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W.P.No.10448 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.10448 of 2012

T.Janakiram,
Assistant Director of Employment & Training
(State Planning & Implementation Division),
Guindy, Chennai – 600 032.

...Petitioner

-Vs-

The Director of Employment & Training,
(State Planning & Implementation Division),
Guindy, Chennai – 600 032.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, to call for the records pertaining to the order bearing Na.Ka.No.55871/Public3/2010 dated 11.05.2011 of the respondent herein and quash the same and further direct the respondent to refix the scale of pay of the petitioner on par with his junior A.Lakshmi both in the cadre of training officer as well as in the cadre of Assistant Director of Employment & Training (in the cadre of Principal) with all consequential benefits such as arrears of pay etc., and pass such further orders.

For Petitioner : M/s.T.Hemalatha



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For Respondent : Mr.M.Rajendiran
Additional Government Pleader

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the 1st respondent vide proceedings Na.Ka.No.55871/Public3/2010 dated 11.05.2011 and direct the respondent to refix the scale of pay of the petitioner on par with his junior A.Lakshmi both in the cadre of training officer as well as in the cadre of Assistant Director of Employment & Training (in the cadre of Principal) with all consequential benefits.

2. The case of the petitioner is that he worked as Assistant Director of Employment & Training (State Planning & Implementation Unit), Guindy, Chennai – 600 032. The petitioner was initially appointed as Junior Training Officer with effect from 21.12.1981 and the said A.Lakshmi joined the service as Junior Training Officer on 02.03.1983. He was appointed as Junior Training Officer in Allied Trade and the said A.Lakshmi joined as Junior Training Officer in the Trade of Radio Electronic Television Division. Since the petitioner and A.Lakshmi belonged to different Trades, their



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promotion opportunities in their respective Trades in the cadre of Assistant Training Officer depended upon vacancy position of the said Trade. In fact, even though the said A.Lakshmi was appointed as Junior Training Officer on 02.03.1983, she secured promotion as Assistant Training Officer in the Trade she belongs to within three years and whereas the petitioner was promoted as Assistant Training Officer in his Trade after 18 years. In any event for promotion to the post of Training Officer total length of service was taken into account and consequently the petitioner was appointed prior to the said A.Lakshmi as Training Officer on 01.06.2001 whereas the said A.Lakshmi was promoted as Training Officer on 19.11.2001.

3. Learned counsel for the petitioner submitted that at the time of promotion as Training Officer, the petitioner was fixed in the scale of pay in the post of Training Officer as Rs.7,700/- with effect from 01.06.2001 as the petitioner opted for revision of pay as per FR 22(b) and whereas the said A.Lakshmi was fixed in the scale of pay of Rs.8,300/- with effect from 19.11.2001 in the cadre of Training Officer. Consequently, disparity in scale of pay was maintained right from the year 2001 and even after promotion to the post of Assistant Director of Employment & Training / Principal of Government Industrial Training Institute. In the interregnum on 17.09.2003



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and 23.12.2003 the petitioner gave a representation to the respondent herein through proper channel while he was working as Training Officer to refix his scale of pay on par with the said A.Lakshmi and on 13.01.2004 the respondent informed the Joint Director, Government Industries Institute, Chennai – 600 021 that the disparity in scale of pay can be rectified only after getting instructions from the Government as the petitioner and A.Lakshmi initially belong to different trade in the cadre of Junior Training Officer and Assistant Training Officer and after receipt of clarification from the Government, proceedings will be issued to refix the scale of pay of the petitioner on par with his junior A.Lakshmi. Subsequently, on 03.02.2004, the Deputy Director of Government Training Industries, Chennai – 600 021 also informed the petitioner that after getting clarification from the Government, the petitioner's scale of pay will be re-fixed in the cadre of Training Officer. The petitioner was under the *bona fide* belief that the respondent will refix the scale of pay for the petitioner after getting appropriate instructions from the Government.

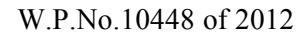
4. Learned counsel further submitted that on 23.09.2010, the respondent published a seniority list of Training Officer after the due



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regularization of their services and in which the petitioner was shown as senior to the said A.Lakshmi. Even though the petitioner was senior in the cadre of Training Officer, his scale of pay was lower than the scale of pay of his junior, A.Lakshmi in the cadre of Training Officer. In the meantime, the petitioner was further promoted as Assistant Director of Employment and Training (in the cadre of Principal), even then the disparity in the scale of payment was not resolved. Hence, on 27.04.2011, the petitioner gave a representation to the respondent to re-fix his scale of pay on par with his junior A.Lakshmi. On 11.05.2011 an order was passed stating that the scale of pay of the petitioner cannot be re-fixed on par with his junior, A.Lakshmi on the ground that both the petitioner and A.Lakshmi were appointed as Junior Training Officer in different trades.

5. Learned counsel further submitted that on an earlier occasion the respondent has re-fixed the scale of pay of one A.M.Subramanian, Assistant Apprenticeship Advisor, was fixed on par with his junior, Thiru.G.Elumalai, even though both of them belonged to different trades. Hence, the reason adduced by the respondent is totally whimsical and liable to be set aside. It is to be noted that the petitioner's initial date of appointment is prior to the said A.Lakshmi and the petitioner is senior to the said A.Lakshmi in the cadre of



6. A counter affidavit was filed on behalf of the respondent dated 24.

7. Learned Additional Government Pleader appearing for the respondent submitted that the respondent issued regularization order on 23.09.2010 for the post of Training Officer, but it is not a seniority list as stated by the petitioner. Further, in the regularization order itself, it was



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stated that the orders regarding seniority will be issued separately. It is submitted that, depending upon appropriate instructions received from the Government only the disparity in the scale of pay can be rectified. The authority to decide is only the Government, this respondent has nothing to say about the disparity in the pay scale. In the office letter No.55871/Gen3/2010 dated 11.05.2011, the petitioner has been clearly informed that as per prevailing rules and norms, the incumbent of the post of Junior Training Officer in different trades cannot claim pay anomaly. Only the compared person in the same trade can claim pay parity. The seniority in the post of Training Officer has not arrived even at this stage, as the issue is pending with Government. He further stated that the petitioner statement under ground 11(b) of the affidavit is correct and the refixation of the scale of pay of Thiru.A.M.Subramaniam on par with his junior Thiru.G.Elumalai is not correct because both were in different trades. Hence, action will be taken to recover the amount claimed by Thiru.A.M.Subramaniam for the wrong fixation. It is submitted that the proposal has been sent to the Government to rectify the disparity in the scale of pay of the employees in the post of Training Officer.

8. An affidavit was submitted by the Additional Director



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(Apprenticeship Training Scheme) dated 12.02.2024 and the relevant portion of the same is extracted hereunder for better appreciation and understanding:

“6.It is humbly submitted that, the following comparative statement of the petitioner Thiru.T.Janakiram, and his junior Tmt.A.Lakshmi from the date of beginning of Government service is submitted.

Name	T.Janakiram	A.Lakshmi
Educational Qualification	Diploma in Mechanical Engineering	Diploma Electronic Communication Engineering
Trade	Allied Trade	Mechanic Radio & Television
Date of Appointment as Junior Training Officer and Basic Pay	21.12.1981 F.N Rs.475/-	02.03.1983 Rs.475/-
Date of Promotion as Assistant Training Officer and Basic Pay	11.08.1994 F.N As on 24.12.1987 his pay in the post of Junior Training Officer was Rs.1,020/-	24.12.1987 F.N Rs.1,040/-
Date of Promotion as Training Officer and Basic pay	01.06.2001 A.N Rs.7,700/-	19.11.2001 F.N Rs.8,300/-
Date of Promotion as Assistant Director/Principal and Basic Pay	07.09.2007 F.N Rs.22,840/-	24.09.2010 A.N Rs.26,540/-

8.It is humbly submitted that, for the next level promotional post i.e., Assistant Training Officer, as per National Council for Vocational Training trade wise seniority of Junior Training Officer was prepared. Based on the trade wise seniority, the petitioner Thiru.T.Janakiram, was promoted as Assistant Training Officer in the Allied trade on 11.08.1994 whereas Tmt.A.Lakshmi, was promoted as Assistant Training Officer prior to Thiru.T.Janakiram, in the Mechanic Radio and Television trade on 24.12.1987.

9.It is humbly submitted that, the junior Thiru.G.Elumalai joined as Junior Training Officer (Maths) and the Senior Thiru.A.M.Subramaniyam joined as Junior



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Training Officer (Allied Trade). Both the individuals are from different trades. As per the Government instruction, rectification of pay anomaly is not permitted for the staff members of different trades. But the pay of the senior Thiru.A.M.Subramaniam has been re-fixed on par with service junior Thiru.G.Elumalai in the proceedings No.88588/Ma.Ko.pa1/1996, dated 30.04.1997. As per the Government instruction the above fixation is incorrect.

10.It is humbly submitted that, Thiru.G.Elumalai had served in this department and retired on superannuation on 30.04.2002 and Thiru.A.M.Subramaniam retired from Regional Joint Director Office, Chennai on 30.03.1999. During the month of December 2015, the entire records available in the ground floor of this Office and Regional Joint Director Office, Chennai, got submerged in flood water. Due to the natural calamity, the documents prior to December 2015 have been destroyed. However, efforts have been taken to get the documents and they took some time for tracing the papers from their records. As per rule 9 of the Tamil Nadu Pension Rules 1978 all recoveries to be made within 4 years from the date of the retirement of the Government servant. Due to natural calamity the pay re-fixation file have gone astray and drenched. After taking much effort to find the record from subordinate office it found that Thiru.A.M.Subramaniam was retired much earlier (2002). Hence, recovery could not be made from the individual as per the Tamil Nadu Pension Rules 1978.”

9. Learned Additional Government Pleader appearing for the respondent drew the attention of this Court to a letter in Na.Ka.Mo.55871/General3/2010-2 dated 20.07.2023, written by the Commissioner, Department of Employment and Training, Guindy, Chennai-32 to the Additional Chief Secretary to Government, Department of Employment and Training, Secretariat, Chennai-9, in which it is stated that



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action is to be taken to rectify the disparity in pay fixation to the petitioner, namely, T.Janakiram, after the present writ petition filed by him.

10. Heard both sides and perused the materials available on record.

11. It is not in dispute and it is an admitted fact that the petitioner was initially appointed as Junior Training Officer with effect from 21.12.1981 and the said A.Lakshmi joined the service as Junior Training Officer on 02.03.1983. He was appointed as Junior Training Officer in Allied Trade and the said A.Lakshmi joined as Junior Training Officer in the Trade of Radio Electronic Television Division. Since the petitioner and A.Lakshmi belonged to different Trades, their promotion opportunities in their respective Trades in the cadre of Assistant Training Officer depended upon vacancy position of the said Trade. Even though the said A.Lakshmi was appointed as Junior Training Officer on 02.03.1983, she secured promotion as Assistant Training Officer in the Trade she belongs to within three years and whereas the petitioner was promoted as Assistant Training Officer in his Trade after 18 years. In any event for promotion to the post of Training Officer total length of service was taken into account and consequently, the petitioner was appointed prior to the said A.Lakshmi as Training Officer on 01.06.2001



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whereas the said A.Lakshmi was promoted as Training Officer on

19.11.2001. At the time of promotion as Training Officer the petitioner was

fixed in the scale of pay in the post of Training Officer as Rs.7,700/- with

effect from 01.06.2001 as the petitioner opted for revision of pay as per FR

22(b) and whereas the said A.Lakshmi was fixed in the scale of pay of

Rs.8,300/- with effect from 19.11.2001 in the cadre of Training Officer.

Consequently, disparity in scale of pay was maintained right from the year

2001 and even after promotion to the post of Assistant Director of

Employment & Training / Principal of Government Industrial Training

Institute. In the interregnum on 17.09.2003 and 23.12.2003 the petitioner

gave a representation to the respondent herein through proper channel while

he was working as Training Officer to refix his scale of pay on par with the

said A.Lakshmi and on 13.01.2004 the respondent informed the Joint

Director, Government Industries Institute, Chennai – 600 021 that the

disparity in scale of pay can be rectified only after getting instructions from

the Government as the petitioner and A.Lakshmi initially belong to different

trade in the cadre of Junior Training Officer and Assistant Training Officer

and after receipt of clarification from the Government, proceedings will be

issued to refix the scale of pay of the petitioner on par with his junior

A.Lakshmi. Subsequently, on 03.02.2004, the Deputy Director of



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Government Training Industries, Chennai – 600 021 also informed the petitioner that after getting clarification from the Government, the petitioner's scale of pay will be re-fixed in the cadre of Training Officer. The petitioner was under the *bona fide* belief that the respondent will re-fix the scale of pay for the petitioner after getting appropriate instructions from the Government. On 23.09.2010, the respondent published a seniority list of Training Officer after the due regularization of their services and in which the petitioner was shown as senior to the said A.Lakshmi. Even though the petitioner was senior in the cadre of Training Officer, his scale of pay was lower than the scale of pay of his junior, A.Lakshmi in the cadre of Training Officer. In the meantime, the petitioner was further promoted as Assistant Director of Employment and Training (in the cadre of Principal), even then the disparity in the scale of payment was not resolved. Hence, on 27.04.2011, the petitioner gave a representation to the respondent to re-fix his scale of pay on par with his junior A.Lakshmi. On 11.05.2011 an order was passed stating that the scale of pay of the petitioner cannot be re-fixed on par with his junior, A.Lakshmi on the ground that both the petitioner and A.Lakshmi were appointed as Junior Training Officer in different trades.

12. It is pertinent to note that on an earlier occasion the respondent



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has re-fixed the scale of pay of one A.M.Subramanian, Assistant Apprenticeship Advisor, was fixed on par with his junior, Thiru.G.Elumalai, even though both of them belonged to different trades and the same was also admitted in the counter affidavit filed by the Additional Director (Apprenticeship Training Scheme) in the office of the Commissionerate of Employment and Training dated 12.02.2024. It is also admitted by the respondent that the pay of senior Thiru.A.M.Subramaniam has been re-fixed on par with service junior Thiru.G.Elumalai in the proceedings No.88588/Ma.Ko.pa1/1996 dated 30.04.1997. As per the Government instructions, the above fixation is incorrect.

13. According to the above affidavit dated 12.02.2024, Thiru.G.Elumalai retired on attaining the age of superannuation on 30.04.2002 and Thiru.A.M.Subramaniam retired on attaining the age of superannuation on 30.03.1999. During the month of December 2015, the entire records available in the ground floor of the respondent office and Regional Joint Director Office, Chennai, got submerged in flood water. Due to the natural calamity, the documents prior to December 2015 have been destroyed. However, efforts have been taken to get the documents and it took some time to trace the papers from their records. As per rule 9 of the Tamil Nadu Pension Rules 1978, all recoveries are to be made within 4 years from



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the date of the retirement of the Government servant. Due to the natural calamity, the pay of re-fixation file has gone astray and drowned. After taking much effort to find the record from subordinate office it is found that Thiru.A.M.Subramaniyam was retired much earlier (2002). Hence, recovery could not be made from the individual as per the Tamil Nadu Pension Rules, 1978. The respondent has clearly admitted in the affidavit that the re-fixation of the salary of Thiru.A.M.Subramaniyam by proceedings dated 30.04.1997 is incorrect as per the Government instruction. Since it is admitted that the re-fixation of Thiru.A.M.Subramaniyam is incorrect as per the Government instructions, the same cannot be followed in the case of the petitioner and the same mistake cannot be followed and applied in the case of the petitioner by the respondent.

14. The said A.Lakshmi was promoted as Assistant Training Officer w.e.f 24.12.1987 F.N whereas the petitioner was promoted only on 11.08.1994 F.N. Hence the petitioner is junior to the said A.Lakshmi as far as the promotion to the post of Assistant Training Officer is concerned. Hence, the pay of A.Lakshmi, who is senior to the petitioner in the post of Assistant Training Officer is Rs.1,040/-. Whereas the petitioner fixed pay was Rs.1,020/-. There is an increase in the pay of said A.Lakshmi. When she was



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promoted to the post of Training Officer, the basic pay was fixed at Rs.8,300/- whereas the petitioner's basic pay was fixed at Rs.7,700/-. Even though the petitioner was promoted earlier to A.Lakshmi, i.e. on 01.06.2001 A.N whereas the said A.Lakshmi was promoted on 19.11.2001 F.N i.e. 5 months later than the petitioner, since there was difference in the salary of the petitioner and the said A.Lakshmi in the post of Training Officer. As a result, A.Lakshmi has got more basic pay in the post of Assistant Training Officer that she was promoted to later than that of the petitioner.

15. In view of the above factual matrix of the case, the order passed by the respondent vide proceedings Na.Ka.No.55871/Public3/2010 dated 11.05.2011 does not warrant any interference from this Court and the same is hereby confirmed.

In the result, the **writ petition stands dismissed**. No costs.

27.03.2024

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Index : Yes / No

Speaking / Non Speaking Order



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To

The Director of Employment & Training
Assistant Director of Employment & Training
(State Planning & Implementation Division),
Guindy, Chennai – 600 032.



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J.SATHYA NARAYANA PRASAD, J.

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