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W.P.No.19113 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19113 of 2011

A.Kaliamurthi

... Petitioner

Vs.

- 1.The Government of Tamilnadu,
rep. by the Secretary to the Government,
Finance (Pay Cell) Department,
Fort St.George, Chennai 600 009
- 2.The Director of Public Health and Preventive
Medicine, Chennai 600 006

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the first respondent to consider the petitioner's representation dated 29.12.2010 praying for restoration of 5% personal pay with effect from 01.08.1992 in the light of the orders passed by the Division Bench of this Court in WP.Nos.20156 and 13143 of 2000 dated 10.03.2006 and grant him all consequential benefits including revision of pay and revision of pension.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.K.H.Ravikumar,
Government Advocate



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ORDER

This writ petition has been filed for direction to the first respondent to consider the petitioner's request for restoration of 5% personal pay with effect from 01.08.1992.

2. Heard, the learned counsel appearing on either side.

3. The petitioner was initially appointed as Para Medical Worker on 15.10.1971. The said post was later re-designated as Leprosy Inspector. Subsequently, he was promoted as Non Medical Supervisor on 09.01.1989. He was also granted Selection Grade scale of pay with effect from 09.01.1999. Thereafter, he attained age of superannuation on 30.06.2006 and retired as Non Medical Supervisor. He was granted personal pay at the rate of 5% of basic pay in the post of Non Medical Supervisor with effect from 01.08.1992. Subsequently, the Government issued orders in GO.Ms.No.664, Finance(PC) Department dated 24.08.1992, thereby granted personal pay at 5% of basic pay to all categories of staff with effect from 01.08.1992. The petitioner was paid personal pay with effect from 01.08.992. However, it was cancelled in



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the year 2003 based on audit objections on the ground that the ordinary grade scale of pay of Rs.1400-1600 was not one among the scale of pay as per GO.Ms.No.664, Finance(PC) Department dated 24.08.1992. Challenging the same, a writ petition was filed before this court in WP.Nos.20156 and 13143 of 2000, wherein this Court declared denial of 5% personal pay as illegal. Following the said judgment, this Court also allowed the writ petition in WPN0.16028 of 2010 dated 06.06.2022.

4. On perusal of GO.Ms.No.664, Finance(PC) Department dated 24.08.1992, the following four specified pre-revised and revised scales of pay as on 01.06.1988 are eligible to get 5% basic pay as personal pay:

(i) All employees in the pre-revised scale of pay at Rs.475--775 moving over to the revised scale of pay of Rs.775--1030.

(ii) All employees in the pre-revised scale of pay of Rs.610- 1075 moving over to the revised scale of pay of Rs.950--1500 or Rs.975--1660.



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(ii) All employees in the pre-revised scale of pay of Rs.705--1230 moving over to the revised scale of pay of Rs. 1200--2040 and

(iv) All employees in the pre-revised scale of pay of Rs.905-1545 moving over to the revised scale of pay of Rs.1600--2660. The Government further issued clarifications on the implementation of the Government Order referred above in letter No.106614/PC/92-1, Finance (PC) Department, dated 30-9-92

5. The petitioner's scale of pay for the post of Non Medical Supervisor is Rs.1400-40-1600-50-2300-60-2600 and it falls in between 3rd and 4th category of the said Government Order. When the employees under the scale of pay of Rs.1600 to 2660 are eligible for 5% of basic pay, the petitioner who was fixed at scale of pay of Rs.1400-2600 is also eligible for basic pay of 5%. It is relevant to extract the relevant portion of the judgment of the Hon'ble Division Bench of this Court in WP.No.20156 of 2000 hereunder:

10. According to the petitioners, Assistants in Sl.No.III who are in the selection grade and receiving the same scale of pay as that of the petitioners, were enjoying the benefit of 5% personal pay on basic pay. However, the petitioners were not given such benefit only



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on the ground that the Government has consciously omitted to include them in the said GO. The main intention in passing the said GO is to remove the anomaly in pay after the revision in the fifth Pay Commission. The contention of the petitioners is that the persons in the lower scale of pay and higher scale of pay as against the petitioners, were given the benefit of 5% personal pay of the basic pay, whereas the petitioners have been denied the same. The letter which is impugned in the writ petitions erroneously states that the employees in selection grade scale of Rs.1400-2600 cannot be compared with Head Clerks in Judicial Ministerial Service as the grade of these posts should be considered based on the ordinary grade level of a post and not with reference to the selection grade of a post.

6. Following the said judgment, this court held that it is an omission and anomaly and also held that omission of the in-between scales, would amount to discrimination, violative of Article 14.

7. Therefore, the petitioner is entitled for 5% personal pay with effect from 01.08.1992. Accordingly, the first respondent is directed to



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restore 5% personal pay with effect from 01.08.1992 to the petitioner and disburse all the arrears and consequential benefits including further revision of pay within a period of twelve weeks from the date of receipt of copy of this order. However, the petitioner will not be entitled for any interest on the said arrears.

8. With the above directions, this writ petition is disposed of.

There shall be no order as to costs.

18.08.2023

Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. Secretary to the Government,
The Government of Tamilnadu,
Finance (Pay Cell) Department,
Fort St.George, Chennai 600 009
2. The Director of Public Health and Preventive
Medicine, Chennai 600 006
3. The Government Advoate,
High Court, Madras.

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