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WA No. 186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

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

Writ Appeal No. 186 of 2023
and
C.M.P. No. 1706 of 2023

1. The State of Tamil Nadu
Rep. by the Secretary to Government
Finance Department
Fort St. George, Chennai - 09.
2. The Secretary to Government
Government of Tamil Nadu
Agriculture Department
Fort St. George, Chennai - 09.
3. The Commissioner of Agriculture
Chepauk, Chennai - 05.
4. The Joint Director of Agriculture
Villupuram District, Villupuram.

.. Appellants

Versus

1. C.Jayapradha
2. R.P.Adhina
3. B.Jayabharathi
4. R.M.Priya
5. S.Parasakthi
6. Savithri
7. J.Sudha
8. D.Komala
9. S.Poovizhi
- 10.R.Vijayalakshmi
- 11.R.Suresh
- 12.B.Yamuna
- 13.S.Sathya
- 14.D.Vimala



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15.M.Vidyavathi
16.Kirubasankari
17.K.Jayagandhi
18.P.Rajathi
19.M.Chandramohan
20.S.Radhai
21.R.Prabhavathi
22.K.Vedharathinam
23.K.Jayakumar
24.T.Paneerselvam
25.D.Chandran

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 07.01.2022 in W.P. No.11450 of 2014 on the file of this Court

For Appellants : Mr. C. Selvaraj
Additional Government Pleader

For Respondents : Mr. T. Arul
for Mr. D. Manimaran

JUDGMENT

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

This intra-court appeal is filed by the appellants assailing the order dated 07.01.2022 passed by the learned Judge in WP.No.11450 of 2014.

2.The aforesaid writ petition was filed by the respondents herein to quash the clarification letter dated 06.08.2009 issued by the first appellant and consequently direct the appellants herein to permit the respondents to exercise their respective option for revised scales of



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pay as per G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009, and accordingly, revise their pay on par with their colleagues and pay the arrears and other consequential benefits thereof.

3.It was stated by the respondents herein before the writ court that they are working as Assistant Agricultural Officers since July 2010. According to them, the Government issued G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009 fixing revised scale of pay of Rs.5200-20200+Rs.2800 Grade Pay on the basis of the recommendations made by the official committee for revision of pay and allowances under the Tamil Nadu Revised Pay Scales Rules, 2009. Subsequently, a clarification was issued by the Government on 06.08.2009, which reads as follows:

"I am directed to clarify that employees can opt to remain in the existing scale of pay (pre-revised scale of pay) upto any period of their choice between 01.01.2006 to 31.05.2009 (i.e.,) prior to the date of issue of notification of Tamil Nadu Revised Scales of Pay Rules, 2009. As such, the employees are permitted to exercise their option to come over to the revised scales from the date on which the pre-revised pay scales were revised upward subsequent to 01.01.2006."

4.According to the respondents/writ petitioners, by virtue of the clarification given by the Government, the Assistant Agricultural Officers who were appointed prior to 31.05.2009 alone, were given the benefits for opting to remain in the existing scale of pay upto any



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period of their choice. But, the respondents, who joined as Assistant Agricultural Officers after 31.05.2009, could not avail such benefits. It is the contention of the respondents/writ petitioners that when a scale of pay has been fixed by the Government, it has to be extended to all, those who are eligible without any artificial cut off date and the failure to extend the same would amount to discrimination. Therefore, the respondents/writ petitioners have filed the writ petition before the Writ Court.

5.On the other hand, the writ petition was opposed by the appellants herein on the ground that the writ petitioners were appointed only after the notification was issued, implementing G.O. Ms. No.234, Finance (Pay Cell) Department dated 01.06.2009 and therefore, they are ineligible to claim the pre-revised scale of pay on par with their colleagues, who were recruited much prior to 01.06.2009.

6.The learned Judge, on hearing the rival submissions, noticed that in similar circumstances, this Court passed an order in W.P. No.7144 of 2014 which was also affirmed by judgment dated 04.08.2021 passed by a Division Bench in W.A. No. 1836 of 2021. Therefore, in the light of the earlier order referred to above, the learned Judge, by order dated 07.01.2022, allowed the writ petition filed by the respondents herein and directed the appellants herein to revise the



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scale of pay of the respondents/writ petitioners on par with their batch mates appointed prior to 01.06.2009 within a period of six months from the date of receipt of a copy of the order. Aggrieved by the said order dated 07.01.2022, the appellants have filed the present appeal.

7.The learned Additional Government Pleader appearing for the appellants would vehemently contend that the benefit of G.O. Ms. No.340 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 on 06.07.2010 much after the Government Order came to be passed. However, the learned Judge did not take note of the fact 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 Government Order, which was issued much after they joined their duty. 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 from the date before joining in a Government post. Thus, according to the learned Additional Government Pleader, the order passed by the learned Judge, in allowing the writ petition filed by the respondents, is illegal and



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contrary to law and hence, the same is liable to be set aside.

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8. On the other hand, the learned counsel for the respondents would contend that the issue involved in this writ petition is no longer *res integra* as it is covered by series of decisions rendered by this Court. The learned Judge also, by following the earlier order, rightly allowed the writ petition filed by the respondents. Therefore, the learned counsel prayed for dismissal of the writ appeal.

9. We have heard Mr. C. Selvaraj, learned Additional Government Pleader appearing for the appellants and Mr. T. Arul, learned counsel taking notice for the respondents and also perused the materials placed on record.

10. The relief sought by the respondents / writ petitioners before the writ court is to exercise their option for revised scales of pay, as per G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, and accordingly, revise their pay on par with their colleagues and pay the arrears and other consequential benefits.

11. The learned Judge allowed the writ petition, after referring to the Judgment dated 04.08.2021 passed by the Division Bench of this Court in W.A. No. 1836 of 2021, which was filed against the order



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passed in WP No.7144 of 2014. In the said judgment, identical facts were involved and it was held that where there was a delay due to administrative reasons, the employees cannot be deprived of the benefits of a benevolent Government Order. It was further held that when similarly placed Government servants were given the benefit of G.O. Ms. No.340 Finance (Pay Cell) Department dated 26.08.2010, the writ petitioners therein were also entitled for the same. In this context, it is worthwhile to advert to paragraph no.4 of the said G.O., dated 26.08.2010, which reads as follows:

"4) The Government has carefully examined the above recommendations of the One Man Commission and decided to rectify the anomaly as pointed out by the One Man Commission. Accordingly, the Government direct that in exercise of the powers conferred under Rule-13 of the Tamil Nadu Revised Scales of Pay Rules, 2009 relax the Rule-9 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 1.6.2009 and joined/appointed on a subsequent date on or after 1.6.2009 due to administrative reasons duly allowing the fitment benefit to the individual employees concerned as a special case. However, Government direct that the above fixation benefit shall be given notional effect from the date of appointment of the individual employees concerned with monetary benefit from 1.8.2010."

12.It is manifest from the above Government Order that certain monetary benefits were extended to those who were recruited by the Tamil Nadu Public Service Commission prior to 01.06.2009, but joined



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on a subsequent date after 01.06.2009 due to administrative reasons.

When the Government Order categorically provides for extending the benefits of the pay band even for those who were appointed after the cut-off date, namely 01.06.2009, the administrative reasons, due to which the delay had occurred, cannot be put against the respondents / writ petitioners. At this juncture, it is relevant to point out that it was not the fault of the writ petitioners in joining the post, to which they were appointed, belatedly. It is also seen that there was no recruitment for more than 18 years for the post of Assistant Agricultural Officers and by the time when the writ petitioners applied, they have crossed the age of 40; and that, there was some delay in appointing the writ petitioners and they received their orders of appointment only in 2010. In such circumstances, the respondents / writ petitioners are also entitled to the benefit of G.O.Ms.No.340, by following the earlier judgment of the Division Bench of this court referred to above.

13.Above all, the learned counsel for the respondents/writ petitioners pointed out that the Director of Agriculture *vide* proceedings dated 11.01.2021 made in FSE1/88389/2013, passed the following order:

" Consequent to the above order of the Hon'ble Madurai Bench of High Court, Government directed in the Government Order sixth read above and subsequent amendment in Government Order 7th read above extended the benefits of G.O. Ms. No.340 Finance (Pay Cell) Department, dated 26.08.2010 to the



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petitioners/individuals on par with the batch-mates who had joined prior to 01.06.2009 and directed the Director of Agriculture to re-fix the pay of the individuals/petitioners' concerned by issuing the separate office proceedings.

As powers conferred in the Government Order 6th read, the pay fixing authorities concerned are directed to re-fix the pay of the Assistant Agricultural Officers indicated in the Annexure (70 persons) to this orders by allowing the 1.86 fitment ($4000 \times 1.86 = 7440$) notionally from the date of joining, with monetary benefit from 01.08.2010."

Thus, when the Government has already extended the benefits of G.O. Ms. No.340 Finance (Pay Cell) Department dated 26.08.2010 to some persons, who are similarly placed like the respondents herein, the refusal to extend such benefits in favour of the respondents herein would amount to discrimination. Therefore, this court is of the view that the benefit of G.O. Ms. No.340 dated 26.08.2010 extended in favour of the persons similarly placed is a *remedy in rem* and hence, it has to be extended to all, including the respondents/ writ petitioners.

14. Thus, the upshot of the discussions is that we find no reason to interfere with the order passed by the learned Judge, which is impugned herein. Hence, the writ appeal fails and is accordingly, dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]



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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non-Speaking Order
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and
MOHAMMED SHAFFIQ, J

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To

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State of Tamil Nadu
Finance Department
Fort St. George, Chennai - 09.
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