IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2152 of 2022
and
CMP. No. 16056 of 2022
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1. The State of Tamil Nadu
Rep. by its Secretary
Finance Department
Fort St. George
Chennai - 600 009

2. The Commissioner
Commercial Tax
Ezhilagam, Chepauk
Chennai - 600 005.

3. The Additional Commissioner (Administrative)
Office of the Principal Secretary/Commissioner
of Commercial Tax
Chepauk, Chennai - 600 005 .. Appellants

Versus

1. J. Babu
Son of Jayaraman
DSTO, O/o. Joint Commissioner (ST) Intelligence
Coimbatore

2. G. Maheshwaran
Son of S. Ganesan
DSTO, O/o. Joint Commissioner (ST) Intelligence
Coimbatore

3. C. Rajasekar
Son of M. Chinnadorai
DSTO, O/o. Joint Commissioner (ST) Intelligence
Coimbatore

4. M. Kanagaeswari
Wife of Balasubramaniam
DSTO, O/o. Assistant Commissioner (ST)
Singanallur North
Coimbatore - 18

5. S.T. Ambika
Wife of K. Nagarajan
DSTO, O/o. Deputy Commissioner (ST)
Inspection, Coimbatore

6. K. Malarvizhi
Wife of A. Rajeswaran
DSTO, O/o. Assistant Commissioner

7. J. Sagaya Mary Vijaya
D/o. A. John
DSTO, O/o. Assistant Commissioner (ST)
Annur Circle, Coimbatore

8. E.P. Selvi
Wife of M. Rajendran
Assistant (Retd) 31.03.2019
O/o. Assistant Commissioner (ST)
Ganapathy Circle, Coimbatore

9. R. Nagendran
Son of R. Ramasamy
DSTO, O/o. Assistant Commissioner (ST)
Avanasi Circle, Avanasi

10. S. Velusamy
Son of M. Subbiah
Assistant, O/o. Deputy Commissioner (ST) (Appeal) (Main)
Coimbatore

11. P. Selvaraj
Son of A.C. Ponnusamy
Assistant, O/o. Dy. Commissioner (ST)
Ramnagar Circle
Coimbatore

12. A. Kalirathinam
Son of Akilandadevar
DSTO (Adjudication)
O/o. Joint Commissioner (ST) Intelligence
Coimbatore

13. R. Sudhamathi
Wife of R. Jeganathan
DSTO, O/o. Deputy Commissioner (ST) Inspection
Coimbatore

14. V. Ravi
Son of N. Venkatachalapathy
Assistant
O/o. Assistant Commissioner (ST)
Mettupalayam Taluk Circle
Mettupalayam, Coimbatore

15. K. Thirupathy
Son of Karuppaiyan
DSTO, O/o. Joint Commissioner (ST)
Coimbatore

16. A. Ganesan
Son of Arumugam
Assistant
O/o. Assistant Commissioner (ST)
Periyanaickenpalayam Circle
Coimbatore

17. M. Rajasekaran
Son of R. Murugesan
DSTO, O/o. Assistant Commissioner (ST)
Saravanampatti East Circle, Coimbatore

18. S. Venugopal
Son of S.A. Sivasamy
DSTO, O/o. Assistant Commissioner (ST)
Avarampalayam Circle
Coimbatore

19. V. Abimanyu
Son of U. Veeran
Assistant
O/o. Deputy Commissioner (ST) Inspection
Coimbatore

20. N. Soodamani
Son of P. Nagappan
Assistant
O/o. Deputy Commissioner (ST) Inspection
Coimbatore .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 02.11.2021 passed by the learned Judge in W.P. No. 22185 of 2021

For Appellants	:	Mr. Haza Nazirudeen Additional Advocate General assisted by Mr. M. Venkateswaran Special Government Pleader (Taxes)
For Respondents	:	Mrs. Dakshayani Reddy, Senior Advocate for Ms. Sumeetha

JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J**)

This intra-court appeal is filed by the appellants / State, assailing the order dated 02.11.2021 passed by the learned Judge in WP. No. 22185 of 2021.

2. The aforesaid writ petition was filed by the respondents herein praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third appellant in Proceedings No. H21/13551/2018 dated 09.06.2020, quash the same and consequently direct the appellants to refix their pay and allowances by extending the benefit of fitment Table as per Rule 4 (1) of the Tamil Nadu Revised Scales of pay Rules 2009 and by extending the benefit of G.O. Ms. No. 340 Pay cell dated 26.08.2010 as was done with respect to the individuals selected along with them and appointed prior to 01.06.2009 in the light of the order dated 03.10.2019 passed in W.P. (MD) No. 15375 of 2013 etc. batch.

3. It was averred by the respondents in the affidavit filed in support of the writ petition, was that they were appointed on a consolidated pay basis in the post of Junior Assistant during the year 2003 through employment exchange as per G.O. Ms. Nos. 84 and 85, Public and Administrative Reforms Department dated 04.07.2003. In fact, the respondents came to be appointed in the posts that fell vacant due to *en masse* strike resorted to by the Government employees in the year 2003. Subsequently, as a condition precedent for regularising the services of the respondents, the Government decided to conduct a competitive examination through the Tamil Nadu Public Service

Commission. Accordingly, a notification dated 06.12.2007 was published calling upon those appointees, who were appointed in the year 2003, to participate. The examination was conducted on 17.02.2008 in which the respondents participated and the results were published on 16.07.2008. As several persons were declared pass in the examination, they could not be accommodated by the Government in a regular sanctioned post. Therefore, the Government directed to appoint them by identifying the vacancies in various Departments. In the case of the respondents, they could not be immediately given orders of appointment for want of vacancy and they were issued with orders of appointment only in the year 2010.

4. The respondents further stated that while so, the Government issued G.O. Ms. No. 234 Finance (Pay Cell) Department dated 01.06.2009, accepting VI Pay Commission recommendation and accordingly, revised the scales of pay of its employees. Subsequently, G.O.Ms.No. 258 dated 23.06.2009 came to be issued, directing the fixation of pay in the revised pay structure for employees appointed on or after 01.01.2006 and before 01.06.2009, as per Rule 4(1) of the revised pay scales Rules of G.O.Ms.No.234 dated 01.06.2009, which states that the pay in the pay band shall be determined by multiplying existing basic pay as on 01.01.2006 by a

factor of 1.86. Thereafter, G.O. Ms. No. 340 Finance (Pay Cell) Department dated 26.08.2010, came to be issued, thereby accepting the recommendations made by the One Man Commission and the Government granted the benefit of fixation of pay as per the fitment table vide Rule 4(1) in the revised pay scale by extending the benefits of G.O.Ms.No.258 dated 23.06.2009 to those individuals, who had been appointed after 01.06.2009 provided the delay in granting the appointment orders was due to administrative reasons.

5. According to the respondents / writ petitioners, the aforesaid Government Orders came to be issued only at the instance of the individuals like them, to specifically benefit those contract employees, employed in the year 2003 and who were subsequently appointed as Junior Assistants after 01.06.2009, but the same have not been extended to the respondents herein. They further submitted that their pay ought to have been fixed as per clause 4(1) of G.O. Ms. No.234 dated 01.06.2009, however, their pay has been fixed at the entry level as a new entrant, thereby denying them the pay fixed in favour of those who were appointed prior to 01.06.2009. The respondents thus stated that they have written the special competitive examination on 17.02.2008 and the results were published even on 16.07.2008, yet the orders of appointment were issued after 01.06.2009 and therefore, for the delay

caused in identifying the sanctioned post and issuing the orders of appointment, they should not be penalised by not giving effect to the benefit of G.O.Ms.No.340 dated 01.06.2009, as the same would amount to discrimination. Seeking the said benefit, they filed WP No. 33616 of 2019, which, by order dated 23.11.2019, was disposed of, by directing the appellants to consider the claim of the respondents. Pursuant to the said direction, the third appellant has passed an order dated 09.06.2020, rejecting the claim of the respondents. Therefore, the instant writ petition viz., WP.No.22185 of 2021 before the learned Judge.

6. Upon hearing both sides, the learned Judge held that even though the respondents / writ petitioners were appointed after the cut off date namely 01.06.2009, the delay in issuing the orders of appointment after the cut off date cannot be attributed against them. Further, the learned Judge placing reliance on the earlier order dated 03.10.2019 passed in WP (MD) Nos. 15357 to 15383 of 2013, 1236 of 2014 and 8913 and 8914 of 2018, held that the benefits of the Government Orders have to be extended in favour of the respondents herein without any discrimination. Accordingly, the learned Judge allowed the writ petition, by order dated 02.11.2021. Challenging the said order, the appellants / State are before this Court with the present appeal.

7. The learned Additional Advocate General appearing for the appellants would vehemently contend that the benefit of G.O. Ms. No.340 Finance (Pay Cell) Department, dated 26.08.2010 is applicable only to those who joined duty prior to 01.06.2009 and it cannot be made applicable to the respondents herein, who admittedly joined duty beyond 01.06.2009. In other words, the respondents joined the service much after the Government Order came to be passed. Adding further, the learned counsel submitted that the service benefit can accrue to a Government servant only upon joining duty and not before. Even though on the date when G.O. Ms. No.340 dated 26.08.2010 was issued, the respondents herein were selected to the post, it will not *ipso facto* confer them any right to get the benefit of the said G.O. It is also submitted that there is no provision in the Tamil Nadu Revised Scales of Pay Rules, 2009 or in any rules to sanction pay and allowances prior to the date on which a Government Servant joins duty. Without properly appreciating the said aspects, the learned Judge erred in considering the claim of the respondents in their favour. Thus, the learned counsel sought to allow this appeal by setting aside the order of the learned Judge.

8.1. Per contra, the learned Senior counsel appearing for the respondents / writ petitioners submitted that the Government, after considering the plight of the persons like the respondents / writ Petitioners herein, decided to relax Rule 9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in exercise of the powers conferred under Rule 13 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants / Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch, prior to 01.06.2009 and joined/appointed on or after 01.06.2009, duly allowing the fitment benefit to the individuals due to administrative reasons. When the Government itself passed such an order to benefit the respondents herein, the order of rejection passed by the third appellant is arbitrary and illegal.

8.2. The learned Senior counsel for the respondents also submitted that in similar circumstances, in WP.No.7144 of 2014, the claim of the writ petitioners therein, who were appointed as Assistant Agricultural Officers and were not extended the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, was considered and was granted in their favour, by the learned Judge on 23.11.2020, following the earlier order dated 03.10.2019 in WP (MD) Nos.15378 to 15383 of 2013, etc. cases, which was also implemented by the Government vide proceedings No.FSE1/88389/2013 dated 11.01.2021. Challenging the said order of the learned Judge dated

23.11.2020, the appellants therein preferred WA.No.1836 of 2021, which was dismissed by a Division Bench, by judgment dated 04.08.2021. Therefore, the learned Senior counsel submitted that in the light of the earlier orders passed by this court, the learned Judge allowed the claim of the respondents herein, by the order impugned herein, which does not require any interference at the hands of this court.

9. We have heard the learned Additional Advocate General appearing for the appellants as well as the learned Senior counsel for the respondents and also perused the materials placed on record.

10. It is an admitted fact that during the year 2003, due to an *en masse* strike conducted by the Government employees, the respondents herein were called upon to discharge the duties of the Government employees temporarily. After the strike was over and the regular incumbents returned to work, the respondents were left without any work. However, in order to accommodate them, the Government conducted a qualifying examination on 17.02.2008, the results of which, were published on 16.07.2008 and the respondents successfully passed the examination. However, they were appointed only in the year 2010. As a result of the same, the benefits conferred

under G.O. Ms. No.234, Finance (Pay Cell) Department dated 01.06.2009 and G.O. Ms. No.340, Finance (Pay Cell) Department dated 26.08.2010 which are applicable to the incumbents recruited before 01.06.2009, have not been extended to the respondents herein on the ground that they were appointed after 01.06.2009.

11. However, by order dated 02.11.2021, which is impugned in this appeal, the writ court, following the earlier orders passed in the similar cases, allowed the claim of the respondents and directed the appellants to give the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 to the respondents from the date of appointment. While so, it was observed that the documents produced would show that even other person, who were appointed after 01.06.2009 were given the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010 and therefore, there cannot be any discrimination among these employees on account of the administrative delay in deputing them to various departments of the Government, after they cleared the exams and results were published on 16.07.2008.

12. The main ground raised by the appellants to challenge the order of the learned Judge passed in the writ petition is that the respondents were

appointed after 01.06.2009 and hence, the benefit of the said G.O. cannot be applicable to them. Whereas, the learned Senior counsel for the respondents contended that immediately after passing the competitive examination, the respondents could not be accommodated in the posts, and there was administrative delay in identifying the posts lying vacant in various Departments and thereafter, the respondents were accommodated in the year 2010 and hence, they cannot be penalised by citing the reason that they were appointed after 01.06.2009.

13. The issue involved in this appeal is no longer *res integra*. There were several decisions of this Court extending the benefit of G.O.Ms.No.340 Finance (Pay Cell) dated 26.08.2010 to the similarly placed persons like the respondents herein, viz., WP(MD)No.15375 of 2013 etc, cases dated 03.10.2019, WP.No.7144 of 2014 dated 23.11.2020, etc. In all those cases, after having found that the Government Order itself provides the benefit to all the categories of posts recruited by the Tamil Nadu Public Service Commission prior to 01.06.2009 and joined on a subsequent date on or after 01.06.2009 due to administrative reasons, it was categorically held that the delay in appointment due to administrative reasons, cannot be deprived of the benefits of the said G.O. The order passed by the Madurai Bench in WP(MD)No.15375

of 2013 etc. batch, was accepted and implemented by the Government on 11.01.2021. In an identical case in WA.No.186 of 2023, by judgment dated 02.02.2023, after referring to the aforesaid decisions, this Court has also affirmed the order of the learned Judge dated 07.01.2022 passed in WP.No.11450 of 2014, granting the revised scale of pay in favour of the Assistant Agricultural Officers, who joined duty after 01.06.2009, as per G.O.Ms.No.234 Finance (Pay Cell) Department, dated 01.06.2009, by extending the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department, dated 26.08.2010.

14. Thus, having regard to the admitted position that the respondents were appointed after 01.06.2009, due to the administrative reasons, and in the light of the decisions referred to above, this court finds no reason to interfere with the order passed by the learned Judge, extending the benefit of G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, to the respondents herein.

15. In such view of the matter, the appeal filed by the appellants deserves to be dismissed and is accordingly, dismissed. Consequently, the appellants are directed to comply with the order of the learned Judge, within a

period of 12 weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J) **(M.S.Q., J)**

05.06.2023

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

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To

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   Finance Department
   Fort St. George
   Chennai - 600 009

2. The Commissioner
   Commercial Tax
   Ezhilagam, Chepauk
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R. MAHADEVAN, J
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