IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.07.2023

CORAM

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

Writ Appeal Nos.733 & 1548 of 2013

L.T.A.Peter ... Appellant in W.A.No.733/13

K.Maria Rajarathinam ... Appellant in W.A.No.1548/13

Vs

State of Tamil Nadu,
Rep. By its Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai – 9. ... Respondent both W.As.

COMMON PRAYER : Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order made in W.P.No.11392 of 2011 dated 03.01.2013.

For Appellants [in both W.As.] : Mr.L.P.Maurya

For Respondent [in both W.As.] : Mr.M.Murali
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

These two appellants were the petitioners along with another person in W.P.No.11392 of 2011, where the Writ Court passed an order on 03.01.2013 of-course against the writ petitioners/appellants, against which, these two appellants filed these appeals arising out of the same order dated 03.01.2013. These appeals were heard together and are being disposed of by this common order.

2. The appellants/petitioners were appointed through the selection made by the Tami Nadu Public Service Commission [in short, 'TNPSC'] in the Tamil Nadu Secretariat Service as Junior Assistant in 1973, thereafter, either they have been promoted or re-designated as Assistant Section Officer [in short, 'ASO'].

3. In the cadre of ASO, various candidates like the appellants have been distributed to various department in the Tamil Nadu Secretariat Service. The Finance Department is one of such department, to whom such a distribution have been made.

4. It is to be noted that among the ASO's, some are internally transferable between the departments in the Secretariat Service, but insofar as the ASO at Finance Department, there can be no such transfer for them and they have to continue in the Finance Department.

5. While that being so, insofar as the ASO's who are working in the Finance Department is concerned, they are able to get a chance of further promotion quickly as they alone would be entitled to get promotion in the vacancy caused in the promoted category in the Finance Department, whereas in respect of other departments, over all seniority would be taken into account and depending upon the vacancy that arose in all other departments, entire feeder category of ASO would be taken into account for the purpose of promotion. Therefore, naturally, for the ASO's working in the other departments other than the Finance Department, their promotion to the next higher category would get stagnated.

6. While that being so, it has become an anomaly as juniors in the ASO cadre in the Finance Department will get further promotion into Assistant Section Officer, whereas seniors in the ASO category in

various other departments would not earn such a promotion as SO and they will continue to work as ASO.

7. To rectify this anomaly, the Government had come forward to issue a Government Order in G.O.Ms.No.126, Personnel and Administrative Reforms, (U.SP1) Department, dated 29.05.1998. The main import of the said G.O reads thus:

> "*10. The Government accordingly direct that:-*
>
> *(i) the pay of the seniors in one unit who have been recruited to the Tamil Nadu Secretariat Service on or before 28.1.1994 shall be stepped up on par with their juniors in the Finance Unit by upgrading the posts held by them to the scale of pay applicable to the juniors with immediate effect.*
>
> *(ii) the stepping up of their pay on par with the junior's in the Finance Unit by upgrading the posts held by them to the scale of pay applicable to the junior ordered in sub-para(i) above is purely a person-oriented upgradation and no new posts will be created for this purpose.*
>
> *(iii) the upgradation sanctioned for the seniors will lapse in the event of the retirement of the individuals concerned or their promotion to the upgraded post in their normal turn.*
>
> *(iv) the pay of the other seniors in the One Unit in*

the same cadre will be stepped up on par with their immediate juniors in the Finance Unit, with effect from the date of issue of this order.

(v) in respect of the Typists /Personal Clerks/Personal Assts. in one unit who have not relinquished their right for promotion as Assistant Section Officer, and are still awaiting their turn for promotion as Assistant Section Officer, their pay shall be upgraded to Assistant Section Officer scale on par with their immediate junior in the Finance Unit who got his promotion as Assistant Section Officer."

8. Accordingly, for those persons i.e., ASO's working in the other departments than the Finance Department, financial benefit or pay would be stepped up on par with their junior in the Finance Department, who earned promotion to the next higher category.

9. It is to be noted that such an upgradation to be given to other department people is only financial upgradation and no functional promotion would be given, as such functional promotion would be given to them based on the vacancy position as well as the over all seniority.

10. By applying the said benefits conferred under G.O.No.126, the two appellants herein and similarly placed persons working in various departments as ASO were given such financial upgradation on par with their juniors. They had been enjoying the benefit for some time and insofar as these appellants are concerned, they retired on superannuation in the year 2007 i.e., on 31.12.2007.

11. However, in the meanwhile, while they were in service, in the year 2006 on behalf of these employees like the appellants their employee's association had given a representation to the State Government to redress their grievance, which according to them, SO level employees in the Finance Department earned the further promotion like Under Secretary and therefore, once again there has been a pay anomaly occurred among the SO's, who are working in the various departments.

12. Therefore, that request made on behalf of these employees by their association in the year 2006 had been under consideration of the Government and ultimately, the Government had come forward to issue further G.O. i.e., G.O.Ms.No.154, Personnel and Administrative Reforms

(U-spl) Department, dated 30.10.2009.

13. In the said G.O., i.e., in G.O.Ms.No.154, the Government has taken the following decision, which reflects in paragraph 5 of the G.O, which reads thus:

> *"5. The Government after careful consideration direct that the post/pay of seniors in One Unit who have been recruited to the Tamil Nadu Secretariat Service on or before 28.01.1994 and promoted as Assistant Section Officers from the category of Assistant (formerly Junior Assistant) only and who are in service on the date of issue of this order shall be upgraded / stepped up on par with their Juniors in the Finance Unit with effect from the date of issue of this order as "another one time affair", subject to the terms and conditions prescribed in the Government Order first read above. Similarly, the post/ pay of the seniors in Finance Unit as on the date of order shall be upgraded/stepped up on par with their juniors in One Unit. The issue of rectification of pay anomaly in respect of Typist/Personal Clerk promotees shall be taken up separately."*

14. Therefore, as per G.O.Ms.No.154, the benefit that has to be

extended under the said G.O. by up gradation or stepping up of the pay on par with their juniors in the Finance Department would be with effect from the date of issuance of the said G.O i.e., from 30.10.2009 and further condition was that, in order to get the said benefit those who are working as on the date of issuance of G.O alone would get such benefit.

15. Because of this embargo put in under G.O.Ms.No.154, the persons like the appellants, who were retired prior to 30.10.2009 would not get the benefit of further upgradation on par with their juniors in the Finance Department. Therefore, the appellants since they are retired on 31.12.2007 well prior to the date of issuance of G.O.154 i..e., 30.10.2009 had filed writ petition challenging the said G.O.No.154 and seek for a consequential relief to extend the benefit as has been extended under G.O.Ms.No.126 to G.O.Ms.No.154 also for these employees or similarly placed persons.

16. The said writ petition having been heard was decided by the learned Judge through the impugned order, where the learned Judge has rejected the plea made by the appellants, who stood as writ petitioners, stating that such kind of cut off date can be fixed by the Government and

therefore, the benefit that has to be extended to the people can be only prospective i.e., from the date of G.O and not for those who retired prior to issuance of G.O.Ms.No.154.

17. Felt aggrieved over the said order passed by the Writ Court dated 03.01.2013, these appeals have been directed.

18. Heard Mr.L.P.Maurya, learned counsel appearing for the appellants and Mr.M.Murali, learned Government Advocate appearing for the respondent.

19. If we look at G.O.Ms.No.126 dated 29.05.1998 and the import of the G.O as has already been extracted herein above, it has been made clear that the pay of the seniors in one unit, who have been recruited to the Tamil Nadu Secretariat service on or before 28.01.1994 shall be stepped up on par with their juniors in the Finance Department by upgrading the position held by them to the scale of pay applicable to the juniors with immediate effect.

20. Therefore, the persons like the appellants, who were working

as ASO's in various departments other than the Finance Department as they could not earn promotion on par with their juniors in the Finance Department because of want of vacancy, their pay has been stepped up on par with their juniors who earned the promotion to the next higher category i.e., from ASO to SO in the Finance Department. Financial benefit was upgraded and stepped up and extended to the persons like the appellants and these appellants also had been enjoying them.

21. While that being so, since over the years, further promotion has been effected in the Finance Department, where their juniors once again has been considered and given promotion to the next promoted category naturally they have to march over the other employees like the appellants working in various departments, therefore, once again the very same anomaly has come into effect. Therefore, in order to rectify that anomaly that plea was raised on behalf of them by their association in the year 2006.

22. The said request made by them to rectify the anomaly having been accepted by the Government, a Government Order was issued in G.O.Ms.No.154 dated 30.10.2009.

23. However they fixed qualifying date as 30.10.2009 i.e., date of

issuance of G.O as the date before which, who were retired would not get the benefit as extended by G.O.Ms.No.154.

24. In this context, it is to be noted that insofar as the employees, who retired prior to 30.10.2009 are concerned, during their service whatever the date on which they retired, if the juniors to them earned the second promotion in the Finance Department, by virtue of that these employees were entitled to get the second step of pay and upgradation and certainly for such benefit they are entitled to.

25. However, the benefit now has been extended under G.O.Ms.No.154 has been extended only to those who are in service on 30.10.2009.

26. In this context, it is to be further noted that the G.O.Ms.No.154 was issued on 30.10.2009, earlier those who were in service, who affected because of the second promotion given to the juniors of the Finance Department also would have got the benefit and the pay anomaly would have been rectified.

27. Here, we must look into the entitlement of the employees like the appellants. For instance, appellants had served up to 31.12.2007 and they retired only on that date i.e., prior to the issuance of G.O i.e., 30.12.2009. Those who are all juniors in the Finance Department, who earned further promotion, certainly on that date these people are also entitled to, as this analogy we can draw from G.O.126 itself.

28. Therefore, G.O.Ms.No.154, is only an extension of the benefits that has been conferred on these kind of employees under G.O.Ms.No.126.

29. When they extended the benefit, there is no gainsaying that the employees, who rendered service on or before 30.10.2009 and retired on superannuation would not be entitled to seek the benefit on par with juniors. Because, the G.O. has been issued belatedly after considering the request of the association for two or three years and ultimately in the year 2009, the G.O. was issued. Therefore, that belated issuance of G.O. cannot take away the accrued right of parity of pay along with their juniors, for which certainly these appellants and similarly placed persons

are entitled to because on that date they were in service.

30. This aspect of the issue has not been considered in proper perspective by the learned Judge while dealing with the writ petition.

31. In other words, the benefit that has been extended under the G.O.Ms.No.154 is only an extension of the benefit given originally under G.O.Ms.No.126. Therefore, the said benefit extended to any eligible persons, who were stagnated by the second promotion also, comparing with the juniors of the Finance Department, certainly would be entitled to earn such benefits. Therefore, these appellants are also entitled to earn such benefits conferred under G.O.Ms.No.126.

32. Moreover, it is a settled proposition of law that whenever a date is fixed for grant of any benefit to the employees, there must be a rational behind it and it must have the nexus with the object sought to be achieved. Here, the object sought to be achieved by issuance of these two Government Orders i.e., G.O.Ms.No.126 and G.O.Ms.No.154 is concerned, whoever in various departments of secretariat service, who suffered with the promotion on par with their juniors in the Finance Department are entitled to get stepping up of pay on par with their

juniors.

33. The very same principle will apply to both the Government Orders, therefore, these appellants since were the employees are entitled to get the stepping up of pay on par with their juniors before their retirement i.e., 31.12.2007.

34. Therefore, by fixing a cut off date i.e., date of the G.O cannot defeat such entitlement of those beneficiaries like the appellants as they are entitled to get such benefits. Therefore, such an exclusion is not on any intelligible differentia. Ergo, there has been no nexus with the object sought to be achieved with a classification. Therefore, on that ground also the impugned Government Order in as much as denying the benefits to these appellants and similarly placed persons are unlawful and therefore, we feel that the impugned judgment as well as the impugned G.O. are liable to be interfered with.

35. In the light of the above, the following orders are passed in these appeals:

- That the impugned judgment is set aside and as a sequel, the offending portion of the G.O.No.154 to restrict the benefit under G.O.Ms.No.154 to those who are in service as on 30.10.2009 is held to be invalid. As a consequence, the appellants as well as the similarly placed persons are entitled to seek the benefit, conferred in G.O.Ms.Nos.126 and 154, of stepping of pay or upgradation of the pay on par with their juniors of Finance Department from the date on which their junior acquired promotion.

- Therefore, there shall be a direction to the respondent to act upon as per the aforesaid directions and declaration and accordingly, confer the benefit to the appellants within a period of twelve(12) weeks from the date of receipt of a copy of this order.

With these directions, these writ appeals are allowed to the terms indicated above. No costs.

(R.S.K.,J.) (K.B., J.)
25.07.2023

Index: Yes
Speaking Order
Neutral Citation:Yes
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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

mp

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