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W.A.No.675 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.08.2023

CORAM

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

**W.A.No.675 of 2016
and
C.M.P.Nos.8923 & 9955 of 2016**

1.State of Tamil Nadu,
Rep. by Secretary to Government,
Highways Department,
Fort St. George,
Chennai – 600 009.

2.The Divisional Engineer,
Highways, Chepauk,
Chennai – 600 005.

... Appellants

Vs

1.D.Duraikann [Died]

2.The Accountant General [A&E],
Accountant General's Office,
Chennai – 600 018.

3.Mala

4.Jayanthi



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5.Vasanthi

6.Santhi

... Respondents

[R3 to R6 substituted as LR's of deceased R1
viz., D.Duraikannu vide order dated 24.04.2023
made in C.M.P.NO.1954 of 2023]

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act to
set aside the order made in W.P.No.22520 of 2014 dated 09.03.2015.

For Appellants	:	Mr.K.V.Sajeev Kumar Special Government Pleader
For R2	:	Mr.V.Vijayshankar
For R3 to R6	:	Mr.L.Chandrakumar for Mr.Sundar Narayan

JUDGMENT

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

This writ appeal is directed against the order passed by the Writ Court
dated 09.03.2015 made in W.P.No.22520 of 2014.



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WEB COPY 2.The first respondent was working as a Driver in the appellant Department for several years as there has been no further promotional avenue. In these kind of posts since the incumbents working cannot get any further promotion, the Government has come forward to confer the financial upgradation scheme called Conferment of Selection Grade and Special Grade.

2.One who served ten years in the ordinary Grade i.e., Entry level, after completion of ten years he will be entitled to get selection grade. In the selection grade if he continue to work for another ten years, then he would be entitled to get the Special grade.

3.Insofar as this respondent is concerned, since he had been working for more than 20 years as a Driver in the appellant Department he was entitled to earn such selection grade and special grade which in fact had been conferred on him.



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4. When that being so, with regard to the fixation of his pay as per the 6th Pay Commission what is to be fixed was the issue that arose. Therefore, in order to resolve the same when the first respondent already filed a writ petition in W.P.No.20256 of 2010, it was disposed by the Writ Court by order dated 19.01.2011, whereby the following direction was given:

“4. Therefore, following the above decision, by a direction is issued to the respondents to re-fix the scale of pay of the petitioner as per G.O.Ms.No.162 Finance [Pay Cell] Department dated 13.04.1998 and grant “Selection Grade” and “Special Grade” under Tamil Nadu revised Scales of Pay Rules, 1998 as indicated in Schedule-II ended thereto, within a period of 12 weeks from the date of the receipt of a copy of this order.”

5. As against which, the Department preferred appeal in W.A.No.67 of 2012 which was also dismissed by an order of the Division Bench dated 18.01.2012 with the following order:

“Heard the learned counsel appearing for the parties and perused the impugned order, dated 19.01.2011 passed in W.P.No.20256 of 2010, whereby the learned Single Judge allowed the writ petition which was



filed by the first respondent/writ petitioner claiming re-fixation of his scale of pay as per G.O.Ms.No.162 Finance [Pay Cell] Department dated 13.04.1998 and to consequently pay arrears of pension and other benefits to him.

2.On going through the impugned order, we do not find any reason to interfere with the same. In our view, the learned Single Judge rightly allowed the writ petition. Hence, the writ appeal is dismissed. Consequently, the connected miscellaneous petition is also dismissed. No costs.”

6.Against which, the appellant Department preferred SLP unsuccessfully. Therefore, the order passed by the learned Judge as stated supra dated 19.01.2011 has been confirmed. Pursuant to which, since the order of the Single Judge has not been complied with immediately, the first respondent filed a contempt petition and in order to avoid the contempt, the appellant Department had come forward to implement the order of the Writ Court by passing an order dated 13.09.2012.

7.In this context, it is to be noted that, as per the 6th Pay Commission



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recommendation from 01.01.2006 the pay has to be revised for all cadres including the Driver cadre and after the pay has been revised, there was certain anomalies which had to be trouble-shooted by the One Man Commission which was appointed by the State Government. Based on the One Man Commission recommendation, the pay scale for Ordinary Grade is Rs.9300-34800+4440 [Grade Pay], for Selection Grade is Rs.9300-34800+4600 [Grade Pay] and for Special Grade is Rs.15600-39100+5400 [Grade Pay]. Based on which, the said order dated 13.09.2012 was passed where the pay for the first respondent has been fixed by the appellant Department as Rs.15600+39100+5400 [Grade Pay]. It has further been stated in the order dated 13.09.2012 that since the first respondent retired from service on 30.09.2006, from 01.03.2011 the pensionary benefits as per the revised pension would be paid.

8.Despite these orders were passed after a full round of litigation since the order passed by the appellant Department dated 13.09.2012 was not implemented, the first respondent had given a representation on 18.09.2013 to implement the order by making recommendation to the Accountant



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General for disbursement of pensionary benefits as per the revised scale of pay.

9.The said representation was considered by the appellant Department, who rejected the same through the order dated 10.10.2013.

10.In the said order, it is not only the plea was rejected but the earlier pay fixed as per the 6th Pay Commission followed by One Man Commission recommendation as stated supra by the order of the Department dated 13.09.2012 itself has been cancelled and the old pay i.e., Rs.9300-34800+4400 [Grade pay] alone according to them was entitled to by the first respondent and accordingly that has been stated in the said order dated 10.10.2013.

11.The said order was under challenge before the Writ Court in W.P.No.22520 of 2014. The said writ petition was allowed by the learned Judge by order dated 09.03.2015. As against which, the present writ appeal has been directed.



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WEB COPY 12. Heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader

appearing for the appellants, who would submit that insofar as the pay as well as the grade pay fixed based on the annexure to the Government letter dated 08.11.2010 cannot be the basis for fixing such a pay scale and in this regard, if any wrong payment is fixed by the communication of the Department dated 13.09.2012, that cannot be taken as a basis for seeking such benefit. Therefore the mistake committed by them already having been considered was rectified and that is how the present order dated 10.10.2013 was passed correcting the mistake already been committed and accordingly, the Special Pay with Grade Pay i.e., Rs.9300 – 34800 +4400 [Grade Pay] has been fixed and communicated through the said order dated 10.10.2013 which has been set aside by the learned Judge through the impugned order. Hence, such an approach on the part of the Writ Court in setting aside the order dated 10.10.2013, by thus making the first respondent to claim the fixation of salary on the basis of the Government letter referred to above for Ordinary Grade, Selection Grade as well as Special Grade is not supported by any Rule and therefore, the order impugned passed by the Writ Court is



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liable to be interfered with.

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13. We have heard the learned counsel appearing for the respondents 3 to 6, who are the legal heirs of the first respondent, who had stated that the first round of litigation is over commencing from W.P.No.20256 of 2010 dated 19.01.2011 and ended with SLP filed by the Government before the Hon'ble Supreme Court and the order of the learned Judge has been confirmed. By virtue of that, the pay of the first respondent has to be fixed under GO.Ms.No.162 Finance [PC] Department dated 13.04.1998 referred to above. After the Government Order in G.O.Ms.No.162 dated 13.04.1998, pursuant to the 6th Pay Commission notice G.O.Ms.No.234 Finance [PC] Department dated 01.06.2009 was issued and when the implementation was made since there has been some anomaly, One Man Commission was appointed. Based on the recommendation of One Man Commission, the Government issued letter dated 08.11.2010 where as per Annexure-I for various stages of Ordinary Grade, Selection Grade and Special Grade, revised pay has been mentioned. In the said Table, Sl.No.13 is applicable to the first respondent and similar employees. Therefore, as per the said



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revised pay scale, the Special Grade pay for the first respondent is to be fixed at Rs.15600-39100+5400 [Grade Pay]. When this was already noted and fixed by the order of the appellant dated 13.09.2012, suddenly they withdrawn the same and the impugned order dated 10.10.2013 was passed. That only triggered the first respondent to approach the Writ Court. Therefore, absolutely there has been no justification on the part of the appellants to pass the order dated 10.10.2013. Therefore, quashing the said order by the Writ Court by passing the said judgment which is impugned herein is fully justified based on the earlier order passed by this Court as confirmed by the Hon'ble Supreme Court as well as various Government Orders issued by the State authorities during various point of time.

14.We have considered the rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

15.As has been rightly pointed out by the learned counsel for the first respondent, the issue started earlier in the year 2010 itself where the first



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respondent was triggered to file a writ petition in W.P.No.20256 of 2010 where a direction was given to fix a pay scale for the first respondent under G.O.Ms.No.162 dated 13.04.1998. This has been confirmed by the Hon'ble Supreme Court.

16. Thereafter, the 6th Pay Commission recommendation had been given and while implementing the same, some anomalies were occurred. Therefore, the One Man Commission was appointed. Based on which the Government issued a letter indicating various Ordinary, Selection and Special Grade Pay for various categories of employees.

17. According to which, the pay scale has to be revised to the first respondent which in fact rightly accepted and done by the appellant Department by order dated 13.09.2012. But the said order without any notice, reason have been withdrawn or they have not even stated whether it has been withdrawn or not, but they have passed an order on 10.10.2013 stating that the first respondent is entitled to get the Special Grade pay of



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Rs.9300-34800+4400 [Grade Pay] alone and not the said amount i.e.,

Rs.15,600-39100+5400 [Grade pay].

18. There is absolutely no justification on the part of the appellant to pass this order dated 10.10.2013. If at all this order is to be passed based on the representation given by the first respondent dated 18.09.2013, notice should have been given. Without any notice this order ought not to have been passed by the appellant Department. Therefore, on that ground itself the impugned order had to be quashed and therefore, it was rightly quashed by the learned Judge.

19. Moreover, insofar as the fixation of pay is concerned, it is based on the 6th Pay Commission recommendation as well as One Man Commission recommendation and the table that has been issued as Annexure-I to the letter of the Government dated 08.11.2010 has been implemented in respect of various categories of employees. When that being so, the present stand taken by the appellant Department by suddenly taking a complete turn of the earlier stand taken by them by issuing an order dated 13.09.2012 is not



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justified or not backed by any Rule or the Government Orders.

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20. When that being so, the attempt now made by the learned Special Government Pleader to sustain the orders passed by them and on that ground challenging the order of the learned Judge which is impugned herein cannot be accepted as absolutely there has been no plausible reason projected by the learned Special Government Pleader appearing for the appellant Department.

21. Insofar as the first respondent is concerned, he has already retired from service and he is no more. The legal heirs have already been brought on record. Therefore, the benefits if at all to be given to the employee i.e., first respondent it is only with regard to the pensionary benefits and that shall be calculated on the basis of the revised pay scale as per the order dated 13.09.2012. Therefore, that revised pay shall be calculated, based on which the revised pension be calculated and paid to the legal heirs of the deceased employee who have been impleaded subsequently in this writ appeal also.



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WEB COPY 22.Hence, the appeal fails and it is liable to be dismissed.

Accordingly, the writ appeal is dismissed. The needful as indicated above shall be undertaken by the appellant Department within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the legal heirs of the deceased employee is also entitled to consequential revised family pension which they shall receive till their entitlement. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (K.B., J.)
01.08.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
cse

To

The Accountant General [A&E],
Accountant General's Office,
Chennai – 600 018.



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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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