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WP.Nos.37840 to 37847/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.Nos.37840 to 37847/2016

&

WMP.Nos.32422, 32423, 32425, 32426, 32428, 32429, 32431, 32432,

32434, 32435, 32437, 32438, 32440, 32441, 32443 & 32444/2016

M.Murugesan

... Petitioner in
WP.No.37840/2016

S.Murugan

... Petitioner in
WP.No.37841/2016

E.David Raj

... Petitioner
in WP.No.37842/2016

M.Vijayamma

... Petitioner in
WP.No.37843/2016

Ravi Kumar Kennedy

... Petitioner
in WP.No.37844/2016

S.Rajan

... Petitioner
in WP.No.37845/2016

T.Jawaharlal Nehru

... Petitioner
in WP.No.37846/2016



WP.Nos.37840 to 37847/2016

V.Swaminatha Pillai

... Petitioner in
WP.No.37847/2016

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Versus

1.The Government of Tamil Nadu
rep.by the Principal Secretary
Chennai 600 009.

2.The Director of Collegiate Education,
DPI Complex, College Road
Nungambakkam, Chennai 600006.

... Respondents in
all WPs

Common Prayer :- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of a certiorarified mandamus calling for the records on the files of the 1st respondent bearing Order in Clauses 4[ii] and 4[iv] of Letter No.63305/Pay Cell/2010-1 dated 08.11.2010 and consequential order in para 2 bearing Letter No.23802/CMPC/2011-1 dated 23.05.2011 insofar as it denies the grant of revised Grade/Special Grade Scales of Pay in the Pay Band-2 of Rs.9300+4200 to Laboratory Assistants awarded Selection Grade/Special Grade on or after 01.06.2009 and quash the same and consequently direct the respondents to pay the petitioners the Selection Grade Pay in the Pay Band-2 of Rs.9300-34800+4200.

For Petitioner in all



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the Writ Petitions : Mr.E.Martin Jayakumar

For Respondents in all
the Writ Petitions : Mr.S.Ravikumar, Spl.GP

COMMON ORDER

- (1) The issues raised in all the writ petitions are the same. The petitioners are working as Laboratory Assistants in Colleges. Since the issues raised by them are the same, a common order is passed.
- (2) Let me take as an illustration, the facts stated in WP.No.37840/2016 filed by M.Murugesan. The petitioner therein had been originally appointed as a Sweeper on 26.11.1986. After working for nearly about two decades, he was finally promoted as Laboratory Assistant on 03.11.2004. He was granted Selection Grade on the same date / 03.11.2014.
- (3) The other writ petitioners were also similarly appointed as Gardeners / Waterman/ Record Clerks in Colleges and they were also promoted as Laboratory Assistants. That post of Laboratory Assistant is the last post to which they could be promoted and there is no further promotional avenue. In view of that particular fact, the relief which is



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sought, is to grant Selection Grade and Special Grade of pay in that particular post since there is no promotional avenue available to them.

This in effect, is the relief sought in the writ petitions.

- (4) On the side of the respondents, reliance was initially placed on the judgment of a learned Single Judge of this Court dated 08.12.2020 in a batch of writ petitions, WP [MD] No.16379/2018 batch, ***[P.Arumugam and 3 Others Vs. The Government of Tamil Nadu rep.by the Secretary, Higher Education [G2] Department, Chennai and Others]***. Those writ petitions were filed by the Laboratory Assistants who were similarly working in various Colleges under the Department of Collegiate Education. It was contended that those writ petitioners also did not have promotional avenues and therefore, they are required to be granted Selection Grade and Special Grade of pay. The Government Order which cover that particular issue is G.O.Ms.No.63 dated 26.02.2011.

- (5) The learned Single Judge while examining the claim of the writ petitioners in those writ petitions, had come to a conclusion that those petitioners had been originally appointed as Laboratory Assistants



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and subsequently had been promoted to the post of Junior Assistants / Typists or as Assistants and some of them as Superintendents. They had been promoted to the higher post even before 01.01.2006 when the Pay Commission had been implemented. It had been stated that G.O.Ms.No.63 dated 26.02.2011 relating to Scale of Pay at Selection Grade and Special Grade was fixed for the post of Laboratory Assistants. It had also been stated that the post of Laboratory Assistant had no promotional avenues and that therefore, pay protection was granted to those employees by the Government as a One Time measure. It was further observed that however since the petitioners therein were granted promotion, the purpose of grant of Selection Grade and Special Grade became irrelevant. It had been observed that on promotion, the petitioners therein will have to move over to the higher post by way of promotion or by way of transfer of service and therefore, their pay would be automatically protected in that particular promoted post or transferred post. In view of that particular factual situation in those writ petitions, the learned Single Judge declined to grant Selection Grade and Special Grade of pay to



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the Laboratory Assistants and dismissed the writ petitions.

- (6) The facts in the present writ petitions are slightly different. The present writ petitioners as aforesaid, had been originally appointed as Sweepers / Gardeners / Waterman / Record Clerks and after slowly moving up the ladder, were finally promoted as Laboratory Assistants. There was no further promotional avenue available to them. Therefore, the relief sought was to grant Selection Grade and Special Grade of pay in the existing post of Laboratory Assistants.
- (7) A counter affidavit had been filed on behalf of the respondents wherein it had been stated as follows:-

"4.It is submitted that the Government Order issued in G.O.[Ms] No.590, Finance [Pay Cell] Department, dated 01.08.1992 is applicable to the petitioner's case, since the Laboratory Assistant post is a non-technical post. Further, the Government issued orders to implement the recommendation of One Man Commission constituted by the Government to examine anomalies, if any, consequent on the implementation of the recommendations of the Official Committee 2009 recommending revision of Scales of Pay and



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redesignation of certain categories in Collegiate Education Department and accordingly, the existing Scale of Pay+Grade Pay ie., Rs.5200-20200+1900 for Laboratory Assistant was revised as Rs.9300-34800+4200. This revision was ordered to take notional effect from 01.01.2006 for the purpose of fixation of pay in the revised scale of pay and with monetary benefit from 01.08.2010. The Government also issued clarification vide Letter No.23802/CMPC/2011-1, dated 23.05.2011 Finance [CMPC Department], Chennai-9 to the effect that on the analogy of the clarification issued by the Higher Education Department in its letter dated 31.12.1999 and subject to the confirmation of presumption that there is no promotion for Laboratory Assistants, it was informed that the Laboratory Assistants were awarded Selection Grade/Special Pay prior to 01.01.2006 and those who opt for fixation of Pay on the date of selection grade/special grade in the revised scales between 01.01.2006 and 31.05.2009 are entitled for re-fixation of pay in the revised Selection Grade/Special Grade of Pay of Rs.9300-34800+4200 and Rs.9300-34800+Grade Pay of Rs.4400 respectively.

5.It is submitted that a further clarification was



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issued by the 2nd respondent, viz., Director of Collegiate Education, vide Letter RC.No.15641/B2/2011 dated 08.07.2011 to all Principals of the Government Colleges and all Regional Joint Directors for the pay fixation of the Laboratory Assistants who were already getting Selection Grade/Special Grade of Pay and who have given option for getting promotion by transfer of service to the post of Junior Assistant/Typist/Store Keeper and who have further been promoted as Assistant etc., and in that event, to avoid loss of monetary benefit whether they can continue to draw the same scale of pay in the promoted post along with the benefit of one additional increment entitled for promotion. On this aspect, it was clarified that:-

- the above such employees will be fixed pay in the Selection Grade/Special Grade as per the said Government Order ;*
- even in the previous Pay Commission fixation the above method was followed ;*
- such employees who attained Selection Grade/Special Grade before 01.01.2006 and such employees who will attain Selection Grade/Special Grade during the period*



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01.01.2006 to 31.05.2009 who have opted for Pay Fixation will be eligible for the scale of Rs.9300-34800 + Grade Pay Rs.4200 and 9300-34800 + Grade Pay Rs.4400.

- The orders issued in G.O[Rt] No.63, Finance [Pay Cell] Department, dated 26.02.2011 should be followed. If any audit objections are raised in future regarding the fixation of pay, an undertaking from such employees should be obtained to the effect that the monetary benefits drawn by them will be refunded in full and in one instalment and such a declaration should be recorded and pasted in their service book.*

Further, it is submitted that in the 2nd respondent's Letter RC.No.44735/G3/2012 dated 27.02.2013, it was informed to all the Regional Joint Directors that the clarification given vide Letter Rc.No.15641/B2/2011 dated 08.07.2011 of the Director of Collegiate Education will be applicable also to the Laboratory Assistants working in Aided Private Colleges and this may be informed to all the Secretaries of Aided Colleges."

(8) The learned Special Government Pleader who had initially relied on



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the judgment of the learned Single Judge in ***P.Arumugam and Others' case*** referred supra, had then stated that those Laboratory Assistants who had attained Selection Grade or Special Grade before 31.12.2005 and who continued to work as Typist/Junior Assistants by transfer of service, cannot draw the pay fixed for the post of Laboratory Assistants whose revised Scale of Pay was Rs.5200-20200-GP 4200. However, in the counter extracted above, it had been very clearly stated that consequent to implementation of the recommendations of the Official Committee of 2009 recommending revision of Scales of Pay and re-designation of certain categories in Collegiate Education Department, the existing Scale of Pay + GP of 5200-20200+1900 for Laboratory Assistants had been revised to Rs.9300-34800+GP 4200. This would be the revised scale for Selection Grade. With respect to the Special Grade, there would be a marginal increase in the Grade Pay from Rs.4,200/- to Rs.4,400/-. This has also been clarified by the Government by a Letter in Letter No.23802/CMPC/2011-1 dated 23.05.2011 Finance [CMPC Department], Chennai.



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(9) A further clarification had also been issued by the Director of Collegiate Education, by a letter in Rc.No.15641/B2/2011 dated 08.07.2011 addressed to all the Principals of Government Colleges and to all Regional Joint Directors. It had also been specifically stated that the said clarification would apply to Laboratory Assistants also working in Aided Private Colleges and therefore, information was directed to be issued to all the Secretaries of Aided Colleges. However, the respondents were also careful in keeping in consideration, any audit objection which might arise later. Therefore, they had stated that an undertaking must be obtained from the employees that all monetary benefits drawn by them would be refunded in full in one instalment if objections are raised and such undertaking should be pasted in the Service Register Book. This is only natural since the petitioners are being extended a monetary benefit consequent to clarification issued by the Government and a further clarification issued by the 2nd respondent / Director of Collegiate Education. The entire issue will have to be decided during audit independently.



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(10) Keeping in view the stand taken by the respondents in the counter affidavit, the Impugned Order dated 23.05.2011 which denied such grant of revised Grade/Special Grade scales of pay, is set aside and the stand taken in the counter affidavit, is reiterated. The respondents may obtain necessary undertakings from the petitioners herein as stated above and paste them in the Service Register Books of the petitioners and thereafter, pay the revised scale of pay to the petitioners herein. Necessary proceedings to be issued by the respondents within a period of sixteen weeks from the date of receipt of a copy of this order.

(11) With that observations and direction, the writ petitions stand **allowed**.
No costs. Consequently, connected miscellaneous petitions are closed.

13.09.2023

AP

Internet : Yes

To

1. The Principal Secretary
Government of Tamil Nadu
Chennai 600 009.



WP.Nos.37840 to 37847/2016

2.The Director of Collegiate Education,
DPI Complex, College Road
Nungambakkam, Chennai 600006.



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C.V.KARTHIKEYAN, J.,

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