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W.P. No.14360 of 2016, 39187 of 2015 and 23712 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P. No.14360 of 2016, 39187 of 2015 and 23712 of 2017

WP.No.14360 of 2016

P.Jayabalan

.. Petitioner

Versus

1. Union of India,
Rep. by the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
2. The Superintendent of Post Offices,
Tiruvannamalai Division,
Tiruvannamalai 606 601.
3. The Registrar,
Central Administrative Tribunal,
Chennai 600 104.

.. Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the third respondent Tribunal made in OA/310/01373 of 2014 dated 01.03.2016 and quash the same and consequently direct the respondents 1 and 2 to pay the officiating allowance to the petitioner for the officiating service rendered by the petitioner and to revise and re-fix the pension of the petitioner by taking into the revised scale applicable to the cadre of HSG-I with all attendant service benefits.

For petitioner : Mr.Malaichamy

For respondents

for RR1 & 2: Mr.V.Balasubramanian, SPC

for R3 : Tribunal

WP.No.39187 of 2015

N.Devarajan

.. Petitioner

VS.

1. Union of India,
Rep. by the Director General of Posts,
Dak Bhavan,
Sansad Marg,
New Delhi - 110 001.



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2. The Principal Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
3. The Postmaster General,
Chennai City Region,
Chennai 600 002.
4. The Senior Superintendent of Post Offices,
Tiruvannamalai Division,
Tiruvannamalai 606 601.
5. The Registrar,
Central Administrative Tribunal,
Chennai 600 104.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of Full Bench of the 5th respondent Tribunal (Chennai) dated 02.06.2015 and the Division Bench of the 5th respondent Tribunal made in OA.No.1215 of 2012 dated 06.10.2015 and quash the same, consequent to direct the respondents 1 to 4 to revise and refix the pension of the petitioner by taking into the pay applicable to the cadre of HSG-I [Higher Selection Grade-I] as recommended by the VI pay commission with all attendant service benefits.

For petitioner : Mr.Malaichamy

For respondents

for RR1 to 4 : Mr.V.Balasubramanian, SPC

for R5 : Tribunal



W.P. No.14360 of 2016, 39187 of 2015 and 23712 of 2017

WEB CO **WP.No.2372 of 2017**

S.A.Shanmuga Sundaram

.. Petitioner

VS.

1. Union of India,
Rep. by the Director General of Posts,
Dak Bhavan,
Sansad Marg,
New Delhi - 110 001.
2. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
3. The Postmaster General,
Western Region (TN),
Coimbatore 641 002.
4. The Senior Superintendent of Post Offices,
Erode Division,
Erode 638 001.
5. The General Manager,
Postal Accounts and Finance,
Ethiraj Salai,
Chennai 600 008.
6. The Registrar,
Central Administrative Tribunal,
Chennai 600 104.

.. Respondents



W.P. No.14360 of 2016, 39187 of 2015 and 23712 of 2017

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the 6th respondent Tribunal made in OA/310/00034/2014, dated 26.02.2016 and quash the same, consequent to direct the respondents 1 to 5 to pay the officiating pay to the petitioner for the officiating service rendered by him and to revise and re-fix the pension of the petitioner by taking into the revised scale applicable to the cadre of HSG-I with all attendant service benefits.

For petitioner : Mr.Malaichamy

For respondents

for RR1 to 4 : Mr.V.Balasubramanian, SPC

for R5 : Tribunal

COMMON ORDER

(The Order of the Court was made by D.KRISHNAKUMAR, J)

The brief facts of the case which are necessary for disposal of the Writ

Petitions are as follows:



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The petitioners were employees of the Postal Department and they were working in the BCR cadre. While so, as per the direction of the respondent Department they officiated the posts of HSG-I cadre and their pay was pre-revised and revised officiating the above cadre. After attaining the age of superannuation, they retired from service. While settling their retirement benefits and fixation of pension, the last pay drawn by them in the HSG-I cadre was not taken into account instead the respondents had taken the pay in the BCR cadre. Therefore, they made representations to the respondents to revise and re-fix their pensionary benefits on the basis of the last pay drawn by them. However, the same was rejected. Challenging the same, the petitioners filed OA, which was dismissed. Aggrieved by the same, the present Writ Petitions have been filed.

2. The learned counsel for the petitioners submitted that as per the instructions of the Postal Department, the petitioners were ordered to officiate in the higher cadre i.e. HSG-I and they were also granted with higher pay to the said cadre. However, after retirement they were denied the revision of pay and pension in accordance with the revised pay as



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recommended by the VI Pay commission, which is not justifiable. As per

Rule 33 CCS (Pension) Rules, the petitioners are entitled for the said benefits and hence, these petitions may be allowed.

3. The learned Senior Panel Counsel appearing for the respondent Department vehemently objected the submission of the learned counsel for the petitioners stating that the petitioner officiated the post of HSG-I cadre on temporary/adhoc basis without any extra remuneration. The employees working in the regular HSG-II cadre with 3 years of service are only eligible for HSG-I posts. Therefore, the Tribunal rightly held that the petitioners are not entitled for the said prayer and hence, these petitions may be dismissed.

4. Heard both sides and perused the materials available on record.

5. The contention of the petitioners is that they worked in the posts of HSG-I cadre as per the direction of the respondent Department and their salary was also fixed in the cadre of HSG-I. Therefore, as per Rule 33 CCS (Pension) Rules, they are entitled for the retirement service benefits



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including pension in the cadre of HSG-I. It is relevant to extract Rule 33

CCS (Pension) Rules, which reads as follows:

"33. Emoluments

The expression 'emoluments' means basic pay as defined in Rule 9(21) (a)(i) of the Fundamental Rules which a Government Servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice.

Sub rule (21) of Rule 9 of Fundamental Rule reads as follows:

"9(1)(a) Pay means the amount drawn monthly by a Government as-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and*
- (ii) Overseas pay, special pay and personal pay; and*
- (iii) And other emoluments which may be specially classed as pay by the President."*



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6.It is clear that the petitioners' last drawn pay is on par with HSG-I cadre and as per Rule 33 CCS (Pension) Rules, the petitioners are entitled for the pensionary benefits based on the last drawn salary paid to them. Further, in a similar writ petition, this Court in **WP.No.6497 of 2011 (The Senior Superintendent of Post Offices, Vellore Division vs. S.Pushpavalli) dated 02.12.2013**, has already granted the said benefit to the petitioner therein. The relevant paragraph of the said order reads as follows:

"4. In the case on hand, it is an admitted fact that the first respondent served in the higher post and received higher salary for the services rendered.

5. The Supreme Court in Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291 has held that if an employee works in a higher post, he will be entitled to get the higher post pay, even though the said post is not to be treated as promotion.

6. In Dwarika Prasad Tiwari vs. M.P. SRTC, (2001) 8 SCC 322, the Supreme Court held that if a person is allowed to work in a higher post, he is entitled to get the salary



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attached to that post.

7. In yet another decision in Jaswant Sing v. Punjab Poultry Field Staff Association, (2002) 1 SCC 261, the Supreme Court held that even if a person promoted is not qualified to hold the post, but discharged the duties in the promotion post, he is entitled to get the pay and allowances admissible to the promotion post.

8. The order of the Tribunal is based on the above said principle, which requires no interference.

For the foregoing reasons, this writ petition is dismissed. the petitioners are directed to implement the order of the Tribunal, which is now confirmed, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2011 is closed."

7. In view of Rule 33 CCS (Pension) Rules and the decision referred to supra, the orders impugned in these Writ Petitions are liable to be set side and accordingly, they are set aside. There shall be a direction to the respondent/Department to revise the pensionary benefits of the petitioners, as per the last pay drawn pay received by them, which is on par with the HSG-I, taking into consideration 6th Pay Commission from the date of



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retirement. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, these

Writ Petitions are allowed. No costs.

[D.K.K., J] [P.D.B., J]
01.12.2023

Speaking order: Yes/No
Index : Yes/No
pvs

To

1. The Chief Postmaster General,
Union of India,
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
2. The Superintendent of Post Offices,
Tiruvannamalai Division,
Tiruvannamalai 606 601.
3. The Registrar,
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D.KRISHNAKUMAR, J.
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