



W.P.No.26242 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 19.12.2023

Orders pronounced on : **04.01.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.26242 of 2011
and M.P.No.1 of 2011

S.Xavier

.. Petitioner

Versus

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Finance (CMPC) Department,
Chennai – 9.
2. The Secretary to Government,
Home Department,
Chennai – 600 009.
3. The Works Manager,
Police Transport Workshop-cum-
Training School, TSP Camp, Avadi,
Chennai – 54.

.. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for records relating to first respondent's proceeding in Letter No.001462 / CMPC / 199-3, dated 07.03.2011 and quash the same and direct the respondent to upgrade petitioner from respective Grade – II to Grade – I post and revise the scale of pay and grant monitory benefits on par with other categories on the line of G.O.Ms.No.731 Finance (Pay cell) Department, dated 29.08.1994 with further revisions made in G.O.Ms.No.456 Finance (Pay cell) Department, dated 31.08.1998.

*Prayer amended as per order, dated 16.12.2011 in M.P.No.2 of 2011 in W.P.No.26242 of 2011.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.M.Muthuswamy,
Government Advocate

ORDER

This Writ Petition is filed for issue of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent, dated 07.03.2011 and to quash the same and to direct the respondents to re-designate the petitioner from Grade - II to Grade - I and



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revise the scale of pay and grant monetary benefits on par with the other categories in the line of G.O.Ms.No.731 Finance (Pay cell) Department, dated 29.08.1994 with further representation as per G.O.Ms.No.456 Finance (Pay cell) Department, dated 31.08.1998.

2. The brief facts of the case are that the petitioner possesses educational qualification of S.S.L.C and an I.T.I certificate in the trade of Electrician. He was directly recruited as Electrician Grade - II on 09.09.1988. The pay revisions in respect of the post of Electrician Grade - II and the other posts in the Police Transport Workshop-cum-Training School on the implementation of IV Pay Commission and thereafter were as follows:-

Name	Scale of pay with effect from 01.10.84 as per G.O.555 Fin (PC)	Scale of pay with effect from 01.06.88 as per G.O.666 Fin (PC)	Revision of pay scale with effect from 01.06.88 as per G.O.562	Revision of pay scale with effect from 01.06.88 as per G.O.731	Scale of pay with effect from 01.01.96 as per G.O.162 Fin (PC)



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	dt.10.06.85	dt.27.06.19 89	Fin (PC) dt.01.08.92	Fin (PC) dt.20.08.94	dt.13.04.98
Electrician II	555-970	825-1200	950-1500	--	3050-4590
Fitter	555-970	825-1200	950-1500	1100-1660	4000-6000
Tinker	555-970	825-1200	--	1100-1660	4000-6000
Painter	555-970	825-1200	950-1500	1100-1660	4000-6000
Electrician Grade - I	610-1500	825-1200	1100-1660	--	4000-6000

3. The grievance of the petitioner is that while in respect of the other similarly situated posts of Fitter, Tinker, Painter etc., scale of pay was initially upgraded in the year 1994 itself to Rs.1100-1660 and thereafter, as Rs.4000-6000, the petitioner's post namely, Electrician Grade - II, alone was left out and was prescribed the scale of pay of Rs.3050-4090. As a matter of fact, when the petitioner was recruited in the post of Electrician Grade - II, the post of Helper was a feeder post. However, subsequently, the said post was upgraded as Fitter Grade - II with the scale of pay of Rs.950-1500 with effect from 01.06.1988 and thereafter, further upgraded as Rs.1100-1660 with effect from 20.08.1994. Therefore, there is a grave pay anomaly and



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the petitioner, who was appointed in the superior post with higher qualification, was left languishing in lower scale of pay. The petitioner, therefore, preferred O.A.No.7351 of 1999 before the Tamil Nadu Administrative Tribunal and after the abolition of the Tribunal, the same was re-numbered as W.P.No.48108 of 2006. By order, dated 15.02.2010, the said Writ Petition was disposed off with a direction to consider the representation by taking into account the judgment of the Hon'ble Supreme Court of India in ***State of Rajasthan Vs. Pateh Chand Son***¹. Thereafter, by the order impugned in the present Writ Petition, the respondents rejected the claim of the petitioner, aggrieved by which, the present Writ Petition is filed.

4. It can be seen that though there may be justification in the prayer of the petitioner inasmuch as any person, who was working as a Helper as on the date of the appointment of the petitioner i.e., on 09.09.1988, would be drawing more pay than the petitioner i.e., scale of pay of Rs.1100-1600 with effect from 01.06.1988 on account of the re-designation as Fitter Grade - II



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and thereafter, the consequential hike in pay by the Sub-Committee as per order in G.O.Ms.No.731 Finance (Pay cell) Department, dated 29.08.1994, in such an event, the petitioner is entitled to name such junior or the person who is in the lower post and claim stepping up of pay and the respondents are bound to rectify the said anomaly. But, however, there are two facts which are in between the petitioner and the said reliefs. Firstly, for an identical relief, i.e., praying to issue Writ of Mandamus calling for the respondent's proceedings, dated 08.08.2012 and quash the same and to direct the respondent to revise the scale of pay of the petitioner with effect from the initial appointment as per G.O.Ms.No.762 Finance (PC) Department, dated 20.08.1986, has already been rejected by this Court vide W.P.No.12641 of 2013. Of course, in the said order, an observation is made if the petitioner succeeds in the present Writ Petition, then he will be entitled for other benefits.

5. But it must be stated here that in the said Writ Petition in



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W.P.No.12641 of 2013, the petitioner made an identical request and the claim has been considered on merits and it has been found that the request made by the petitioner was rightly rejected and that there is no infirmity or illegality in the order, dated 08.08.2012. Therefore, firstly, it was the petitioner's own making that he filed two Writ Petitions for identical reliefs and the later Writ Petition being dismissed on merits, inspite of the observations made in the last paragraph of the earlier order in W.P.No.12641 of 2013, still this Writ Petition has to be dismissed on the principles of *res judicata*. Any grant of relief in the present Writ Petition would have the effect of setting aside the said order.

6. Be that as it may, even considering the case on merits, when cadre restructuring and rationalisation is done, it is for the employer to fix the appropriate scales of pay and restructure the cadre. The State, as the employer, has decided to make the post of Electrician Grade - II as entry level post by fixing the appropriate scale of pay. The said action by itself



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cannot be found fault with by the Writ Petitioner. It would be within the realm of the employer to restructure any cadre and rationalise the pay structure the service exigencies and the minimum qualification required etc. If such rationalisation or restructuring results in pay anomaly and leaves him in a disadvantageous position that of his juniors in service and the same is not attributable to the employee in form of any of his option, then the said anomaly has to be rectified. In the instant case, the petitioner was offered promotion as Electrician Grade - I and he permanently relinquished his promotion. While on the one hand, the petitioner relinquished promotion to the post of Electrician Grade - I, he is claiming revision of scale of pay as Electrician Grade - I in the present Writ Petition. Therefore, the petitioner cannot approbate and reprobate. It can be seen that the One Man Commission took into account the Higher Secondary qualifications and the I.T.I trade certificate, while recommending restructure of the cadre. In the instant case, the petitioner possesses only S.S.L.C and the I.T.I certificate is also in the trade of 'Electrician' and therefore, he cannot make out any



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grievance by comparing himself with others.

7. Therefore, the claim of the petitioner cannot be countenanced and as such, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The Secretary to Government,
Finance (CMPC) Department,
Chennai – 9.
2. The Secretary to Government,
Home Department,
Chennai – 600 009.
3. The Works Manager,
Police Transport Workshop-cum-



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Training School, TSP Camp, Avadi,
Chennai – 54.

4. The Public Prosecutor,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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