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W.P.No.26243 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.26243 of 2011
and M.P.No.1 of 2011

K.Govindan

.. 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

Prayer : Writ Petition filed under Article 226 of the Constitution of India

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praying for a Writ of Certiorarified Mandamus calling for records relating to first respondent 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.26243 of 2011.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.M.Muthuswamy,
Government Advocate

ORDER

This Writ Petition is filed for issue of a 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 consequently, to re-designate the petitioner from respective Grade - II to Grade - I post and revise the scale of pay and grant monetary benefits on par with the other categories in the



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light 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.

2. The brief facts of the case are that there are various trade and technical posts in the Police Transport Workshop and recruitment to the said posts are governed by the Ad-hoc Rules framed vide G.O.Ms.No.1111, Home (Police-XIII) Department, dated 04.05.1985. The petitioner possesses the educational qualification of PUC and also had I.T.I certificate in the trade of 'Mechanic Motor Vehicles'. On 05.10.1987, the petitioner was further promoted as Electrician Grade - II and again was promoted as Electrician Grade - I on 13.07.2005. The scales of pay in respect of the various technical posts had undergone revision during the implementation of IV pay commission recommendations and subsequently as follows :-

Name	Scale of pay with effect from	Scale of pay with effect from	Revision of pay scale with effect	Revision of pay scale with	Scale of pay with effect from
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	01.10.84 as per G.O.555 Fin (PC) dt.10.06.85	01.06.88 as per G.O.666 Fin (PC) dt.27.06.1989	from 01.06.88 as per G.O.562 Fin (PC) dt.01.08.92	effect from 01.06.88 as per G.O.731 Fin (PC) dt.20.08.94	01.01.96 as per G.O.162 Fin (PC) 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. Firstly, vide G.O.Ms.No.562 Finance (Pay Cell) Department, dated 01.08.1992, the scale of pay of Fitter Grade - II was revised as Rs.950-1500 along with the post of Electrician Grade - II based on the recommendation of the Official Committee constituted by the Government. Thereafter, upon receipt of several representations, the Government further constituted One Man Commission to consider the grievances and certain practical inconveniences in extending the revised scales of pay in certain categories in Police Transport Workshop and after the report, the Government issued



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G.O.Ms.No.731 Finance (Pay cell) Department, dated 29.08.1994. By the said Government Order, Rule 9 of the Tamil Nadu Revised Scales of Pay Rules, 1989 was amended, under which, the post of Helper was re-designated as Fitter Grade - II. The post of Fitter Grade - II was further upgraded as Fitter Grade - I and the scale of pay was upgraded as Rs.1100-1600 with effect from 01.06.1988. Further, the Government issued G.O.Ms.No.338 Finance (Pay Cell) Department, dated 26.08.2010 after constituting One Man Commission to examine the anomalies, by which, all these posts are classified into Unskilled, Skilled Assistant Grade -II, Skilled Assistant Grade - I, Special Artisan and Supervisor. The same was done taking into account the qualification being the Higher Secondary and the I.T.I certificate. The petitioner, therefore, claimed that when the post of Fitter Grade - II was re-designated as Grade - I in the scale of pay of Rs.1100-1600, the post of Electrician Grade - II cannot remain unchanged and therefore, the petitioner made a representation on 08.05.1998. Thereafter, through the association, the petitioner filed O.A.No.3392 of 1998



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and by order, dated 15.05.1998, by which, the respondents were directed to consider their representation. By order, dated 23.09.1999, the said claim was rejected by the Government. The petitioner, therefore, filed O.A.No.7352 of 1999 before the Tamil Nadu Administrative Tribunal which was thereafter transferred and renumbered as W.P.No.48109 of 2006 and once again by order, dated 15.02.2010, this Court disposed off the Writ Petition 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. However, the same was again rejected by the impugned order, dated 07.03.2011 and challenging the same, the present Writ Petition is filed.

4. This Writ Petition is resisted by the respondents by filing a detailed counter-affidavit stating that it was part of the cadre restructuring and rationalisation made by the Government and the pay scales of various posts have been settled and at this belated point of time, it cannot be unsettled. It

¹ 1996 (1) ELR 1



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is the further case of the respondents that when the petitioner has promotion in the line of Electrician Grade - II, thereafter, he cannot turn back and claim the benefits in the line of the other trade namely, the Motor Mechanic. Therefore, they support the impugned order and pray that the Writ Petition be dismissed.

5. I have considered the rival submissions made on either side and perused material records of the case.

6. It is for the employer to restructure / rationalise the cadre. The cadre re-structuring and rationalisation of the pay scales vide G.O.Ms.No.562 Financial (Pay Cell) Department, dated 01.08.1992, G.O.Ms.No.731 Finance (Pay cell) Department, dated 29.08.1994 and G.O.Ms.No.338 Finance (Pay Cell) Department, dated 26.08.2010, *per se*, cannot be found fault with. The respondents have specifically decided to make the Electrician Grade - II as entry level post. Therefore, the petitioner



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cannot have any right to claim that the post of Electrician Grade - II should also have been re-designated or upgraded as Grade - I. The upgradation and re-designation / re-structuring of posts are done by the employer considering the administrative exigencies and the work output in the Police Automobile Workshop. The petitioner, as a matter of right, cannot claim any upgradation of post or re-designation. At the same time, it has to be seen that the petitioner possesses the qualification of P.U.C which is equivalent to the Higher Secondary. He also possesses the I.T.I certificate in the trade of 'Motor Mechanic'. The petitioner was originally appointed as Helper on 05.07.1984. Had he been continued in the same post, by virtue of G.O.Ms.No.731 Finance (Pay cell) Department, dated 29.08.1994, he would have been re-designated as Fitter Grade - II in the scale of pay of Rs.950-1500 and consequently, as Fitter Grade - I in the scale of Rs.1100-1660 with effect from 01.06.1988.

7. On the other hand, because of his promotion as Electrician Grade -



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II, he reached the said scale only upon his further promotion as Electrician Grade - I with effect from 13.07.2005. For no fault of the petitioner, the persons juniors to him and are working as Helpers, were granted better scales of pay. Further, it can be seen that G.O.Ms.No.338 Finance (Pay Cell) Department, dated 26.08.2010 further rationalised the posts taking into account the Higher Secondary qualification and I.T.I trade certificate. The petitioner possesses those two qualifications also. In that event, when there is no fault of the petitioner, when there is anomaly in pay occurred to the prejudice of the petitioner, when the petitioner possesses all the educational and other qualifications, the grant and accepting of promotion cannot work to the detriment of the petitioner. Therefore, while the respondent Government is well within its jurisdiction in the matter of re-designation and rationalisation of posts, but, however, if the same results in the pay anomaly to persons like that of the petitioner who possesses all the educational qualifications and experience, then the same has to be rectified by stepping up the pay of the petitioner. Therefore, while the petitioner's prayer as such



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cannot be granted, the petitioner's grievance has to be redressed by stepping up of his pay equivalent to the exact sum for which he would have been paid had he not been promoted as Electrician Grade - II from the post of Helper and had he been continued in the same post. The same can be Personal Pay to the petitioner but shall form part of the emoluments for calculation of pension. The relevant ruling under FR -19 of the Fundamental Rules of the Government of Tamil Nadu, reads as follows :-

"(2) (a) An officer holding any post substantively should not lose in his substantive pay on his promotion to a higher post on the revised scale of pay. Under Rule 19, if the substantive pay of an officer is higher than the maximum of the new revised time-scale of pay of a post to which he is promoted or the new revised pay of such post if it is on a fixed rate of pay, the difference shall be made good by the grant of personal pay. (b) In cases where a Government servant, who is granted personal pay to make good the loss in substantive pay on promotion from a lower post to a higher post in the revised scale of pay, is promoted to another higher post, the personal pay also should be taken into account in fixing his pay in the third higher post notwithstanding the provisions of Rule 9 (28). Example. An officer drawing a substantive pay of Rs. 500 in the old scale of Rs. 300-500, was promoted substantively to a higher post on the existing revised scale of Rs. 300-50/2-450. His pay in the higher post was fixed at Rs. 450 plus personal pay Rs. 50. He was again promoted to a still higher post in the new revised scale of



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Rs. 415-35/2-520 and his pay in this post was fixed at Rs.520, with reference to the above orders. (Memo. No. 24864-C.S.R.-1, Finance, dated 8th January 1943, memo. No. 3085-C.S.R.-1, Finance, dated 9th February 1943, Memo. No. 836-E-43-B-1-H-D, dated 18th January 1943 and G.O. No. 555, P.S., dated 28th March 1938.)"

8. At the same time, it can be seen that there is a huge delay in the matter and repeated orders have been passed only for considering the representation. Though in matters of revision of scale of pay, the delay itself will not disentitle the petitioner, it has been held that the petitioner can be permitted the arrears of pay depending on the facts and circumstances of the case. Considering the extreme delay, the petitioner will not be entitled for any arrears and but such pay granted to him shall be taken to account for calculation of pension and actual financial benefits of revised higher pension shall be granted prospectively from the date of this order. It is made clear that any such exercise shall not result in any disadvantage to the petitioner.

9. Accordingly, this Writ Petition is partly allowed on the following



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terms:-

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(i) The impugned order of the first respondent, dated 07.03.2011 is set aside inasmuch as the petitioner is concerned;

(ii) The petitioner's scale of pay in the post of Electrician Grade - II shall be stepped up in the scale of Rs.1100-1660 with effect from 01.06.1988 and consequently, by re-fixing the scales in the appropriate level under G.O.Ms.No.338 Finance (Pay Cell) Department, dated 26.08.2010 and his last drawn pay and pension shall be worked out;

(iii) The petitioner will not be entitled for any arrears and the same shall be calculated and be given from the date of this order;

(iv) No costs. Consequently, connected miscellaneous petition is closed.

04.01.2024

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Index : yes

Speaking order

Neutral Citation : yes

grs

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Finance (CMPC) Department,
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2. The Secretary to Government,
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Chennai – 600 009.
3. The Works Manager,
Police Transport Workshop-cum-
Training School, TSP Camp, Avadi,
Chennai – 54.
4. The Public Prosecutor,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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