BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.26441 of 2022

R.Sridharapandian ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by the Secretary to Government,
   Finance Department, Fort St. George,
   Chennai – 600 009.

2. The District Collector,
   Collector Office,
   Madurai District.

3. The District Revenue Officer,
   Collector Office,
   Madurai District.

4. The Pay and Accounts Officer,
   South Veli Street,
   Madurai. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to refix the petitioner's salary by granting the fitment benefit from the date of the petitioner's appointment onwards, by disbursing the entire arrear amounts to the petitioner within time frame stipulated by this Court, in the light of G.O.Ms.No. 340, Finance (Pay Cell) Department dated 26.08.2010, as per the proceedings issued by the 3rd respondent in Na.Ka.No. 14191/2022/Voo.5 dated 16.03.2022, on the basis of the petitioner's representation dated 07.07.2022.

For Petitioner : Mr.A.Arumugam

For Respondents: Mr.A.K.Manikkam,
Special Government Pleader.

* * *

O R D E R

Heard the learned counsel on either side.

2. The writ petitioner is presently working as Senior Revenue Inspector in Madurai. Tamil Nadu Public Service Commission had issued recruitment notification No.135 of 2007 for the post of Typists and Steno Typists. The writ petitioner applied in response to the same. He wrote the written examination on 27.01.2008. He was selected and his name found place in the list of selected candidates published on 07.11.2008. He participated in the certificate verification held in the year December 2008. He was issued with appointment order only on 25.07.2009. He joined duty few

days later. His grievance is that his pay fixation was not properly done. According to him, he has been denied the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010. He submitted representation in this regard. The District Revenue Officer, Madurai, passed an order dated 16.03.2022 granting the petitioner's request. However, the petitioner is yet to reap the benefits of the said order. He gave one more representation dated 07.07.2022 and thereafter filed the present writ petition.

3. The respondents have filed detailed counter affidavit and the learned Special Government Pleader took me through its contents.

4. I have to express my surprise because the earlier District Revenue Officer had passed an order in favour of the writ petitioner whereas the present District Revenue Officer has filed counter affidavit denying the petitioner's claim. I can understand if a superior officer had taken a different stand. A contra stand could not have been taken so long as the earlier order is holding good. The emphasis in the counter affidavit is

that since the petitioner joined duty after the cut off date, he is not entitled to the benefit of the aforesaid Government Order.

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

6. The issue on hand is no longer *res integra*. The number of orders have been passed by various judges of this Court holding similar contention. I had an occasion to deal with the same issue in ***W.P.(MD)No.13775 to 13779 of 2022 (M.G.Gomathy V. The Secretary to Government, Finance Department, Chennai) vide order dated 13.10.2022***. Paragraph Nos.7 to 12 of the aforesaid judgment reads as follows:-

> “ 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 came 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**
>
> 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 the 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.

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 Government 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. The

writ petitions are allowed. No costs. ”

7. Adopting the very same approach, I grant relief to the petitioner herein. The respondents are directed to refix the petitioner's salary as prayed for. Such proceedings will be issued within a period of twelve weeks from the date of receipt of a copy of this order. This writ petition stands allowed. No costs.

28.11.2022

Index : Yes / No
Internet : Yes/ No

PMU

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G.R.SWAMINATHAN,J.

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