



W.P.No.33531 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated	09.02.2023
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CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.33531 of 2018
and
W.M.P.No.38919 of 2018

N.Kumar

... Petitioner

Vs.

1.The Principal Secretary to Government,
Department of Highways & Minor Ports,
Fort St. George,
Chennai-600 009.

2.The Director General of Highways,
No.76, Sardar Patel Road,
Guindy, Chennai-600 025.

3.The Director,
Highways Research Station,
No.76, Sardar Patel Road,
Guindy, Chennai-600 025.

4.The Principal Accountant General of Tamil Nadu,
Teynampet, Anna Salai,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Certiorarified Mandamus, calling for the records in



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pursuant to the impugned Admissibility Report issued by the fourth respondent in proceeding Pr. AG (A & E)/PEN P14/11408667/4/R1408667/121 dated 11.07.2014 along with the enclosed impugned remarks in Admissibility report dated 14.07.2014 and the subsequent impugned order issued by the fourth respondent in proceeding PEN 14/II/11409303/R.V/2014-15/ADK/206 dated 10.11.2014 and the consequential impugned order issued by the third respondent in Proceeding Se.Mu.Au.No.1235/P3/2014 dated 25.11.2014 and the impugned order dated issued by the fourth respondent in Proceeding Legal Cell/RTI-315/2017-18/464-47907 dated 17.08.2017 and the subsequent order issued by the fourth respondent in Proceeding AG(A&E)/Legal Cell/RTI-SA-474/18/19/720-55507 dated 28.09.2018 and quash these orders and consequently direct the respondents to restore the fixation of revised of scale of pay of the petitioner in the post of selection grade Lab Assistant at Rs.9300-34800+4200 with effect from 25.11.2007 with all consequential service and monetary benefits, including revision of pension and further direct the respondents to repay the recovered amount of Rs.94,119/- and pension arrears, within a time frame as fixed by this Court.

For Petitioner : Mr.R.Prem Narayan

For Respondent : Mr.K.H.Ravikumar, GA
Nos.1 to 3

For Respondent-4 : Mr.V.Vijay Shankar



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ORDER

Heard Mr.R.Prem Narayan, learned counsel for the petitioner and Mr. K.H.Ravikumar, learned Government Advocate appearing on behalf of the respondents 1 to 3, as well as Mr.V.Vijay Shankar, learned counsel appearing for the fourth respondent.

2. The brief facts of the case is as follows:

2.1. The petitioner herein, while working as a Field Assistant in the second respondent / The Director General of Highways, has retired from service on 30.04.2014. Through the impugned orders, passed in the year 2014, the respondents 3 & 4 had cancelled the petitioner's pay fixation in the post of Selection Grade Lab Assistant and ordered for recovery of the excess payment. Prior to 01.01.2006, the scale of pay of the petitioner was enhanced in accordance with G.O.(Ms) No.234, Finance (Pay Cell) Department, dated 01.06.2009.

2.2. Through G.O.(Ms) No.234 dated 01.06.2009, the revision of pay scales on the State Government employees was ordered, notionally



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from 01.01.2006. Prior to the notification of the Tamil Nadu Revised Government Pay Rules, by G.O. (Ms) No.234 dated 01.06.2009, separate scale of pay was ordered to the Selection Grade / Special Grade in view of G.O.(Ms) No.234 dated 01.06.2009, this separate scales were dispensed with and instead of scale of pay of the employees, who had moved to Selection Grade / Special Grade after 01.01.2006 was ordered to the date of award of the Selection Grade / Special Grade, by granting the benefit of one increment equal to 3% of the basic pay including grade pay in the same pay band and grade pay in the revised scale of pay. Through government order dated 08.11.2010, instructions were issued to fix the Selection Grade / Special Grade of pay to the employees, who received the same, prior to 01.01.2006 and in the case of employees, who have exercised their options to come over to the revised scale of pay on the date of award of their Selection Grade / Special Grade by 01.01.2006 i.e., prior to the date of issue of G.O.(Ms) No.234. Consequently, the Government issued G.O.(Ms) No.63, Finance Department, dated 26.02.2011, revising the ordinary scale of pay of Lab Assistants.

2.3. The petitioner was awarded Selection Grade in the post of Lab Assistant, which is between 01.01.2006 and 31.05.2009 and his



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ordinary scale of pay is revised as per G.O.(Ms) No.63 dated 26.02.2011. His scale of pay in the post of Selection Grade Lab Assistant was also fixed in the scale of pay of Rs.9,300-34,800+GP 4200 notionally with effect from 25.11.2007 and with monetary benefits from 01.03.2011 as per Annexure I to Government Letter No.63305 Finance (Pay Cell) Department 2010-1 dated 08.11.2010 and his last drawn pay at the time of retirement was Rs.12,430 + 4200. The petitioner was subsequently promoted as Field Assistant and retired from service on 30.04.2014.

2.4. To the pension proposals forwarded to the fourth respondent, his last drawn pay was reduced as Rs.10,800/- through the impugned admissibility report dated 14.11.2014, stating that he was entitled for fixation of pay in the post of Lab Assistant only in the pay scale of Rs.5200-20,200+2400, by granting two additional increments at the rate of 3% + 3% of his basic pay. When the third respondent had forwarded the proposal reiterating that, there was no fault with the original fixation of the time scale of pay, the fourth respondent had once again reiterated their earlier stand through letter dated 10.11.2014. Consequently, the third respondent herein had issued the impugned order dated 25.11.2014, cancelling the petitioner's fixation pay scale in



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the post of Selection Grade Lab Assistant in the scale of pay of Rs.9300-34,800 + GP 4200 and re-fixed at Rs.5200-20,200+2400 by giving two additional increments. On reduction, the petitioner had paid a sum of Rs.23,709/- and further sum of Rs.70,410/- was recovered from his gratuity. Challenging these orders of the fourth and third respondents, the present Writ Petition has been filed.

3. The learned counsel for the petitioner predominantly raised a ground that since he has exercised his option for re-fixation of the pay on 12.03.2012, there was no infirmity in the fixation of the pay scale in the post of Selection Grade of Lab Assistant. He further submitted that similarly placed Lab assistants, who were awarded with the Selection Grade, as well as his Juniors, were receiving higher pay since their pay was fixed in the scale of pay at Rs.9,300-34,800+GP 4200 and therefore, the petitioner's scale of pay also requires to be stepped up on par with them in accordance with FR 27 of the Fundamental Rules of the Tamil Nadu Government.

4. Per contra, learned counsel for the fourth respondent placed reliance on the averments of the counter affidavit and submitted that the Government servant is eligible only for two increments on the date



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of movement to Selection Grade / Special Grade, as per G.O.237, Finance (Pay Cell) Department dated 01.04.2013. Since the petitioner has moved to Selection Grade after 01.01.2006, there is no infirmity in the impugned orders.

5. One of the consistent stand taken by the petitioner is that, his juniors, who were also awarded Selection Grade in the post of Lab Assistants were receiving higher pay and therefore, the petitioner's scale of pay to be stepped up on par with their pay. Such a stand was also admitted and accepted by the respondents 1 to 3 in their counter affidavit, wherein they have stated that the petitioner is also eligible for the revised pension based on his last drawn pay at Rs.12,430 +GP 4200/- as on the date of his superannuation. This Court in various decisions have been reiterating this ratio and have been passing orders for stepping up the pay of the Government employees on par with the juniors, who receive higher pay of scale. The FR 27 of the Fundamental Rules also provides for such step up of pay of the senior on par with the pay of his junior. When the respondents 1 to 3 herein had brought to the notice of the fourth respondent that several persons similarly placed as that of the petitioner herein and have retired also and the juniors, who were working and awarded with the Selection Grade to the post of



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Lab Assistants were receiving higher pay, since their pay was fixed in the scale of Rs.9,300-34,800 + GP 4200, the fourth respondent had tried to justify the fixation of the pay scale of the juniors of the petitioner herein in the impugned order and had reiterated their earlier stand. Such a stand is opposed to the well settled proposition of law, that a senior would be entitled for a pay scale equal to that of his junior, who was drawing a higher pay of scale of pay.

6. This apart, Rule 56 of the Tamil Nadu Pension Rules, 1978 provides that the revision of pension cannot be ordered to the disadvantage of a pensioner without obtaining prior sanction of the Government, in cases, where a clerical error is detected after a period of two years. For the sake of convenience, Rule 56 is extracted hereunder:-

"56. Revision of pension after sanction.- (1) *Subject to the provisions of rules 8 and 9, pension once sanctioned after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of clerical error subsequently and where it is found to be in excess of the amount finally assessed by the Audit Officer:*



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Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the pension sanctioning authority without the sanction of the Government if the clerical error is detected after a period of two years from the date of sanction of pension.

(2) For the purposes of sub-rule (1) the Government servant concerned shall be served with a notice by the pension sanctioning authority, requiring him to refund the excess payment of pensions within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, their pension sanctioning authority shall, by order in writing direct that such excess payment shall be adjusted by short payments of pension in future, in one or more instalments, as the said authority may direct."

7. In the instant case, the fourth respondent herein had sought for revision of the pay scale based on the Selection Grade of Pay, which was awarded on 25.11.2007. By applying the aforesaid Rule, the prior approval of the Government would be mandated for such revision. On the contrary, the revision that is now sought to be made by the fourth respondent herein through the admissibility report, which is a printed



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format, as well as the remarks, does not make any reference to prior sanction of the Government. On this ground also, the order impugned, cannot be sustained.

8. Above all, the entire exercise of revising the petitioner's pension has been made in violation of Principles of Natural Justice. The fourth respondent had unilaterally taken a decision to revise the petitioner's scale of pay in the post of Lab Assistant, without any prior notice calling for the petitioner's objections. On this ground also, the impugned order, cannot be sustained.

9. For all the foregoing reasons, the impugned orders dated 11.07.2014, 14.07.2014, 10.11.2014, 25.11.2014, 17.08.2017 & 28.09.2018 on the file of the third and fourth respondents respectively, are quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, restoring the fixation of revised pay of the petitioner to the post of Selection Grade Lab Assistant at Rs.9,300-34,800+ 4200 with effect from 25.11.2007, with all consequential service and monetary benefits, including the revision of pension. The respondents herein shall pass such orders, including the repayment of the recovered amount of Rs.94,119/- with pension



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arrears, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition thus stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

09.02.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

To

- 1.The Principal Secretary to Government,
Department of Highways & Minor Ports,
Fort St. George,
Chennai-600 009.
- 2.The Director General of Highways,
No.76, Sardar Patel Road,
Guindy, Chennai-600 025.
- 3.The Director,
Highways Research Station,
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- 4.The Principal Accountant General of Tamil Nadu,
Teynampet, Anna Salai,
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M.S.RAMESH,J.

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