



WP.No.36616 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.36616 of 2015

and M.P.No.1 of 2015

P.Baskaran

...Petitioner

Vs.

- 1.The Secretary to Government,
Personal and Administrative Reforms Department,
Fort St. George,
Chennai- 600 009.
- 2.The Deputy Secretary to Government,
D&E, P& AR(OP) Department,
Fort St. George,
Chennai- 600 009.
- 3.The Secretary
Tamil Nadu Public Service Commission
Park Town,
Chennai-600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus,



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directing to call for records of the 2nd respondent in connection with the impugned order passed in letter No.50819/OP-1-1/2012(OP 1-1) dated 18.02.2013 and quash the same and direct the respondents to fix the salary of the petitioner at par with his junior in the scale of pay of Rs.12090+GP 4600 etc., and further direct the respondents to draw and disburse the arrears of salary within a reasonable time.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for M/s.M.Muthappan

For Respondents : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.Vadivelu Deenadayalan
Additional Government Pleader
for R1 & R2
Mr.R.Bharanidharan for R3

ORDER

Heard K.Venkataramani, learned Senior Counsel for the petitioner and Mr.R.Kumaresan, learned Additional Advocate for the respondents and perused the relevant material available on record.

2.The petitioner herein who belongs to Hindu Scheduled Tribe



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Malayalee Community, participated in the recruitment process initiated by the Tamil Nadu Public Service Commission (hereinafter in short 'TNPSC') for the post of Assistant Section Officer in Tamil Nadu Secretariat Service and basing upon his merit, he was provisionally selected for the said post in the year 2007. However, he was not issued with any appointment order on the ground that TNPSC intends to verify the social status of the petitioner and accordingly, a letter was addressed to the State Level Scrutiny Committee to ascertain the genuineness of the Community Status of the petitioner through letter No.5413/OTD/B2/2008, dated 21.08.2008 and thereafter, the State Level Scrutiny Committee, having verified the community status of the petitioner through their reply vide proceedings No.2705/C-VIII/2008 dated 22.12.2008, confirmed the social / community status of the petitioner and the same was communicated to TNPSC through the letter of the Adi Dravidar and Tribal Welfare Department, dated 27.05.2009. Thereafter, the 3rd respondent/TNPSC through their Memorandum No.4921/OTD-B4/2008 dated 20.08.2009, informed the petitioner about his provisional selection to the post of Assistant Section Officer and



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accordingly, he was issued with an appointment order, dated 09.09.2009 and thereafter, the petitioner joined duty on 14.09.2009. It is thereafter, the petitioner made a claim for fixation of pay on par with his juniors who were selected in the very same selection process. However, the said claim of the petitioner was rejected by passing the impugned order dated 18.02.2013 on the ground that there is no provision in Tamil Nadu Revised Scales of Pay Rules, 2009, to rectify the anomaly that the junior is getting more pay than the senior, where the senior has joined duty lately. It is aggrieved by the said proceedings dated 18.02.2013, issued by the respondents, the petitioner had approached this Court, by filing the present writ petition.

3.Mr.P.Kumaresan, learned Additional Advocate General, appearing for the respondents 1 & 2, contended that the petitioner should go before the State Level Scrutiny Committee before he participate in the selection process i.e., atleast six months in advance and then get his community status confirmed, in terms of G.O.2D No.1081 Aadhidravidar and Tribal Welfare (CDI) Department, dated 12.09.2007



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read with Annexure to the said Government order, but the petitioner failed to get his community status confirmed by the State Level Scrutiny before making an application for appointment.

4. This Court carefully considered the said submissions and is not convinced by the same for the simple reason that the said Government order was issued only on 12.09.2007, whereas recruitment process in question was commenced much prior to the said date. Hence, the petitioner cannot be found fault with for want of appearing before the State Level Scrutiny Committee, in terms of G.O.2D No.1081, Adi Dravidar and Tribal Welfare (CDI) Department, dated 12.09.2007.

5. There is no dispute on the factual aspects of this case. Admittedly, the petitioner who participated in the selection process initiated by the TNPSC, got selected under ST category, but he was not issued with any provisional appointment on the ground that the TNPSC intends to verify the genuineness of the community status claimed by the petitioner and addressed a letter to the State Level Scrutiny Committee



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through letter dated 21.08.2008 and the same was replied by the State Level Scrutiny Committee, through a letter dated 22.12.2008 and the same was communicated to the TNPSC by the Adi Dravidar and Tribal Welfare Department, by their letter dated 27.05.2009. Thereafter, the petitioner was appointed as Assistant Section Officer on 09.09.2009. It is not the case of the respondents that the petitioner has not produced any proof in support of the community status. Admittedly, the petitioner has produced the certificate issued by the Competent Authority with regard to the Community status. But it is only because of the decision taken by TNPSC to get the genuineness of the community status claimed by the petitioner the selection and appointment to the petitioner for the post of Assistant Section Officer was delayed and the persons who were below the petitioner in the selection list, were appointed ahead of petitioner and their scale of pay has been accordingly fixed. In between, the appointment of the juniors of the petitioner and appointment to the petitioner into service, Tamil Nadu Revised Pay Scale Rules, 2009, came into effect from 01.06.2009 and the persons who were appointed prior to 01.06.2009 were extended the benefits of higher pay scale and whereas,



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the persons appointed after 01.06.2009 have been allowed lesser pay.

Thus, the petitioner having felt aggrieved, made a claim for fixation of his pay on par with the juniors in the select list drawn by the TNPSC, but the same was negatived.

6.The petitioner, belonging to Schedule caste, genuinely participated in the selection process and emerged as selected candidate, but he was denied appointment along with others on the ground that the genuineness of the community status claimed by the petitioner is intended to be verified through State Level Scrutiny Committee. Taking into consideration the fact that the petitioner has produced the Community Certificate issued by the Competent Authority, the 3rd respondent / TNPSC ought to have proceeded to select the petitioner provisionally and he should have been appointed along with other selected candidates on provisional basis, subject to confirmation by the State Level Scrutiny Committee. But for the reasons best known the case of the petitioner was not considered by the TNPSC and the respondents, after a long lapse of time, appointed the petitioner as Assistant Section



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Officer in the year 2009. As a result, the persons who were shown below the petitioner in the select list prepared by the TNPSC, are drawing more pay than the petitioner, thus causing serious grievance to the petitioner. When petitioner made a claim for fixation of his pay on par with juniors, the same was denied by the respondents on the ground that there is no provision in revised scale of pay Rules, 2009 to rectify the anomaly. In the light of the admitted fact situation, even though the petitioner has joined service subsequent to his juniors in the select list, the petitioner cannot be found fault for belated joining and it is only the respondents who are responsible for such belated joining. In the circumstances, the reasons assigned in the impugned order of non-availability of a provision, cannot be a ground to deny the petitioner of equal treatment on par with the others.

7. In the light of the above, the impugned order dated 18.02.2013 cannot be sustained and the same is accordingly set aside. The 1st respondent is directed to fix the pay of the petitioner on par with the juniors in the select list notionally and the consequential monetary



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benefits be paid from the date of filing of the present writ petition i.e.,
16.09.2015, together with arrears.

8.In the result, writ petition stands allowed. No costs.
Consequently, connected miscellaneous petition is closed.

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vsn
Index: Yes/No
Speaking: Yes/No
Neutral case citation: Yes/No

To

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