



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2022

DELIVERED ON : 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.3979 of 2019

W.M.P(MD).Nos.3078 & 3079 of 2019

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A.Kannan

...Petitioner

/Vs./

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2.The State of Tamil Nadu,
Rep.by its Secretary,
Department of Finance (Pay Cell),
Fort St.George, Chennai-600 009.

3.The Accountant General,
Office of the Accountant General,
261, Anna Salai, Chennai-600 018.

4.The Chief Educational Officer,
Madurai, Madurai District.

5.The District Educational Officer,
Melur Madurai District.

...Respondents

Cause title is amended as per the order of this Court dated 12.04.2022 in W.M.P(MD).No.18949 of 2021 in W.P(MD).No.3979 of 2019

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent Accountant General in Pr AG (A&G) PEN / P09 / 10915026 /1/ R0914346 dated 23.12.2016 and the proceedings issued by the 5th respondent District Educational Officer, Melur in Na.Ka.No. 3489 / A1/ 2016 dated --. 02.2017 (signed on 01.03.2017) quash the same and further direct the respondents 3 to 5 herein to restore the earlier Selection Grade Scale of pay of the petitioner in Pay Band Rs.9300-34800+GP4200 and to sanction and disburse forthwith the retirement benefits due to the petitioner on the basis of the Last Drawn Pay received by the petitioner at the time of his retirement I.e., 30.06.2016 and to repay Rs.3,02,148/- paid to the respondents by the petitioner with interest at the rate of 8%.



For Petitioner
For Respondents

: Mr.T.Cibi Chakraborty
: Mr.G.V.Vairom Santhosh
Additional Government Pleader
for RR1 and 2, 4 and 5
Mr.P.Gunasekaran for R3

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ORDER

The writ on hand has been instituted to call for the records relating to the impugned proceedings issued by the 2nd respondent Accountant General 23.12.2016 and the proceedings issued by the 5th respondent District Educational Officer, Melur in Na.Ka.No. 3489 / A1/ 2016 dated --.02.2017 (signed on 01.03.2017), quash the same and direct the respondents 3 to 5 herein to restore the earlier Selection Grade Scale of pay of the petitioner in Pay Band Rs.9300-34800+GP4200 and to disburse forthwith the retirement benefits due to the petitioner on the basis of the Last Drawn Pay received by the petitioner at the time of his retirement (i.e.) 30.06.2016 and to repay Rs.3,02,148/- paid to the respondents by the petitioner with interest at the rate of 8%.

2. The petitioner has joined as Watchman in Government Higher Secondary School on 03.04.1980. He was posted as Office Assistant on 03.06.1987. He was promoted to the post of Record clerk on 04.02.1988. On 04.01.1989, the petitioner was promoted to the post of Lab Assistant and thereafter, granted selection grade in the post of Lab Assistant with effect from 04.01.1999. Admittedly, further promotion was granted to the petitioner to the post of Junior Assistant on 30.03.2002 and finally, he was promoted to the post of Assistant and selection grade was granted in the post of Assistant. While so, the petitioner states that the grade pay of Rs.4,200/- is to be sanctioned with reference to his date of retirement on 30.06.2016. Admittedly, the petitioner reached the age of superannuation on 30.06.2016 and filed the writ petition in the year 2019 questioning the grade pay fixed by the respondents.

3. The learned counsel appearing for the petitioner mainly contended that as per G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, the grade pay is to be fixed in the selection grade and special grade and accordingly, the petitioner is entitled for the grade pay of Rs.4,200/-, instead of Rs.2,800/-.

4. The Principal Accountant General of Tamil Nadu raised an objection that the petitioner is not eligible for the grade pay of Rs.4,200/-, since he was holding the post of Junior Assistant as on 31.02.2005 and therefore, the petitioner is eligible for the grade pay of Rs.2,800/- on promotion to the post of Assistant with effect from 01.01.2011. Accordingly, the audit objection states that the grade pay of Rs.2,800/- is to be granted to the petitioner. Pursuant to the audit objection, the Authorities have initiated action, issued the order for re-fixing the grade pay and imposed recovery.



In view of the fact that the petitioner reached the age of superannuation on 30.06.2016, the excess amount is directed to be recovered from the terminal and retirement benefits.

5. The respondents have stated that the service particulars of the petitioner reveal that he was appointed as Watchman on 03.04.1980 and thereafter, he was promoted as Office Assistant on 03.06.1987. Again, he was promoted as Record Clerk on 04.02.1988. The petitioner was further promoted as Lab Assistant on 04.01.1989 and on completion of 10 years of service in the post of Lab Assistant, he was awarded selection grade in the post of Lab Assistant with effect from 04.01.1999 (Rs.4,000-100-6000). The petitioner was further promoted to the post of Junior Assistant with effect from 30.03.2002 in the scale of pay of (Rs.4,000-100-6000). The petitioner was promoted to the post of Assistant on 09.09.2010 and he was allowed to retire from service on 30.06.2016.

6. The issue regarding the fixation of grade pay on similar circumstances was considered by this Court in a batch of writ petitions in W.P(MD)No.16379 of 2014 etc., on 08.12.2020 and the relevant paragraphs are extracted hereunder:-

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 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 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.

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.

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 precedent so as to claim the Grade Pay attached to the post of Laboratory Assistants, even after getting promotion, further to the post of Assistant.



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 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.

17. 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 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, then they are at liberty to approach the competent authority for the purpose of enhancement of their pay on par with their juniors.

18. 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 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.

7. The facts and circumstances of the present writ petition are also on the same line in respect of the orders cited supra. In view of the facts and circumstances, this Court do not find any infirmity as such in respect of the order of re-fixation made in accordance with the Pay Rules and based on the findings of the Principal Accountant General of India.

8. Accordingly, the Writ Petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai-600 009.

2.The Secretary,
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5.The District Educational Officer,
Melur, Madurai District.

+1 CC to M/s.T. CIBI CHAKRABORTHY, Advocate (SR-19628[F] dated 20/04/2022)

+1 CC to M/s.SPL.GP (SR-20143[F] dated 21/04/2022)

W.P. (MD) No.3979 of 2019
20.04.2022

MGJ(17.05.2022) 6P 8C