



W.P.Nos.9729 & 8625 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.9729 & 8625 of 2020 and
W.M.P.No.10443 of 2020

1.R.M.Ramathal ... Petitioner in W.P.No.9729 of 2020
2.P.Theerthaiappan ... Petitioner in W.P.No.8625 of 2020
Vs.

1.The Secretary to the Government,
Department of Finance,
Fort St.George,
Chennai 600 009.

2.The Secretary to the Government,
Department of Personnel and Administrative Department,
Fort St.George,
Chennai 600 009.

3.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town, VOC Nagar,
Chennai 600 003.

... Respondents in both W.Ps

Prayer in both W.Ps : Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of G.O.Ms.No.388 Finance (Pay Cell) Department dated



W.P.Nos.9729 & 8625 of 2020

07.12.2018 and quash the same to enable the members in the Tamil Nadu Public Service Commission to get the monetary benefit uniformly with effect from 01.01.2016 irrespective of the services previously held before the appointment as Member of the Tamil Nadu Public Service Commission under Article 316 of the Constitution of India.

In both W.Ps.

For Petitioners : Dr.A.Thiyagarajan, Senior Counsel for
Ms.A.Vinu Pradha
For Respondents : Mr.T.Chezhiyan, AGP for RR1 & 2
Mr.R.Bharanidharan, Standing Counsel
for R3

COMMON ORDER

These Writ Petitions have been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of G.O.Ms.No.388 Finance (Pay Cell) Department dated 07.12.2018 and quash the same to enable the members in the Tamil Nadu Public Service Commission to get the monetary benefit uniformly with effect from 01.01.2016 irrespective of the services previously held before the appointment as Member of the Tamil Nadu Public Service Commission under Article 316 of the Constitution of India.



W.P.Nos.9729 & 8625 of 2020

2. Heard Dr.A.Thiyagarajan, learned Senior Counsel for the petitioners, Mr.T.Chezhiyan, learned Additional Government Pleader for R1 & R2 and Mr.R.Bharanidharan, learned Standing Counsel for the third respondent in both Writ Petitions.

3. The petitioners who are the Ex-members of the Tamil Nadu Public Service Commission (hereinafter referred to as TNPSC) have filed these Petitions challenging the G.O.Ms.No.388 dated 07.12.2018 and quash the same in order to enable all the members in the TNPSC to get the monetary benefit uniformly with effect from 01.01.2016 irrespective of their past service.

4. The origin of this Writ Petition is the issuance of G.O.Ms.No.388 dated 07.12.2018. The Government of Tamil Nadu thought it fit to revise the pay of the then members of the TNPSC and issued a Government Order in G.O.Ms.No.331, Finance (Pay Cell) Department dated 28.09.2018. As per the said Government Order, their pay has been revised from Rs.1,82,200/- to Rs.2,18,200/- per month,



W.P.Nos.9729 & 8625 of 2020

which was the highest pay in the super time scale of pay. The said pay is on par with Secretaries to Government in the super time scale of pay.

However, notional effect in the revision is with effect from 01.01.2016 and the monetary benefit is said to be from 01.10.2017. Aggrieved over the date of implementation of the monetary benefit, some of the members appeared to have given a representation to the Government. On consideration of the said representation, the Government has issued an amended order in G.O.Ms.No.388, Finance (Pay Cell) Department dated 07.12.2018 and the following amendment has been issued :

"(i) The revision of the fixed pay of the official members holding the post from All India Service shall be given monetary benefit from 01.01.2016.

(ii) The revision of the fixed pay of Members from State Service and Non-official Members shall be given notional effect from 01.01.2016 and monetary benefit from 01.10.2017."

5. Now the petitioners who are not IAS Officers but equal to the members of the TNPSC have challenged the above order by stating that it was an arbitrary exercise of power and discriminatory between the



W.P.Nos.9729 & 8625 of 2020

similarly placed members who have to be treated equally.

WEB COPY

6. Dr.A.Thiyagarajan, learned Senior Counsel for the petitioners submitted that there is no 'intelligent differentia' in treating some of the members of the TNPSC in different manner than the others just because they are from all India Service.

7. Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents 1 and 2 submitted that the Tamil Nadu Public Service Commission regulations 1954, would provide different conditions of service for the members and the Chairman of the Commission. So it is submitted that the different date of effect for monetary benefit in respect of the post held under Government of India and Government of Tamil Nadu is legally sustainable and not discriminatory in nature.

8. It is needless to state that the members of the TNPSC are all retired employees of either of Indian Service or State Service. Even as per the Government Order dated 28.09.2018, there is no disparity in their



W.P.Nos.9729 & 8625 of 2020

pay. The pay was revised taking into consideration of their status on par with the Secretaries to the Government in the super time scale of pay.

Having considered their status on par with Secretaries to Government in the super time scale of pay, it is thought fit to revise their pay equal to that of Secretaries at super time scale of pay and consequently, it was revised at Rs.2,18,200/- per month.

9. In fact in G.O.Ms.No.331, there was no discrimination made between the members who hailed from all India Service and the members who hailed from State Service. The date of implementation of monetary benefit has been fixed uniformly as 01.10.2017. Subsequently, some of the members who have come from All India Service and State Service have given representations to the Government to consider the implementation of monetary benefit with retrospective effect from 01.10.2016 instead of 01.10.2017. Only after considering the said representation, the amendment has been made in G.O.Ms.No.388 dated 07.12.2018. While issuing the said amendment order, a distinction has been made between the members who were holding All India Service and



W.P.Nos.9729 & 8625 of 2020

the members who were holding the post under State Service.

WEB COPY

10. When the revision of pay has been implemented by treating all the members equally without any distinction as to their past service, discrimination has been made only in respect of giving effect to monetary benefit. Even though the respondents try to seek shelter under the regulations which would state about the different conditions of service for members who held posts under Government of India and the members who held the posts under State Service, G.O.Ms.No.331 dated 28.09.2018 has been issued only by treating all the members equally.

11. The members of TNPSC are normally appointed from the retired persons of Indian Government Service and the Tamil Nadu State Service. Once they are appointed as members of TNPSC, they ought to be treated equally. There cannot be any difference in the fixation of pay for the members, because all the members perform equal functions. The members who held the post under the Government of India do not play a different role in the Commission in order to enjoy a different pay.



W.P.Nos.9729 & 8625 of 2020

WEB COPY

12. The regulation No.4(2)(i) of the TNPSC prescribes the quantum of pay and other allowances for the Chairman and other members as under:

"4(2)(i) A person who at the date of his appointment to the Commission is holding a post under the Government of India or the Government of a State or a Government aided educational institution shall on appointment as Chairman or other

Member receive the salary, special pay and all other allowances, which he drew at the said date and shall continue to receive the salary, special pay and all other allowances which he would draw from time to time under the relevant rules had he continued to be member of the service to which he belonged at the said date or the salary mentioned in clause (1) whichever is higher."

13. So the above regulations make it clear that the members are eligible to draw a salary, special pay or other allowances attached to their past service or the salary, special pay and other allowances attached to the



W.P.Nos.9729 & 8625 of 2020

member of the Commission as prescribed under Regulation 4(2)(i), whichever is higher. When the regulation itself contemplates pay parity between the members, I do not find any 'intelligent differentia' in prescribing different date for implementation of monetary benefit between the two classes of Ex-Indian Service Officers and Ex-Tamil Nadu State Service Officers.

14. The learned Additional Government Pleader further submitted that the difference in the date for implementing the monetary effect is probably due to the date from which the 7th pay commission benefits have been implemented in respect of the employee of Government of India and the Tamil Nadu Government Service.

15. The above reason is also not applicable to the case of the petitioners because the petitioners were not continuing in their service department and their appointment to the Commission was only their post retirement. After they assumed as members of TNPSC, their scale of pay has to be considered only as per the assurance given under Regulation 4(2)(i) and not otherwise.



W.P.Nos.9729 & 8625 of 2020

WEB COPY

16. In view of the above stated reasons, these Writ Petitions are allowed and G.O.Ms.No.388, Finance (Pay Cell) Department dated 07.12.2018 is quashed and the respondents are directed to implement the monetary effect of G.O.Ms.No.331, Finance (Pay Cell) Department dated 28.09.2018 with effect from 01.01.2016 to all the then members of the Tamil Nadu Public Service Commission by issuing revised orders and disburse the arrears of pay within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2024

Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk



W.P.Nos.9729 & 8625 of 2020

WEB COPY

To

1. The Secretary to the Government,
Department of Finance,
Fort St. George,
Chennai 600 009.
2. The Secretary to the Government,
Department of Personnel and Administrative Department,
Fort St. George,
Chennai 600 009.
3. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town, VOC Nagar,
Chennai 600 003.



WEB COPY



W.P.Nos.9729 & 8625 of 2020

R.N.MANJULA, J.

gsk

W.P.Nos.9729 & 8625 of 2020 and
W.M.P.No.10443 of 2020

20.02.2024