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Writ Appeal Nos.42, 192, 632 1159, 1556 of 2015
and W.A.Nos.274 and 275 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.07.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal Nos.42, 192, 632 1159, 1556 of 2015
and W.A.Nos.274 and 275 of 2016
and M.P.No.1 of 2015 [in W.A.Nos.42, 192, 632
1159, 1556 of 2015]
and M.P.No.2 of 2015 in W.A.No.192 of 2015
and C.M.P.Nos.4456 and 4457 of 2016

W.A.No.42 of 2015

1. The State of Tamil Nadu,
rep. By the
Secretary to Government,
Finance (Pay Cell) Department,
Fort St. George, Chennai – 600 009.
 2. The Secretary to Government,
Rural Development Department,
Fort St. George,
Chennai -09.
 3. The Director of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet, Chennai – 15.
- ... Appellants

Vs

1. M.Maheswaran
2. B.Ragavendiran



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3. D.Sridhar
4. K.Thanikachalam
5. P.Subramaniam
6. P.Jayakumar
7. M.Kandasamy
8. P.Gurusamy
9. T.Kalaiselvi
10. N.Sivamathi
11. K.P.Shanmugam'
12. D.Santhilakshmi
13. L.Mariappan
14. S.Suriyakumari
15. A.Jothinath
16. P.Chellamuthu
17. D.S.Balasubramaniam
18. D.Vijayakumari
19. V.Kanagaraju
20. M.Ronald Shelton Fernandaz
21. N.Subramaniam
22. T.Jayabharathi
23. S.Rajkumar
24. D.Banupriya
25. P.Sadiq Batcha
26. R.Gnanasekaran
27. M.Vimalavathi
28. S.Shanmugasundari
29. S.Vijayakumar
30. D.Venkatesan
31. K.Ramasamy
32. V.Geetha
33. N.Suresh Kumar
34. S.Kavitha
35. S.Jothi
36. S.Kanthasivam
37. R.Gokila
38. K.Palanisamy
39. P.Pushpavalli
40. K.Ranganathan



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41. M. Ganesan
42. K. R. Ethiraj
43. S. I. Anargali
44. U. N. Kumaresan
45. N. M. Thangam
46. K. Prabhalatha

... Respondents

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent to set aside the order dated 27.01.2014 made in W.P.No.34778 of 2013.

For Appellants : K. V. Sajeew Kumar
[in all W.As.] Special Government Pleader

For Respondents : Mr. R. Prem Narayan
[in W.A.Nos.42, 1159, 1156, 192/2015]

Mr. K. S. Viswanathan
Senior Counsel
for Ms. T. Hemalatha
[in W.A.Nos.632/2015, 274 &
275/2016]

COMMON JUDGMENT

(Judgement of the Court was made by Mr. R. SURESH KUMAR., J.)

These intra-court appeals have been directed against the various orders passed, of-course on the same issue, by the Writ Court in the respective writ petitions.



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2. Since the issue raised in all these appeals is one and the same, these appeals were heard together and are disposed of by this common order.

3. Before the Writ Court, the respondents, who were working as Deputy Block Development Officer [in short, 'Deputy BDO's'], who earned such promotion i.e., Deputy BDO's after 01.06.2009 were the petitioners.

4. In this context, it is to be noted that, pursuant to the VI pay Commission recommendation, the Government issued a Rule called Tamil Nadu Revised Scales of Pay Rules, 2009 [in short, 'the said Rules'] in G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009.

5. In the said Rule, the pay structure has been revised for various categories.

6. In Rule 8 of the said Rules under the heading option, it has been made clear that a Government employee may exercise option to remain in



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the existing scale of pay until the date on which he earns his next or any subsequent increments in the existing scale of pay or until he vacates his post or ceases to draw pay in that pay scale. Provided that, if a Government employee does not exercise his option within the period specified below he shall be deemed to have opted for the revised scales of pay with effect from 01.01.2006.

7. So, based on Rule 8 of the said Rules, the employees, who had been in the existing pre-revised pay scale had an option to exercise whether they want to continue in the existing pre-revised pay scale or a revised pay scale and in this regard, option has to be exercised by them on earning the next increment or the next promotion whatever it may be.

8. In this context, it is to be noted that these contesting respondents i.e., employees have earned the promotion to the post of Deputy BDO's after 31.05.2009 i.e., on or after 01.06.2009.

9. It is an admitted case that when they acquired such a promotion they exercised their option to get a revised pay.



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10. The said option also was accepted and a revised pay seems to have been paid for some time.

11. Subsequently, the Government has come forward to issue certain clarifications. By virtue of such clarifications, these employees were made in-eligible to make the option to get the revised pay scale after 31.05.2009 i.e., on or after 01.06.2009 and therefore, whatever the payment that has been made pursuant to the revised pay scale, that excess payment allegedly made to them was sought to be recovered.

12. Only at that point of time, these employees had come before this Court and filed respective writ petitions.

13. The earlier case is W.P.No.34487 of 2013, where the Writ Court passed order on 18.12.2013, which has been the base case for subsequent orders, where on 27.01.2014 two writ petitions viz., W.P.Nos.34478 and 34479 of 2013 were disposed of.



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14. The order dated 27.01.2014 passed by the Writ Court in the aforesaid writ petitions, which we take as a lead case for disposal of this batch of writ appeals.

15. In the order in W.P.Nos.34778 and 34779 of 2013 dated 27.01.2014, the learned Judge has stated that, the option provided to the employees under Rule 8 of the said Rules in G.O.Ms.234 with regard to the retainment of pre-existing pay or a revised pay is concerned, there has been no restriction given i.e., between a particular period only such kind of option has to be made, beyond which, no option can be made by the employees. The learned Judge has taken the view that when Rule 8 does not restrict with any period for making option the employee would be entitled to make option either on receiving the increment or acquiring any promotion.

16. When that being so, all these employees since acquired promotion to the post of Deputy BDO's after 31.05.2009, the moment they got promotion only they will exercise their option, which they have



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in fact exercised admittedly. When that being so, by giving any subsequent clarification by the Government, restricting the period for these employees to make option would run contra to the import of the Rule 8 of the said Rules and therefore, on that ground alone, the learned Judge has stated that the impugned clarification issued by the Government stating that those who have got promotion between 12.12.2007 and 31.05.2009 would be entitled to exercise their option is unlawful and unjustifiable.

17. Aggrieved over the said order passed by the Writ Court dated 27.01.2014 and other writ petitions covered in that batch, the present batch of writ appeals have been filed by the appellant/State.

18. We have heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellant, Mr.K.S.Viswanathan, learned Senior Counsel appearing for the respondents in W.A.Nos.42, 1159, 1556, 632 of 2015 and Mr.R.Prem Narayan, learned counsel for respondents in W.A.Nos.192 of 2015, 274 and 275 of 2016.

19. Rule 8 of the said Rules, reads thus:



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“8.Option:-

(1) A Government employee may exercise opinion to remain in the existing scale of pay until the date which he earns his next or any subsequent increments in the existing scale of pay or until he vacates his post or ceases to draw pay in that pay scale;

Provided that, if a Government employee does not exercise his option within the period specified below he shall be deemed to have opted for the revised scales of pay with effect from the 1st January, 2006.”

20. Subsequently on 26.06.2009, a letter has been issued by the Finance Department, Government of Tamil Nadu, where various clarifications sought for, one of such clarification is, whether it can be presumed that option can be exercised by the employees to come to the revised scale after earning increment in the pre-revised scale on or after 01.01.2006 or after obtaining promotion on or after 01.01.2006 or after obtaining Selection Grade/Special Grade. The presumption that has been sought for has been confirmed as a clarification by the Government through the said letter dated 26.06.2009. For better understanding, the relevant portion of the letter dated 26.06.2009 is extracted hereunder:



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Sl.No.	Clarifications sought for	Clarifications Issued
1.	It is presumed that option can be exercised by the employees to come to the revised scale; i) after earning increment in the pre-revised or ii) after obtaining promotion on or after 1-1-2006 or iii) obtaining Selection grade /Special Grade	Presumption is confirmed.

21. Pursuant to this clarification, which in fact is in consonance with the Rule 8 of the said Rules, these employees, who earned the promotion as Deputy BDO's since had given their option, based on which, the revised pay scale has been paid to them.

22. However, after some time, a letter was issued by the very same Finance Department of the State Government on 06.08.2009 in letter No.38566/Pay Cell/2009-1, wherein the following clarification has been given.

“4. I am directed to clarify that employees can opt to remain in the existing scale of pay (pre-revised scale of pay) upto any period of their choice between 1-1-2006 to 31-5-2009 (i.e) prior to the date of issue of notification of Tamil Nadu Revised Scales of Pay Rules, 2009. As such, the employees are permitted to exercise their option to



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come over to the revised pay scales from the date on which the pre-revised pay scales were revised upward subsequent to 1-1-2006.”

23. Following which, another clarification letter in Letter No.45113/Pay Cell/2009-1, dated 17.08.2009 was issued, wherein, the clarification No.(2) that has been sought for has been clarified, which reads thus:

<i>Sl.No.</i>	<i>Clarifications sought for</i>	<i>Clarifications Issued</i>
2.	It has been clarified under Sl.No.4 of the Government letter 2 nd cited, that the employees opting for the upgraded pre-revised scales (i.e) 7000-11500/ Rs.7500-12000 shall be entitled for fixation of pay in the upgraded pre-revised scale of pay with effect from 12-12-2007 with reference to provisions under FR-23 by foregoing arrears upto the date of above fixation. In this connection, it is presumed that those employees who are promoted between 12-12-2007 to 31-5-2009 and drawing in the scales of pay Rs.5500-9000, 5700-9200 & Rs.6500-10500 and whose scales have been upgraded to Rs.7000-11500/Rs.7500-12000 are also entitled for fixation of pay in the revised (upgraded) pre-revised scale of pay with reference to provisions under FR-23 by foregoing the arrears upto the date of promotion. This may	Yes. Presumption is confirmed.



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<i>Sl.No.</i>	<i>Clarifications sought for</i>	<i>Clarifications Issued</i>
	kindly be confirmed.	

24. These two clarifications i.e., clarification letter dated 06.08.2009 and 17.08.2009 had taken a diagonally opposite direction stating that between cut off date i.e., between 12.12.2007 and 31.05.2009 alone these employees were entitled to make their option and after 31.05.2009 they cannot make an option, therefore, these employees since had made an option only after 31.05.2009, based on which, whatever the revised scale that has been paid would be an excess amount, therefore, that amount has to be recovered from them, that was the stand taken by the appellant/State. Only this position triggered these employees to run to this Court by filing the aforesaid writ petitions.

25. In this context, it is to be noted that, under Rule 8 of the said Rules, which has been clarified at the earliest point of time by the Government through their letter dated 26.06.2009 make it very clear that the employee can exercise his option on earning the increment or acquiring the promotion.

26. Therefore, there are three or four stages available to an employee



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to exercise their option. Either can exercise his option in the existing post itself or after earning a increment or if he does not exercise his option, he can wait till he earned the promotion and on acquiring the promotion, he can exercise such option. This is what intended in the Rule 8 of the said Rules, which has been thoroughly clarified by the Government of Tamil Nadu dated on 26.06.2009.

27. However, the subsequent two letters dated 06.08.2009 and 17.08.2009 issued in this regard since has taken a different stand that the employee should have exercised their option on or before 31.05.2009, beyond which, they did not have a right to make an option and these employees admittedly had exercised their option only after 31.05.2009, they are not entitled to get revised pay.

28. This stand taken by the Government is not based on any intelligible differentia.

29. The VI Pay Commission Recommendation was to be



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implemented, for which, the rule has been framed and G.O.Ms.No.234 was issued on 01.06.2009, therefore, from the date on which, that implementation was made.

30. Before issuance of Government Order, there had been no option for these employees to exercise their option because they can exercise their option on earning the increment or acquiring the promotion.

31. Acquiring the promotion depends upon two factors, one is that the employees must reach the zone of consideration, secondly, it depends upon the vacancy in the promoted category.

32. Therefore, in the post of Deputy BDO's these people have been promoted only after 31.05.2009, therefore, on that date of promotion, they are entitled to make their option, which admittedly they have been made and that has not been disputed by the appellant also.

33. However, artificially 31.05.2009 date has been fixed not under



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the Rule only in the subsequent clarifications dated 06.08.2009 and 17.08.2009.

34. The said clarification letter cannot override the import of Rules especially the Rule 8 of the said Rules, which has been pointed out by the learned Judge in the order impugned.

35. What are all the benefits that has been earned by the similarly placed persons pursuant to VI Pay Commission Recommendation, which has been made as a Rule under G.O.Ms.No.234 as referred to above, are to be extended to the similarly placed persons. These employees are though similarly placed persons could not exercise their option because they did not earn the promotion before 31.05.2009. Merely because they earned promotion after 31.05.2009 their right of getting the enhanced pay or a revised pay cannot be denied. Therefore, the said clarification given in this regard by the aforestated letters viz., letter date 06.08.2009 and 17.08.2009 since is not inconsonance with the Rule, which was rightly struck down by the learned Judge through the impugned orders and giving extension of such benefits to these employees.



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36. The said judgments, which are impugned herein, in our considered opinion, do not warrant any interference for the aforesaid reasons and discussions. Hence, all these appeals are failed and accordingly, they are dismissed. No costs.

(R.S.K.,J.) (K.B., J.)
18.07.2023

Index: Yes
Speaking Order
Neutral Citation: Yes/No

mp

R.SURESH KUMAR., J.
and



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K.KUMARESH BABU.,J.

mp

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