



W.P.No.9846 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9846 of 2022

1.A.Rehana
2.A.Vasanthi

... Petitioners

Vs.

1.The Government of Tamilnadu,
Rep. By its Principal Secretary,
Finance Department,
Fort St.George,
Chennai-9
2.The Director of Agriculture,
Chepauk, Chennai-5
3.The Chief Engineer(Agricultural Engineering),
Agricultural Engineering Department,
487, Annasalai, Nandanam, Chennai-3
4.The Secretary,
Tamilnadu Public Service Commission,
TNPSC Road, Chennai-3

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in proceedings in No.Aa.Pa.1/22492/2020 dated 30.11.2021 on the file of the third respondent herein and to quash the same consequently direct the respondents to pay advance increment as



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Government Letter No.2680/PC/2018-5 dated 19.09.2018 Finance (pay cell).

For Petitioners : Mr.B.Manoharan

For Respondents

For R1 to 3 : Mr.U.Baranidharan,
Additional Government Pleader

For R4 : Mr.R.Bharanidharan,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 30.11.2021, thereby rejected the request made by the petitioners for advance increment as per the Government letter dated 19.09.2018.

2. The petitioners had appeared in Group-IV examination as per notification No.14 of 2012 dated 27.04.2012 conducted by the Tamilnadu Public Service Commission(TNPSC). After completion of their written examination, they were selected and their certificate verification was done on 28.01.2013. They also attended counselling on



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29.01.2013. They were selected as Typist in the Agricultural Engineering Department by order dated 12.07.2013. They were issued appointment order on 25.07.2013 by the third respondent. Accordingly, they had joined duty on 01.08.2013. Subsequently, they were promoted to the post of Assistant with effect from 02.02.2017. For the post of Typist, qualification was fixed as SSLC. But both the petitioners had higher qualification. As per GO.(Ms)No.321, Finance(Pay Cell) Department dated 02.07.1998 granting of higher pay at two stages above the minimum of scale of pay to the Graduate Junior Assistant / Typist / Record Clerk by the GO.(Ms) No.241 Finance(Pay Cell) Department dated 22.07.2013, the grant of higher pay was dispensed with effect from 01.04.2013. By the very same notification, the persons who were selected are qualified for the higher pay. However, the petitioners were singled out without any default on them. Intimation of selection and posting was delayed only because of the administrative reasons on the part of the respondents. Therefore, their appointment order was issued belatedly and they had joined duty only on 01.08.2013. As such, there was pay anomaly occurred for the persons selected through selection process as



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per the notification No.14 of 2012 dated 27.04.2012.

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3. After considering the administrative delay, the Government issued clarification vide GO(Ms)No.37 Personnel and Administrative Reforms Department dated 10.03.2020 and GO.(Ms)No.116 Personnel and Administrative Reforms Department dated 15.10.2020 regarding dispensation of advance increment on account of higher qualification. Similarly placed persons approached this Court for sanction of advance increment and directed the District Collector for issuance of suitable direction.

4. The respondents filed counter stating that as per GO.Ms.No.241 Finance (PC) Department dated 22.07.2013, the grant of higher start of pay has been dispensed with effect from 01.04.2013. The petitioners had joined in the Government service only on 01.08.2013. Therefore, they have not been sanctioned the higher start of pay for possessing degree qualification. Insofar as the delay is concerned, though it was only on the part of the administration, the Hon'ble Division Bench of Madurai Bench of this Court in the case of *V.Sahadevan Vs. State of*



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Tamilnadu in WA(MD).No.217 of 2011 held that on the question of operation of a rule or the application of a rule, circumstances, situations or sympathies can have no rule. If a person could not pass the check post at the appointed time, he loses the benefit irrespective of the reasons as to why he could not pass the check post at the appointed time. The applicability of statutory rules, would not depend upon the situation in which each person is placed. As a matter of fact, on the date of their actual appointment, the only promise held out by the Government to the petitioners is reflected in the rules that came into effect on 01.04.2003. The rules that were in existence before 01.04.2003 did not constitute any promise to persons who had not been appointed till then.

5. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Division Bench of this Court rendered in WA.No.1117 of 2012 dated 21.03.2013 in the case of **Secretary, Revenue Department and others Vs. P.Madhuraj**, wherein it is held that persons similarly placed should not be forced to approach the court for getting relief, and if approached, the courts are bound to extend the



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benefits without any discrimination as held by the Hon'ble Supreme Court of India. The similarly placed persons were considered by the first respondent by the communication dated 19.09.2018 and directed the District Collector to take necessary action to grant higher start of pay to the petitioners with effect from the date of joining verifying their educational qualification. Further directed to instruct the Treasury Officer concerned to admit and honour the arrear claim of the individuals, if otherwise found to be in order. However, the request made by the petitioners were rejected by the impugned order dated 30.11.2021.

6. Admittedly, the petitioners were selected in the written examination and their certificate verification was done on 28.01.2013. Thereafter, they were subjected for counselling on 29.01.2013, By the communication dated 16.12.2012, they were informed about their selection vide memorandum No.7022/PSD-P2/2010 and accordingly, they were allotted to Agricultural Engineering Department. Since they are qualified with Master degree and Bachelor degree respectively, as per GO.(Ms)No.321 Finance (Pay Cell) Department dated 02.07.1998, they



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are entitled to grant of higher pay at two stages above the minimum of scale of pay to the Graduate Junior Assistant. However, by the Government Order in GO(Ms).No.241 Finance (Pay Cell) Department dated 22.07.2013, the grant of higher pay was dispensed with effect from 01.04.2013. Though the petitioners attended the counselling as on 29.01.2023 and they were allotted to Agricultural Engineering Department, they were issued posting order only on 25.07.2013. They had joined duty on 01.08.2013. Therefore, the appointment got delayed not due to fault of the petitioners. In this regard, the learned counsel for the petitioners also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Pillai Sitaram Patrudu and Others Vs. Union of India and Others*** reported in (1996) 8 SCC 637, wherein it is held as follows:

“It is contended by the learned counsel for the petitioners that since the inter-re seniority as Asstt. Engineers was left open in the order, the directions given by the Tribunal to consider the case as Executive Engineer and determine his seniority on the basis of the promotion, is not valid in law. We find no force in the contention. Once he is found to be eligible according to



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the rules, then his seniority is required to be determined as per the procedure prescribed in the rules in vogue. It is further contended that the fifth respondent was not qualified since he had not completed 8 years of required service. The Tribunal has recorded a finding that two years period is relaxable in the case of the reserved candidates. The inter se seniority as Asstt. Executive Engineer is required to be determined; he joined service in 1981 and, therefore, he did not have the requisite service. We find no force in the contention. Since he was selected by direct recruitment, he is entitled to be appointed according to rule. His appointment was delayed for no fault of him and he came to be appointed in 1981, he is, therefore, entitled to the ranking given in the select list and appointment made accordingly. Under these circumstances, we do not find any illegality in the order.”

7. Thus, it is clear that direct recruit whose appointment was delayed for no fault on his part but due to laches on the part of the department, the direct recruit is entitled to be appointed according to the rules.



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8. It is also relevant to rely upon the judgment of this Court rendered in WP.No.8055 of 2015 dated 11.07.2023 in the case of ***B.Vallipavai Vs. State of Tamilnadu and others***, wherein while dealing with the issue of applicability of old pension scheme, this Court held as follows:

11. That apart, the learned counsel for the petitioner produced office memorandum issued by the Government of India on 03.03.2023, considering the representation submitted from Government servants appointed on or after 01.10.2004 requesting for extending the benefit of the pension scheme under Central Civil Services (Pension) Rules 1972 (now 2021) on the ground that their appointment was made against the post / vacancies advertised/notified for recruitment prior to notification for National Pension System referring to court judgments on various Hon-ble High Courts and Hon-ble Central Administrative Tribunals decided that in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertised / notified for recruitment / appointment prior to the date of notification for national pension scheme i.e. 22.12.2003 and is covered under the National Pension System on joining service on



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or after 01.01.2004, may be given a one-time option to be covered under the CCS (Pension) Rules, 1972 (now 2021). The said option may be exercised by the Government servants latest by 31.08.2023. In fact the Government of India also called for list of pending cases of employees seeking conversion from contributory pension scheme to old pension scheme by the letter dated 19.02.2023, in which following details were called for:

(i) The details of employees in your department in Secretariat and under your control viz., Heads of Department, Public Sector Undertakings, Statutory Boards and Government Societies for whom orders have been issued for conversion from Contributory Pension Scheme to Old Pension Scheme with authority (G.O.No. and Date along with a copy along with case history from 2003 to till date.

(ii) The details of employees seeking Old Pension Scheme from Contributory Pension Scheme either under the ambit of Government Orders / Clarifications / Court Orders and pending court cases / pending cases with specific case history may be forwarded for consolidation and taking a final decision in the matter after due examination.



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12. Therefore, the retrospective amendment / change affecting the vested or accrued rights of employees, adversely affecting their pension, was declared to be invalid as held by the Hon-ble Supreme Court of India in the case of Chairman, Railway Board and Ors Vs. C.R.Rangadhamaiah and Ors. reported in 1997 (6) SCC 623.

9. The appointment of the petitioners got delayed due to administrative delay and not on the fault of the petitioners. Therefore, they are entitled for advance agreement. As such, the impugned order is liable to be quashed. Accordingly, this writ petition is allowed and the impugned order passed by the third respondent dated 30.11.2021 is quashed. The respondents are directed to pay advance increment to the petitioners as per Government Letter No.2680/PC/2018-5 dated 19.09.2018 Finance (pay cell) within a period of twelve weeks from the date of receipt of copy of this order. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.Principal Secretary,
The Government of Tamilnadu,
Finance Department,
Fort St.George,
Chennai-9
- 2.The Director of Agriculture,
Chepauk, Chennai-5
- 3.The Chief Engineer(Agricultural Engineering),
Agricultural Engineering Department,
487, Annasalai, Nandanam, Chennai-3
- 4.The Secretary,
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