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W.P.No.33269 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

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

W.P.No.33269 of 2014

1. A.Sahayaraj
2. S.Ravichandran
3. G.Joseph Eugin Ezhilan
4. R.Joseph
5. A.Abdul Salam

... Petitioners

-Vs-

1. The Principal Secretary to Government,
Finance (CMPC) Department,
Fort St.George,
Chennai 09.
2. The Director of School Education,
College Road,
Chennai.
3. The District Educational Officer,
Nagapattinam.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to first impugned order issued by the first respondent in Para 4 of G.O.Ms.No.234 Finance (Paycell) Department dated 01.06.2009 and the second impugned order issued by the first respondent



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in para 4 of Letter No.63305 / Pay cell / 2010-1 dated 08.11.2010 in so far as they denied fixation of Selection Grade/Selection Grade in higher scale of pay to the petitioners who were granted Selection Grade/Special Grade on or after 01.06.2009 and the third impugned order issued by the first respondent in Letter No.57536/CMPC/2013-2 dated 25.07.2014 and to quash these orders and to consequently direct the respondents to fix the pay of the petitioner in the Selection Grade Laboratory Assistant in the scale of Pay of Rs 9300-34800 plus G.P.4200 with effect from the respective date of their award of Selection Grade in the post of Laboratory Assistant with all consequential service and monetary benefits including arrears of pay.

(Prayer amended vide order dated 06.02.2023 made in W.M.P.No.2386 of 2023 in W.P.No.33269 of 2014)

For Petitioners : Mr.R.Prem Narayan
For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order issued by the first respondent in Para 4 of G.O.Ms.No.234 Finance (Paycell) Department dated 01.06.2009 and the second impugned order issued by the first respondent in para 4 of Letter No.63305 / Pay cell / 2010-1 dated 08.11.2010 in so far as they denied fixation of Selection Grade/Selection Grade in higher scale of pay to the petitioners who were



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granted Selection Grade/Special Grade on or after 01.06.2009 and the third impugned order issued by the first respondent in Letter No.57536/CMPC/2013-2 dated 25.07.2014 and to quash these orders and to consequently direct the respondents to fix the pay of the petitioners in the Selection Grade Laboratory Assistant in the scale of Pay of Rs 9300-34800 plus G.P.4200 with effect from the respective date of their award of Selection Grade in the post of Laboratory Assistant with all consequential service and monetary benefits including arrears of pay.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

3. The petitioners are working as Laboratory Assistants in the Government Aided Schools in Nagapattinam District. Pursuant to the recommendations of the Official Committee on revision of pay and allowances under the Tamil Nadu Revised Pay Scale Rules 2009, the Government issued G.O.Ms.No.234, Finance Department dated 01.06.2009. Accordingly, the revised scale of pay of Rs.9300-



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34800+Grade pay Rs 4200 was given to the Selection Grade Laboratory Assistants. For Special Grade, the Grade Pay was fixed as Rs.4400/-. Accordingly, the revision of pay is to be extended to all the Selection Grade Laboratory Assistants. But, all the petitioners were granted lesser scale of pay of Rs.5200-20200+Grade Pay of Rs.2400/-. On enquiry, they were informed that a Clarification Letter was issued by the first respondent dated 25.07.2014 stating that the revised pay for the post of Selection Grade Lab Assistant as per G.O.234 will be granted only to the persons awarded with Selection Grade/Special Grade between 01.01.2006 and 31.05.2009. The other persons awarded with the Selection Grade after the said cut off date are not entitled for the revised pay as per G.O.234.

4. The learned counsel for the petitioner would submit that the pay rules was issued commonly to all the persons working in the same cadre. The date is artificial and imaginary and the same was just a clarification letter dated 25.07.2014. The benefit of revised scale is extended to the employees awarded of selection grade between 01.01.2006 and 31.05.2009. The petitioners are working in the cadre of



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Lab Assistants and all the persons in the same cadre should be treated as Homogeneous class and two different scale of pay cannot be granted based on the date of award of selection grade. It is nothing but discriminatory and violation of principles of equal pay for equal work. G.O.Ms.234 was taken as a criteria for fixation of the cut off date of 31.05.2009. It is an official committee constituted subsequent to the implementation of the 6th pay commission to rectify the pay anomalies. Therefore, there cannot be further cut off date depriving the petitioners to move on to the revised pay by giving option.

5. In support of his contention, he relied upon various Judgments reported in **2017 (1) SCC 148** in the case of ***State of Punjab and others Vs Jagjit Singh and others***, in **L.P.A.No.22 of 2018** in the case of ***The State of Jharkand and another Vs. Prashant Kumar Mishra and others***, in **S.L.P.(C).No.19255 of 2021** in the case of ***State of U.P. and another Vs Aishwarya Pandey***.

6. The Hon'ble Supreme Court of India held in



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S.L.P.(C).No.19255 of 2021 in the case of ***State of U.P. and another Vs Aishwarya Pandey*** that there cannot be two different pay-scales for the employee appointed on compassionate ground and the employee appointed on regular basis. The moment a person is appointed on a particular post, that person is entitled to the pay-scale of the very post, even if the appointment is on compassionate ground. Therefore, the authority cannot be allowed to fix the cut-off date arbitrarily that too without any reason.

7. A perusal of the counter affidavit filed by the first respondent revealed that subsequent to the Sixth Central Pay Commission, an Official Committee was constituted on 20.08.2008, by Government of Tamil Nadu, to examine and make necessary recommendations for the revision of scale of pay and allowances of State Government employees and teachers including local body employees. Accordingly, the Government have implemented the recommendations of Official Committee on “pay scale to pay scale basis”, notionally effect from 01.01.2006 with monetary benefit from 01.01.2007 and passed a G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009.



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Thereafter, the revised pay scale for the post of Laboratory Assistants was fixed in Pay Band-1 at Rs.5200-20200+Grade Pay Rs.1900 with effect from 01.01.2006 as per Schedule-I.

8. The employees appointed between 01.01.2006 and 31.05.2009 were drawing pay in the pre-revised scales of pay. These employees were also wanted the benefit of Fitment Table by allowing to multiply the basic pay by a factor of 1.86 vide G.O.Ms.No.258 Finance (Pay Cell) Department, dated 23.06.2009. On the recommendations of One Man Commission, 2010, G.O.Ms.No.63 Finance (Pay Cell) Department, dated 26.02.2011, orders were issued revising the Ordinary Grade Scale of Pay for the post of Laboratory Assistant from Rs.5200-20200+G.P.1900/Rs.5200-2200+G.P.2000 to Rs.5200-20200+G.P.2400 notionally w.e.f. 01.01.2006 and with monetary benefit from 01.03.2011. Accordingly, G.O.Ms.237 dated 22.07.2013 was issued. As far as the petitioners are concerned, they are working as Laboratory Assistant in an aided private school in Nagapattinam District.



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9. The service details of petitioners are as follows:-

SI. No.	Name	Date of Selection Grade in the post of Lab Assistant	Option date for coming into the revised scale of pay 2009	Pre-Revised scale of pay (Rs.)	Revised scale of pay for selection Grade (with 3%+3% benefit) (Rs.)
1.	A.Sahayaraj	03.10.2010	01.01.2006	3050-75- 3950-80- 4590	5200- 20200+Grade Pay Rs.2400
2.	S.Ravichandran	07.03.2011	01.01.2006		
3.	G.Joseph Eugin Ezhilan	09.10.2010	01.01.2006		
4.	R.Joseph	06.09.2012	01.01.2006	4000-100- 6000	9300- 34800+Grade Pay 4200
5.	A.Abdul Salaam	10.06.2005	01.01.2006		

10. Petitioners 1 to 4 are not entitled for Selection Grade as per Government Letter No.63305/Pay Cell/2010-1, Finance Department, dated 08.11.2010. The fifth petitioner was awarded selection grade from 10.06.2005 prior to implementation of revised pay scale of pay rules and others were awarded selection grade after 01.06.2009. Therefore, the petitioners 1 to 4 have not been awarded Selection Grade pay between 01.01.2006 and 31.05.2009. There is no provision to provide separate scale of pay for awarding selection grade beyond 01.06.2009. However, as per G.O.Ms.237, Finance (Pay Cell) Department, dated 22.07.2013,



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the petitioners are entitled for an additional increment benefit equivalent to 3%+3% of basic pay (Pay + Grade Pay). Therefore, as a matter of policy decision, the Government abolished the system of providing separate scales of pay for Selection Grade/Special Grade. Therefore, a cut-off date is needed. Accordingly, the date of issue of orders in G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 has been prescribed/fixed as cut-off date. Hence, the employees who were availing Selection Grade/Special Grade prior to issue of the Government Order were permitted to fix their pay in the separate scales of pay. There is no discrimination among the Laboratory Assistant working in the Government School and Aided Private School. All are treated as equal. Since the petitioners 1 to 4 have not been awarded selection grade in the period between 01.01.2006 and 31.05.2009, they are not entitled to avail separate scale of pay for Selection Grade. As per Rule, they are entitled to avail 3%+3% increment benefit for attaining selection grade and they have also been awarded this benefit already. This mode of fixation is commonly done to all Government employees who were awarded Selection Grade/Special Grade after notification of G.O.(Ms).No.234, finance (Pay Cell) Department, dated 01.06.2009. In fact, the fifth



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petitioner has been awarded Selection Grade prior to implementation of revised scale of pay and he has opted to come into the revised scale of pay from 01.01.2006 and he is entitled for the benefit as per Government Letter No.63305/Pay Cell/2010-1, Finance Department, dated 08.11.2010.

11. Accordingly, the first respondent is directed to pass order to school education department for sanctioning of said benefit to the fifth petitioner. Insofar as the petitioners 1 to 4, they are not entitled for any relief as prayed for.

12. Accordingly, this writ petition is partly allowed. No costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
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