



W.P.(MD).No.15647 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15647 of 2016

and

W.M.P(MD)Nos.11499 & 11500 of 2016

S.Jeevarathinam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Rural Development & Panchayatraj,
Secretariat,
Chennai.

2.The State of Tamil Nadu,
Represented by its Joint Secretary to Government,
Finance (Pay section) Department,
Secretariat,
Chennai.

3.The District Collector,
Theni District,
Theni.

4.The Personal Assistant to District
Collector (Development),
Collectorate,
Theni,
Theni District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order issued by the 2nd respondent in letter No. 43688/Voo.P//2015-1 dated 19.05.2016 and the consequential order passed by the 4th respondent in his proceedings in Na.Ka.No.35716-4/2013/Voo.Va.2 dated 20.07.2016 and quash the same as illegal.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The writ petition has been filed challenging an order passed by the 2nd respondent, dated 19.05.2016 and the consequential order passed by the 4th respondent, dated 20.07.2016.

2. The petitioner was initially appointed as Junior Assistant on 24.07.1985. Thereafter, promoted to various posts. The petitioner was promoted as Deputy Block Development Officer at Panchayat Union Office on 09.04.2007. On further promotion, the petitioner was working as Personal



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Assistant to District Collector (Noon Meal Scheme) and retired on 30.06.2015 on attaining superannuation. He has rendered 30 years of impeccable service.

3. The contention of the petitioner is while he was working as Block Development Officer, his junior, namely one Mrs.Dhanalakshmi working as a Block Development Officer was given higher scale of pay than the petitioner. Hence, the petitioner requested the respondent to revise his scale of pay on par with the junior. Hence, the respondent revised the scale of pay on 27.07.2015 and accordingly granted equal scale of pay in consonance with the scale of pay of his junior. Thereafter, the 4th respondent, vide proceedings, dated 23.06.2016 issued a notice seeking explanation by informing that the 2nd respondent through proceedings, dated 19.05.2016 ordered to cancel the order, dated 27.07.2015 revising the petitioner's scale of pay on par with the junior.

4. The contention of the petitioner is even though it is named as show cause notice, the respondents have pre-determined the issue. However, the petitioner has submitted his explanation and however the explanation was rejected. The petitioner's scale of pay was revised and the impugned recovery order was passed. Aggrieved over the same, the present writ petition is filed.



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5. The respondents have filed a counter stating that the petitioner was subsequently promoted as Block Development Officer on 11.11.2009. Therefore, the said G.O.Ms.No.70 Finance (Pay Cell) Department, dated 26.02.2011 (Finance Department) is not applicable to the petitioner. If the petitioner is retained in service as Deputy Block Development Officer without promotion on 11.11.2009, then the said Government Order is applicable. Therefore, the claim of the petitioner is not supported by any Government Orders and hence, it is liable to be rejected. Hence, he prayed for dismissal of the writ petition.

6. Heard Mr.H.Mohammed Imran, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents and perused the records.

7. The contention of the petitioner is that since the petitioner's junior, namely Mrs.Dhanalakshmi was drawing more pay, this petition has been filed to eradicate the pay anomaly between the junior and the senior. However, the claim of the respondents is that since the petitioner was promoted and the



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junior was still holding the post of Deputy Block Development Officer, based on G.O.Ms.No.70 Finance (Pay Cell) Department, the junior was granted personal pay of Rs.500/- (Rupees Five Hundred only) per month. Hence, there was a pay anomaly between the petitioner and his junior. Since the petitioner was already promoted to the post of Block Development Officer, the petitioner is not entitled to a personal pay of Rs.500/- (Rupees Five Hundred only) per month. If the petitioner is continued as Deputy Block Development Officer, the petitioner would be entitled to Rs.500/- (Rupees Five Hundred only) per month. Therefore, the bald allegation of senior getting lesser pay cannot be accepted. The lesser pay is due to the promotion of the petitioner.

8. However, it is seen that the petitioner was holding the post as on 12.12.2007. G.O.Ms.No.70 Finance (Pay Cell) Department, dated 26.02.2011 states that the Deputy Block Development Officers were given scale of pay in G.O.Ms.No.234 Finance (Pay Cell) Department, dated 01.06.2009 as Rs.9,300/- – Rs.34,800/- + grade pay Rs.4,800/-. Whoever getting such scale of pay in the post of Deputy Block Development Officer as on 12.12.2007 are entitled to the benefits of G.O.Ms.No.70 Finance (Pay Cell) Department. Since the petitioner was holding the said post of Deputy Block Development Officer as on



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12.12.2007 until 11.11.2009 (the date when petitioner was promoted as Block Development Officer), the said Government Order is applicable to the petitioner for the said period. The said Government Order states the employee is entitled to said basic pay from 01.03.2011. Therefore, this Court is directing the respondents to consider the case of the petitioner to grant the benefits of G.O.Ms.No.70 Finance (Pay Cell) Department from 12.12.2007 to 11.11.2009 notionally and fix the benefits from the cutoff date stated in G.O.Ms.No.70 Finance (Pay Cell) Department that is 01.03.2011. Therefore, the 1st respondent is directed to consider as stated above and pass an order within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. Both the impugned orders are set aside and the matter is remitted back for reconsideration. As far as recover is concerned the respondent shall adhere to the direction given in *State of Punjab and Haryana Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334*.

10. With the above said directions, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.



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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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Secretariat,
Chennai.
- 2.The Joint Secretary to Government,
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S.SRIMATHY, J.

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