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W.P.No.19358 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.19358 of 2011

M.Thulasingham

...Petitioner

Vs

1.The Commissioner of Treasuries and Accounts,
Chennai.

2.The Government of Tamil Nadu,
Represented by the Secretary,
The Finance Department,
Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in proceedings Rc.22969/02/C1 and dated 21.07.2011 and quash the same as illegal, incompetent and without jurisdiction and further direct the 1st respondent to refix the petitioner's salary.

For Petitioner : Ms.V.Srimathi

For Respondents : Mr.K.Tippusulthan,
Government Advocate



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ORDER

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The Writ Petition is filed for quashing the proceedings of the 1st respondent in Rc.22969/02/C1 dated 21.07.2011 and for directing the 1st respondent to refix the petitioner's salary.

2.Learned counsel for the petitioner submitted that petitioner joined as Junior Assistant in the year 1977 at Chennai Metropolitan Magistrate Court, Egmore. His service was regularized on 28.12.1977. For want of vacancy, he was ousted from service and thereafter, he was appointed as Copyist in Saidapet Court. Meanwhile, he appeared in the examination conducted by TNPSC on 28.12.1977. He was selected for the post of Junior Assistant in District Treasury, Kancheepuram. At that point of time, his initial pay was Rs.350/-. Government issued G.O.No.882 P & AR dated 06.08.1980 stating that the temporary candidates joining the new department to which they are allotted, continue to draw the same pay as they were drawing in their previous offices. G.O.Ms.No.1034 P & AP(P) dated 01.11.1983 deals with the fixation of pay. As per this Government Order, the pay of a person allotted to the same category in a different department shall be fixed at the same stage in the time scale of pay applicable to the post prior to such allotment. Petitioner's pay when he worked



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in Saidapet Court was Rs.210/-. As per Third Pay Commission scale of pay, the corresponding pay in the new scale is Rs.370/- for a pre-revised scale of Rs.210/-. On the basis of G.O.No.882 P & AR , his initial pay on joining the treasury department on 10.08.1980 should be on par with the pay which had been drawn by him in the previous department.

3.On the contrary, 1st respondent fixed the pay at Rs.350/-. He filed W.P.No.23115 of 2010 for considering his representation dated 14.12.2008 for proper re-fixation and a direction was given to pass appropriate orders within a period of eight (08) weeks from the date of the order. However, 1st respondent passed the order on 21.07.2011 rejecting his request for re-fixation. Therefore, this Writ Petition.

4.In response, learned counsel appearing for the respondents submitted that Government framed Special Rules in G.O.Ms.No.1034 P & AR(P) Department dated 01.11.1983 for the candidates who have been appointed through Special Recruitment Examination in 1977 and 1981. According to Rule 7(1) of the said Rules, petitioner is eligible for the minimum pay only. The Government has also issued clarification in G.O.Ms.715 P & AR(Placement) Department dated 06.07.1981 with regard to fixation of pay. Another



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clarification was issued in Letter No.20585/FR3/87-8 P & AR (FR3)

Department dated 11.12.1987 regarding the regularization of the breaks in services. As per this letter, the intervening breaks between the services in the same category of posts shall be regulated but the breaks occurred in different posts cannot be regulated. In the case before hand, petitioner was working as Junior Assistant on temporary basis and ousted on the afternoon of 31.03.1998. Then, he was appointed as Copyist (which post is not coming under the purview of the TNPSC). This break in service cannot be condoned as per the clarification issued by the said Government Letter, for the reason that, the break in service occurred in two different categories of posts.

5.Considered the rival submissions and perused the records.

6.From the facts obtained, it is not in dispute that petitioner was working as Junior Assistant on temporary basis and then as Copyist. At the time of his regular appointment, through TNPSC, he was working as Copyist. Petitioner's representation dated 14.12.2009 was considered by the Commissioner of Treasuries and Accounts and he passed an elaborate order in RC.No.22969/02/C1 dated 21.07.2011. As per this order, petitioner sought for refixation of pay in the post of Junior Assistant to which he was selected by the



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TNPSC through Special Qualifying Examination in the year 1977, condoning the break in his temporary services prior to his allotment by the TNPSC. The relevant portion of the order is extracted herein under:-

“Contention (1)

The individual contends that the fixation of pay at the minimum of the scale in the post of Junior Assistant in the Treasuries and Accounts Department from 10.09.80 on allotment by TNPSC is not correct, resulting in recurring loss of pay and also retirement benefits. He contends that the pay drawn on 28.12.1977 when his services were regularized in the post of Junior Assistant in the Judicial Department should be protected.

In the Rule 7 of the Special Rules issued in the G.O.Ms. No:1034, P& AR Department dated 01.11.83. prescribing the conditions of service in respect of the candidates appointed through Special Recruitment Examination, 1977 and 1981

"Every person appointed to the post of Junior Assistant, Typist or Steno Typist shall continue to draw the same pay drawn by him prior to the date of his regularization if he had been allotted to the same category in the same department where he had been previously



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working temporarily. The Pay of a person allotted to the same category in a different department shall be fixed at the same stage in the time scale of pay applicable to the post prior to such allotment.

Provided that the above fixation shall not be applicable to a person who was ousted from such temporary appointment in a service for want of vacancies and was appointed in any department on allotment by the TNPSC. In such cases the pay shall be fixed at the minimum of the time scale of pay applicable to the post to which he is appointed."

As per the above rule position, the pay of a person who was working temporarily in any department prior to the selection by the TNPSC through Special qualifying Examination 1977 and 1981, shall be fixed at the same stage in the time scale of pay applicable to the post prior to such allotment only if he has been appointed to the same category of post on TNPSC allotment. In the present case, the individual had not been working temporarily in the same category ie as Junior Assistant prior to TNPSC allotment. He had been working as Junior Assistant only during the period from 12.08.1977 to 31.03.1978 and ousted from service for want of vacancy and again



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absorbed temporarily as Copyist in Judicial Department. Hence prior to his appointment as Junior Assistant on regular basis in Treasuries & Accounts Department, he was working as Copyist. It is a lower category of post bearing lower time scale of pay. In the above circumstances, the request for fixing of his pay corresponding to the pay that was drawn by him on 28.12.1977 could not be complied with on the ground that he has not been appointed as Junior Assistant on regular basis on 10.09.80 from the same category of post held on temporary basis.

Contention (2)

The individual contends that the breaks between services in a different department could be condoned as per the Para 2(i) of the G.O.Ms.No:715 P & AR(P) Department dated 07.07.81. Also he reiterates that the services from 17.04.78 to 09.09.80 in the lower post may be ignored for purposes of fixation of pay.

The contention of the individual is not correct. In the Para 2(1) G.O.Ms.No:715 P & AR(P) Department dated 07.07.81., no mention has been made with regard to the condonation of break. In Para 2(ii) of the G.O.Ms.No:715 P & AR(P) Department dated 07.07.81. it has been provided that the unavoidable breaks in service of the temporary Junior Assistant. Typists and Steno typists working in



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Government Departments caused while on joining in a different department on allotment by the TNPSC shall be condone.

Also in the Rule 7(2) of the Special Rules issued in the G.O.Ms. No: 1034, P& AR Department dated 01.11.83. it has been provided that the unavaoidable breaks in services of the candidates appointed temporarily to the post of Junior Assistant, Typist or Steno Typist working in Government departments caused while on joining duty in a different department on allotment by the TNPSC shall be condoned."

With regard to the condonation of breaks in temporary service, clarifications have been issued in Govt.letter No:20585/FR 3/87-8, P&AR(FR 3) Dept dt 11.12.87, that the intervening breaks between the services in the same category of posts shall also be regulated. In this case while the individual was working as Junior Assistant on temporary basis, in Chief Metropolitan Magistrate Court, Egmore he was ousted from temporary service on the afternoon of 31.03.1978 and he was reappointed as copyist on temporary basis in Saidapet Court, Chennai causing a break of service from 01.04.1978 to 16.04.1978. Eventhough it is a break of service it could not be condoned as per the instructions issued in Govt.letter No:20585/FR 3/87-8, P&AR(FR 3) Dept dt 11.12.87 because the break of



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service occurred in between the different categories of posts. Also there is no provision for ignoring the services put in by the individual in the lower post ie, the post of copyist for the period from 17.04.1978 to 09.08.1980 with a view to give pay protection in the post of Junior Assistant. Therefore the requests of the individual for condoning the break for the period from 01.04.78 to 16.04.78 and for ignoring the period of service rendered in the lower post from 17.04.78 to 09.08.1980 could not be complied with.”

7. With regard to the third contention, one Thiru.T.Sankaralingam was given pay protection, it was found that Thiru.T.Sankaralingam was working as Cashier in temporary post in T&A Department and his post is equivalent to the post of Junior Assistant and therefore, he was given pay protection.

8. For all the aforesaid reasons, petitioner's representation was rejected stating that his request for refixation is not feasible.

9. On going through this order, this Court finds that the Commissioner of Treasuries and Accounts, after perusing the Rule positions and Government Letters, had properly applied the provisions and rightly decided the petitioner's claim. This Court finds no reason to take a different view of the matter and



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finds no merits in this Writ Petition.

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10. Accordingly, the order passed by the 1st respondent in proceedings Rc.22969/02/C1 dated 21.07.2011 is confirmed and this Writ Petition is dismissed. No costs.

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Index: Yes/No
Speaking order/Non-speaking order
gd



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- To
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 - 2.The Government of Tamil Nadu,
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G.CHANDRASEKHARAN, J.

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