counsel for the 3rd respondent made a submission that the 3rd respondent is an autonomous organization under the control of Government of India, Ministry of Health and Family Welfare. Therefore, the claim of the writ petitioner cannot be considered by the 3rd respondent. However, the representation submitted by the petitioner was forwarded to the Government of India, Ministry of Health and Family Welfare for clarification. Thus, if at all any clarification is issued by the Government of India, the claim of the petitioner will be considered on merits and in accordance with law.

9. In view of the stand taken by the 3rd respondent, this Court is of the opinion that the relief as such sought for to grant 5% personal pay cannot be granted and the petitioner is at liberty to pursue the matter before the Ministry of Health and Family Welfare for getting appropriate clarification. In the event of getting any such clarification and if such clarification is in favour of the petitioner then appropriate relief need to be granted.



10. With these observations, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

MPK

To

1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.

2.The Chairman,
Board of Trustee,
Gandhigram Institute of Rural Health
and Family Welfare Trust,
Soundaram Nagar,
Ambathurai,
Gandhigram Post - 624 302,
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3.The Director,
Gandhigram Institute of Rural Health
and Family Welfare Trust,
Soundaram Nagar,
Ambathurai,
Gandhigram Post - 624 302,
Dindigul District.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-5253[F] dated 10/02/2022)

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-5269[F] dated 10/02/2022)

+1 CC to M/s.SPL GP (SR-5375[F] dated 10/02/2022)

W.P. (MD)No.1033 of 2019
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MK/01.03.2022/4P/7C