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W.P. No.11390 of 2012

IN THE MADRAS HIGH COURT OF JUDICATURE

DATED: 14.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.P. No.11390 of 2012

S. Mohanarangam

.... Petitioner

vs.

1. State of Tamil Nadu
represented by the Secretary to Government,
Commercial Tax and Registration Department,
Secretariat, Fort St. George, Chennai-600 009.

2. State of Tamil Nadu
represented by the Secretary to Government,
Personnel & Administrative Reforms Department,
Secretariat, Fort St. George, Chennai-600 009.

3. Inspector General of Registration,
No.120, Santhome High Road,
Chennai-600 028.

.... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India seeking to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 1st respondent in Letter No.6021/K/2009-14 dated 20.02.2012 and quash the same and consequently direct the respondents to grant two advance increments from May 2004, the date of passing B.L. Degree, within a time frame to be fixed by this Court.



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For Petitioner : Mr. L.G. Sahadevan

For Respondents : Mr. P. Kumaresan,
Additional Advocate General
assisted by Mr. P. Ganesan

ORDER

This Writ Petition is filed challenging the order passed by the Secretary to Government, Commercial Tax and Registration Department, Secretariat, Fort St. George, Chennai-600 009.

2. The case of the petitioner is that he entered into Government Service on 01.08.1983 and he was appointed as Junior Assistant at the office of District Registrar, Madras South and was regularized on 06.02.1985. The qualification prescribed for the post of Junior Assistant, as per Section 12 of the Tamil Nadu General Service Rules, is a pass in S.S.L.C. which is the minimum qualification prescribed and at the time of appointment, the petitioner was a Graduate holding a BA Degree. The petitioner was promoted as Assistant in the year 1994 and was transferred to the Office of District Registrar, Madras North in 1995. The petitioner was eager to acquire higher qualification and appeared for the entrance examination for B.L. (evening course) and he was selected for admission and the 3rd respondent has given permission to join the Law course on 21.08.1998 to attend evening Law College.

3. The learned counsel appearing for the petitioner submitted that while



working as Assistant in the office of Intelligence Cell, Chennai vide 3rd respondent's order No.48129/A4/2002/1 dated 24.10.2002, he was deputed as a Liaison Officer to attend the High Court and City Civil Court. The petitioner was also directed to attend the office of the Government Pleader, Madras High Court to liaison with the Registration Department and the office of the Government Pleader. Since then, he had been attending the High Court and other Courts as a Liaison Officer giving instructions to the Law Officers as directed by the Inspector General of Registration / respective authorities in respect of cases pertaining to Registration Department. The petitioner was interacting every day with the Law Officers and giving them instructions pertaining to the cases of Registration Department and used to assist in preparing parawise remarks and provide all the relevant information, including case laws and unreported decision given in identical cases. The petitioner used to meet the Senior Law Officers like Advocate General of Tamil Nadu and Additional Advocate Generals of Tamil Nadu, along with the instructing Law Officers in important cases and used to provide assistance to the best of his ability and his services were appreciated by the Senior Law Officers. He used to do his best in instructing the Law Officers as Liaison Officer, as directed by Inspector General of Registration / respective authorities and he was the only Liaison Officer possessing B.L. Degree who has been attending the High Court dealing with legal work, since 2002.

4. The learned counsel further submitted that in May 2004, he passed the Bachelor of Law Degree Course and it is the policy of the Government of Tamil



Nadu to give incentive increments to those Government Servants who has acquired higher qualifications i.e., more than what is prescribed under the Rules. The minimum qualification prescribed for the post of Junior Assistant / Assistant is only a pass in S.S.L.C. But the petitioner has acquired the Law Degree so that it would help him in performing his duties as well as a Liaison Officer of the department for Court cases. It is further stated that as early as 1979, the Government had issued G.O. Ms. No.80, Law Department dated 24.04.1979 sanctioning two advance increments to a person working in the Law Department, if they had acquired M.L. Degree. This increment was given to persons who had been appointed even after 01.04.1978 if they had acquired a M.L. Degree.

5. The learned counsel would further submit that by G.O. Ms. No.3125, Home Department dated 15.12.1982, the aforesaid advance increment was given on the recommendation of the High Court to Judicial Officers, who had possessed M.L. Degree and the reasoning given by the High Court was that acquisition of M.L. Degree by a Judicial Officer will definitely be conducive for the proper and efficient performance of the duties by the concerned Judicial Officer and usefulness of the Department. By G.O. Ms. No.1023, Education Department dated 09.12.1993 the Education Department granted advance increments to those Secondary Grade Teachers who had acquired B.T. B.Ed Degrees and to B.T. Teachers for passing M.A. & M.Sc. The G.O. Ms. No.1170, Education, Science & Technology Department



dated 20.12.1993, the benefit extended to Secondary Grade Teachers was also applied to Post-Graduate Assistants, who had obtained higher qualifications. It is further submitted that Ministerial Staff of High Court and Subordinate Courts were denied advance increments on their obtaining B.L. Degree and therefore they filed Writ Petition No.16131 of 1998 and the Division Bench of this Court vide order dated 25.03.1999 allowed the Writ petition on the ground that the Government is bound by the recommendation of the High Court and therefore they cannot bypass the said recommendation. In pursuant to the direction of this Court, the Government issued two Government orders viz., G.O. Ms. No.1638, Home (Courts V) Department, dated 10.12.1999. The Government also passed another Government Order in G.O.(D) No.264, Home (Courts V) Department, dated 07.03.2002 modifying the earlier order granting the increments from the date of the order of the High Court, viz., 21.03.1999 instead of 10.12.1999 which was the date of the Government Order. The 3rd respondent in U.O. Note No.61 of 2008 dated 29.09.2008 requested the Government to depute one Under Secretary (Law Department) to the Registration Department to attend all legal matters. The 3rd respondent also requested for the post of District Registrar (Legal) and the petitioner was directed to assist in all these legal matters and liaisoning with the Government. The petitioner, based on the Government Orders and the order of this Court, made a representation dated 16.10.2008 to the District Registrar (Chennai North) seeking advance increments and had relied upon the orders passed by the Home Department with regard to Court staff as an instance



and the spirit of his representation was to consider his higher qualifications, which is connected with his work and grant the increment as had been done in the cases cited supra.

6. The learned counsel would further submit that the 3rd respondent vide U.O. No.90 of 2008 dated 05.11.2008 directed the petitioner to assist and liaison with the Law Officers of Madurai Bench of this Court and the authorities of Registration Department within Madurai Bench's jurisdiction. The District Registrar, Chennai North passed an order in No.10938/A1/2008 dated 11.12.2008 rejecting his claim for advance increments on the ground that the Government Orders relied on by him viz., G.O. Ms. No.1638, Home (Courts V) Department, dated 10.12.1999 and G.O.(D) No.264, Home (Courts V) Department dated 07.03.2002 would not apply to his case. Aggrieved by the said order of District Registrar, Chennai North, the petitioner preferred W.P. No.2840 of 2009. The 3rd respondent in Letter No.13074/K3/09 dated 20.04.2009 recommended to the 1st respondent that the petitioner's representation dated 15.12.2008 be considered in the light of the facts that the Registration Department was facing legal issues daily. This Court vide order 23.04.2009 made in W.P. No.2840 of 2009 set aside the order dated 11.12.2008 of the District Registrar, Chennai North and directed the 1st respondent to consider the representation of the petitioner dated 06.10.2008 along with proceedings of the 3rd respondent in Letter No.13074/K.3/09 dated 20.04.2009 and to pass orders within a period of three



months from the date of receipt of the said order copy.

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7. The learned counsel further submitted that on 30.11.2009, the petitioner was promoted as Sub-Registrar, Grade-II and promoted as Sub Registrar, Kundrathur and thereafter deputed to the office of the Inspector General of Registration on 20.11.2009 to look into the legal issues of the Department. Thereafter the petitioner was promoted as Sub-Registrar, Grade-I on 27.04.2010 and was directed to look after all legal cases / issues of the Department. The 3rd respondent in U.O. Note No.55 of 2010 dated 07.04.2010, recommended designating the petitioner as Law Officer and to entrust all legal matters to him in addition to other works. The 3rd respondent by Office Order bearing No.24 of 2010 in Proceedings No.20403/A4/2010 dated 11.05.2010 designated the petitioner as Law Officer for Registration Department. The 3rd respondent in U.O. Note No.105 of 2010 dated 19.05.2010 all officers and superintendents of Registration Department to utilize his services as Law Officer for Registration Department to take follow up actions. The 3rd respondent by Office Order No.4 of 2012 in Proceedings No.3668/A4/2012 dated 23.01.2012 directing the petitioner to henceforth look after all the legal matters concerning the office of the Inspector General of Registration.

8. The learned counsel further submit that after lapse of nearly 3 years and inspite of the recommendations and accreditations given to the petitioner by the 3rd



respondent, the 1st respondent has passed the impugned order in Letter No.6021/K/2009-14 dated 20.02.2012 rejecting the request of the petitioner for advance increments stating that G.O. Ms. No.1638, Home (Courts V) Department dated 10.12.1999 is applicable only to Ministerial Staff of High Court below the post of Assistant Registrar and Subordinate Courts and not common to all Ministerial Staff in other Departments. The said order was communicated to the petitioner by the 3rd respondent vide Endorsement No.9759/K3/2012 dated 06.03.2012 which was received by the petitioner on 30.03.2012. Aggrieved by the above order passed by the 1st respondent, the petitioner has come forward with the present petition.

9. Rule 9(17) of Fundamental Rules of Tamil Nadu Government defines Ministerial Servant as a Government Servant of a subordinate service whose duties are entirely clerical and any other class of servant specially defined as such by general or special order of Government. Admittedly the petitioner had been a ministerial servant as Junior Assistant / Assistant / Superintendent engaged with the job of liaising with the Law Officers of this Court and Subordinate Courts. Hence the 1st respondent cannot discriminate the petitioner. It is pertinent to note that the Division Bench of this Court vide order dated 23.05.1999 made in W.P. No.16131 of 1998 had held that if persons similarly placed are granted advance increments on acquisition of higher qualifications, which are relevant for the discharge of the duties, Article 14 would be attracted, if it is denied to a person similarly placed, because the



denial would amount to discrimination and amounting to treating equals unequally.

The Government has got power to grant advance increments and this power should be exercised objectively and failure to consider the case of the petitioner in a proper perspective would vitiate the entire order. It is further submitted that one K. Srinivasan who had entered into service as Office Assistant in Tamil Nadu Administrative Tribunal in 1989 and promoted as Record Clerk in 1994, had acquired BL Degree in 2004 and made a representation 2005 seeking two advance increments for acquiring BL Degree and the same was rejected by the 2nd respondent in 2007, he had filed W.P. No.20442 of 2007 and this Court by order dated 22.06.2007 set aside the order dated 16.04.2007 passed by the 2nd respondent and directed the 2nd respondent to pay the two advance increments for possessing B.L. Degree from November 2004. In compliance of the order of this Court, the 2nd respondent had passed Government Order in favour of the said K. Srinivasan, granting two advance increments. It is pertinent to note that as on the date of granting two increments, the said K. Srinivasan was not a Ministerial Staff working in High Court or Subordinate Courts. Hence, the 1st and 2nd respondents cannot discriminate the petitioner and reject his request as not working under High Court and or Subordinate Courts, which is violative of Article 14 of the of the Consitution of India.

10. A counter affidavit was filed by the 3rd respondent in March 2013. The learned Additional Advocate General appearing for the respondents would submit



that in the absence of any Government order from the Personnel and Administrative Reforms Department for sanctioning advance increments for possessing law degree by the Government servants other than law department, the petitioner cannot claim it as matter of right based on the Government order specifically issued for the Court staff which comes under the Department of Homes (Courts) of the Secretariat. The official designation of the petitioner is still only Sub-Registrar and he may be transferred to any field office and the work, he has been carrying on at present is only temporary in nature. The petitioner herein has never dealt with the Legal issues before the Madurai Bench of this Court. The petitioner was asked to collect the details, documents and evidences from the Sub-Registrars and to forward the same to the Special Government Pleader, Madurai when litigations regarding Regarding Department come up in the Madurai Bench of Madras High Court and the petitioner cannot claim any increments based on the said note of the Inspector General of Registration vide U.O. Note No.90 of 2008 dated 05.11.2008 and the same may be rescinded by this office. The learned counsel appearing for the respondents has relied upon judgment of the Division Bench of this Court in W.A. No.3378 of 2019 dated 03.10.2019.

11. Heard both sides and perused materials available on record.

12. In the case on hand, the petitioner was working in the Registration Department, as a Junior Assistant and the prescribed qualification for the job is only a



pass in S.S.L.C. But he acquired Law Degree by attending evening Law College after obtaining due permission from the 3rd respondent to join the law course on 21.08.1998. Thereafter he was promoted as Sub-Registrar, Grade-II on 13.11.2009 and thereafter promoted as Sub-Registrar, Grade-I on 27.04.2010. The petitioner was posted as Liaisoning Officer by the 3rd respondent and deputed to attend the High Court and City Civil Courts and as a Liaison Officer giving instructions to the Law Officers as directed by the Inspector General of Registration / respective authorities in respect of cases pertaining to Registration Department. Subsequent to acquiring B.L. Degree, the petitioner made a representation to the 3rd respondent and the 3rd respondent recommended the petitioner's case to the 1st respondent, who passed an order vide letter No.6021/K/2009-14 dated 20.02.2012 rejecting the request of the petitioner for advance increments by stating that the G.O. Ms. No.1638, Home (Courts V) Department, dated 10.12.1999 is applicable only to the Ministerial Staff of High Court below the post of Assistant Registrar and Subordinate Courts and not common to all Ministerial Staff in other Departments. The petitioner's contentions is that one K. Srinivasan, who was a Record Clerk, obtained B.L. Degree and made a representation for two advance increments for acquiring B.L. Degree,. Since the same was rejected by the 2nd respondent, he filed a Writ petition in W.P. No.20442 of 2007 and this Court by an order dated 22.06.2007 set aside the order dated 16.04.2007 passed by the 2nd respondent and directed the 2nd respondent to pay the two advance increments to the said K. Srinivasan for possessing B.L. Degree. In



compliance of the order of this Court, the 2nd respondent had passed Government Order in favour of the said K. Srinivasan, granting two advance increments. It is pertinent to note that as on the date of granting two increments, the said K. Srinivasan was not a Ministerial Staff working in High Court or Subordinate Courts. The main reason given by the 1st respondent for rejecting the request of the petitioner is that he was not a Ministerial Staff working in High Court and Subordinate Courts and he is a Staff of Registration Department and he is doing only liaisoning work in the High Court and Madurai Bench of Madras High Court. His main work is liaisoning between the Law Officers and as a Liaison Officer giving instructions to the Law Officers as directed by the Inspector General of Registration / respective authorities in respect of cases pertaining to Registration Department. The learned counsel for the petitioner relied upon the judgment of this Court in ***W.A. No.3378 of 2019 dated 03.10.2009***. The relevant portions are extracted hereunder:

“9. The facts reveal that the petitioner served as Deputy Director, Forensic Sciences Department at the time of his retirement in 2016 and during his service, he pursued his Ph.D. Degree after obtaining due permission from the Department and completed the same. Though the petitioner requested for advance increment, he was not granted any increment in terms of G.O. Ms. No.1159 P&AR (FR.II) Department dated 21.11.1984, by which, G.O. Ms No.843, Personnel and Administrative Reforms (F.R.I) Department dated 05.09.1983 was revived. A perusal of Clause No.4 of G.O. 1159 unfolds the fact that the benefit of advance increment needs to be extended to all Government Servants, including teachers and a close reading of G.O. Ms. No.843 dated 05.09.1983 would go to show that it was issued for the purpose of grant of lumpsum amount as an incentive in order to enable Government



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Employees to pursue further education and acquire higher qualification. Even though it was contended by the Respondents that G.O. Ms. No.843 dated 05.09.1983 is applicable to the Staff members working in Home Department, especially to Police Constables, such segregation of category is not found in the contents of the said G.O., which merely stipulates that all the Government Servants, including teachers are entitled to advance, other the benefits of Clause No.4 of G.O. 1159 would have become redundant.

10. This Court feels it appropriate to point out that the teachers have no role to play in the Personnel and Administrative Reforms Department and even assuming for the sake of argument that the word 'teachers' has been wrongly referred in G.O. 1159, as they have got a separate Government Order for claiming advancement increment, the intention of the Government is very clear that all the Government Servants must be granted the benefit. A harmonious reading has got to be given to both the Government Orders, namely, G.O. 1159 and G.O. 843 and if the intention of the Government was to give the benefit only to certain categories, then there is no need for inclusion of Clause No.4 in G.O.1159 and therefore, this Court is of the view that the benefit of advancement increment needs to be given to a person, who has completed Ph.D. In Forensic Sciences.

11. The Government, having utilized the services of the Petitioner in a proper perspective, cannot deny advance increment to the petitioner, especially when such benefit was extended to Government Servants on earlier occasions by G.O. Ms. No.843, Personnel and Administrative Reforms (F.R.I) Department dated 05.09.1983, which was revived subsequently. On a bare scrutiny of G.O.1159, no other interpretation can be given than the one that the intention of the Government was to extend the benefit to all Government Servants without any restriction in terms of Staff category. Even though G.O. Ms. No.843, Personnel and Administrative Reforms (F.R.I) Department dated 05.09.1983 restricted the grant to only one sect of people, the subsequent G.O.1159 has widened the scope and therefore, this Court is of the view that the Petitioner, who is a Ph.D holder is entitled to only one advance increment. At



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the same time, the petitioner is not entitled to three advance increments, as the petitioner had already been holding a P.G. Qualification.

16. Argument of the learned Special Government Pleader that acquisition of higher educational qualification can improve the performance only in the field of teaching, engineering and agriculture, and acquisition of Ph.D, the highest degree in the subject, in the case on hand, would not help the Forensic Officers, cannot be accepted, for the reason that acquiring of higher educational qualification would certainly enrich one's knowledge and better results in investigation.

17. Contention of the learned Special Government Pleader that unlike in teaching, engineering and other subjects, Government have not issued any orders, enabling grant of advance increment, cannot be accepted, for the reason that G.O. (Ms) No.1159, Personnel & Administrative Reforms Department, dated 21.11.1984 covers the field and at the risk of repetition, the same is reproduced hereunder:-

**GOVERNMENT OF TAMIL NADU
ABSTRACT**

Fundamental Rules – Scheme of Sanction of Advance
Increments – Revival – Orders – Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (F.R.II)
DEPARTMENT

G.O. (Ms.) No.1159

Dated: 21.11.1984

Read:

- 1.G.O. (Ms.) No.531, Finance Department dated 25.04.1963.
- 2.G.O. (Ms) No.825, Personnel and Administrative Reforms (F.R.I) Department, dated 06.07.1977.
- 3.G.O. (Ms) No.1195, Personnel and Administrative Reforms (F.R.I) Department, dated 27.10.1978.
- 4.G.O.(Ms) No.843, Personnel and Administrative Reforms (F.R.I) Department, dated 05.09.1983.

ORDER:

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In the Government Order 4th read above, the scheme of sanction of advance increments for acquisition of higher qualifications was replaced by the scheme of sanction of lumpsum grant. The orders took effect from 05.09.1983. Departments of Secretariat were requested to determine the quantum of lumpsum / grant in lieu of advance increments in consultation with Personnel and Administrative Reforms and Finance Departments.

2. Several representations have been received requesting that the advance increment scheme may be continued, Government have carefully examined the request and have decided to revive the scheme of sanction of advance increments. Accordingly the Government direct that the scheme of sanction of advance increments for acquisition of higher qualifications in vogue prior to 05.09.1983 be revived with immediate effect. The orders issued in the Government Order fourth read above and the clarifications issued there under from time to time be cancelled subject to the modification specified in para 3 below.

3. Such of the Officers who have already availed themselves of the lumpsum grant under G.O. Ms. No.843, Personnel and Administrative Reforms (F.R.II) Department, dated 05.09.1983 and permitted to retain the benefit. However, if a person who has already drawn the lumpsum grant wishes to avail himself of the scheme of sanction of advances increment, he shall refund the lumpsum grant in one installment and then apply to the concerned authority for sanction of advance increment.

4. These orders will apply to Government Servants including teachers.

5. Departments of Secretariat are requested to take action in accordance with the orders in Paras 1 to 4 above.

6. This order issues with the concurrence of Finance Department – vide its U.O. No.4056/FS/84, dated 09.11.1984.

(BY ORDER OF THE GOVERNOR)

T.V. ANTHONY”

13. In the above cited judgment, the petitioner is working in Forensic

Department as Deputy Director and after obtaining permission from the Forensic



Sciences Department, he has pursued Ph.D degree in Polymer Science by the University of Madras and this Court has held that “thus, he is entitled for two advance increments”.

14. As per G.O. Ms. No.1159 dated 21.11.1984, wherein it is stated that in Clause-IV that “These orders will apply to Government Servants including teachers”. Hence the same is applicable in the case of the petitioner for awarding of two advance increments for acquiring B.L. Degree, even though he is not working as Ministerial Staff in the High Court and Subordinate Courts, but he is working in the Registration Department initially as Assistant and thereafter promoted as Sub-Registrar, Grade-II and subsequently as Sub-Registrar, Grade-I. It is pertinent to mention Rule 9(17) of Fundamental Rules of Tamil Nadu Government defines Ministerial Servant as a Government Servant of a subordinate service whose duties are entirely clerical and any other class of servant specially defined as such by general or special order of Government.

15. In view of above factual matrix of the case and the ration laid down by the Division Bench of this Court, the impugned order of the 1st respondent in Letter No.6021/K/2009-14 dated 20.02.2012 is liable to be quashed and the same is hereby quashed.

16. In the result, the Writ Petition stands allowed by directing the respondents



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to grant two advance increments from May 2004, date of passing B.L. Degree by the petitioner, within a period of **8 weeks** from the date of receipt of a copy of this order.

No costs.

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mjs

To

1. State of Tamil Nadu
represented by the Secretary to Government,
Commercial Tax and Registration Department,
Secretariat, Fort St. George, Chennai-600 009.
2. State of Tamil Nadu
represented by the Secretary to Government,
Personnel & Administrative Reforms Department,
Secretariat, Fort St. George, Chennai-600 009.
3. Inspector General of Registration,
No.120, Santhome High Road,
Chennai-600 028.
4. The Public Prosecutor, High Court, Madras.



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