



WEB COPY

W.P.(MD)No.21957 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.03.2022

DELIEVERD ON: 13.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.21957 of 2017

and

W.M.P.(MD) .Nos.18253 and 18254 of 2017

G.Dennis

... Petitioner

vs

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Kattabomman Nagar,
Tirunelveli District.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Nagercoil Region,
Ranithottam,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent Letter No.5527/A1/TNSTC (TNV)/ NGL/2017 dated 19.07.2017 and quash the same and directing the respondents to step up the pay of the petitioner like those of other similarly placed person and on par with his junior J.Jeba Chandra Nesa Kumar from the date of on which the pay anomaly occurred with monetary and other service benefits with a time that may be fixed by Court.

For Petitioner : Mr.S.Govindan
For Mr.S.Sivanesan

For Respondents : Mr.R.Rajamohan
Standing Counsel.

O R D E R

This Writ Petition has been filed to quash the impugned order dated 19.07.2017 and direct the respondents to step up the pay based on the similarly placed persons like his Junior J.Jeba Chandra Nesa Kumar from the date of which the pay anomaly occurred with monetary service benefits.

2. The brief facts of the case are that the petitioner is



working as Selection Grade Superintendent at Nagercoil Region of the second respondent Management. The petitioner studied degree and was initially recruited through Employment Exchange seniority and appointed as Programmer (Trainee) on 12.09.1987. The petitioner was appointed as Computer Programmer Trainee and completed training on 18.10.1988 after absorbed in the post of Computer Programmer. The petitioner's junior namely J.Jeba Chandra Nesa Kumar was regularized in the Computer Programmer post on 18.10.1988. The petitioner was promoted and served as Superintendent in time scale of pay on 04.07.2012 and the said junior also was promoted on the time scale of pay on 04.07.2012. In the meanwhile, the Secretary, Transport Department in Letter No.16074/C1/2015-1 dated 09.11.2015 has clarified that the pay anomaly of senior getting less than junior can be rectified between the Superintendent on par with the juniors by following the existing procedures except in the following cases as there is no guideline and the exceptions are as under:

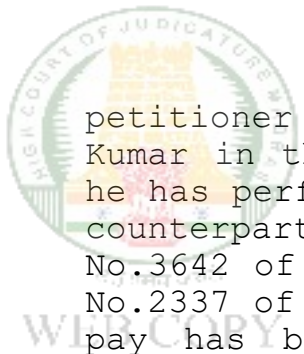
"(i) in view of the change in Review patterns, the Senior gets promotion after getting III Review and the Junior gets promotion after getting IV Review.

(ii) Pay anomaly arise as the senior gets Superintendent promotion before wages settlement and the Junior getting promotion after getting Wage settlement benefit.

(iii) Pay anomaly arise as the senior gets Superintendent promotion before wage settlement and the Junior getting promotion after getting wage settlement benefit and next higher review benefit."

3. The petitioner submitted a written representation dated 20.04.2017 requesting to remove the pay anomaly. The contention of the petitioner is that the similarly placed persons who were working as Superintendent by promotion have been posted along with the petitioner on 04.07.2012 were given basic pay of Rs.27,420 whereas, the petitioner was given lesser pay of Rs.19,945/- with difference of Rs.7,475/- thereby discriminating the petitioner arbitrarily. Hence the petitioner submitted a representation dated 20.04.2017 to revise the scale pay to Rs.27,420/-. However, the respondents have rejected the petitioner's request vide impugned order dated 19.07.2017. Aggrieved over, the present Writ Petition has been filed.

4. The second respondent has filed a counter wherein it has been stated that the said J.Jeba Chandra Nesa Kumar have been appointed in the same cadre and confirmed in the same category on the same date. The said J.Jeba Chandra Nesa Kumar has been designated as Junior Programmer from 27.05.1992 since he holds a Diploma in Computer Application Software from a recognized University and attending programming work, whereas, the petitioner is not having any Diploma qualification and not doing any programming work. Since the petitioner continued in the same category from the date of appointment without any change, the

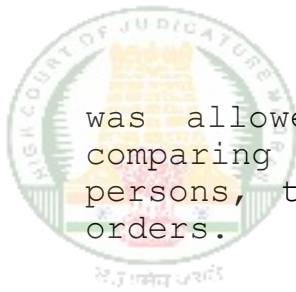


petitioner cannot claim pay anomaly. The said J.Jeba Chandra Nesa Kumar in the strength of his re-designation and the nature of work he has performed, claimed for revision of pay scale by comparing his counterpart in the sister Corporation before this Court in W.P.(MD). No.3642 of 2004 and the same was allowed and confirmed in W.A.(MD). No.2337 of 2012. Hence as per the order of the Hon'ble Court, the pay has been revised to said J.Jeba Chandra Nesa Kumar. The respondents have denied the contention of the petitioner that the similarly placed persons were paid more payment. Because of the Court order, the said J. Jeba Chandra Nesa Kumar was paid Rs.27,420/-. The persons working as Superintendent like the petitioner are receiving the same scale of pay as the petitioner is receiving. The specific claim of the respondents is that other than the said J. Jeba Chandra Nesa Kumar, none of the Superintendent promoted along with the petitioner are receiving basic pay of Rs.27,420/-. The petitioner filed W.P.(MD).No.11078 of 2017 claiming the pay anomaly and this Court directed the respondents to consider the representation dated 20.04.2017 and based on the order, the present impugned order is passed. The contention of the respondents is that the pay anomaly cannot be claimed from the person who receives higher pay due to promotion or due to Court Orders. Hence the petitioner's pay cannot be stepped up on par with the said J.Jeba Chandra Nesa Kumar. The petitioner also attained the age of superannuation and retired on 31.03.2018. Hence the respondents prayed to dismiss the Writ Petition.

5. Heard Mr.S.Govindan, learned counsel For Mr.S.Sivanesan for the petitioner and Mr.R.Rajamohan, learned Standing Counsel for the respondents.

6. The contention of the petitioner is that the petitioner along with the said J. Jeba Chandra Nesa Kumar were appointed on the same post and on the same date with the same salary. The respondents also have admitted the said fact. But subsequently, the said J.Jeba Chandra Nesa Kumar was redesignated as Junior Programmer from 20.07.1992 based on his Diploma qualification in Computer Application. The contention of the respondents is that the petitioner is not possessing qualification in Diploma in Computer Application or Diploma in Computer Science and therefore, the petitioner was not redesignated as Junior Programmer. The contention of the petitioner even though he has not been redesignated, he was carrying the work of Computer Programmer. This Court is of the considered opinion that this plea cannot be accepted, unless there is equal qualification, the petitioner cannot be considered on par with the said J.Jeba Chandra Nesa Kumar. Even though the petitioner is doing the same work of the Programmer without requisite qualification, the post cannot be conferred on the petitioner.

7. It is seen that the said J.Jeba Chandra Nesa Kumar has compared himself with another person with the same designation in the sister Corporation and he has filed the Writ Petition and which



was allowed and which was confirmed in the Writ Appeal. By comparing the persons working in the sister corporation with other persons, there is a high risk of fixing the salary through Court orders.

8. Therefore, this Court is of the considered opinion that the fixing of salary through Writ Petitions cannot be maintained. If the claim of the petitioner is allowed, then there will be a chain reaction and the similarly placed persons would come forward with same plea and that will end up in paying higher salary without scrutinizing of service records. Fixing salary is within the domain of the employer and it is based on terms and conditions or rules and regulations.

9. There is a Common Cadre Rule in TNSTC, but this Court is repeatedly seeing that the Common Cadre Rules are not followed in TNSTC at all. This is leading to so many litigations.

10. Therefore, this Court cannot give any positive direction to the respondents. The respondents are directed to consider and pass orders by strictly adhering to the Common Cadre Service Rules and if the petitioner is eligible, then the respondents may confer the benefits.

11. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

Nsr

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 Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Kattabomman Nagar,
Tirunelveli District.



2.The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Nagercoil Region,
Ranithottam,
Kanyakumari District.

+1 CC to M/s.S. SIVANESAN, Advocate (SR-19086[F] dated 18/04/2022)

+1 CC to M/s.R. RAJAMOHAN, Advocate (SR-19113[F] dated 18/04/2022)

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13.04.2022

RD(16.05.2022) 5P 5C