IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.02.2024**

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.14386 of 2021
and
W.M.P.No.15300 of 2021

M.Ganesan ... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Secretary to Government,
Personnel & Administrative Reforms Department,
Secretariat, Chennai – 600 009.

2.State of Tamil Nadu,
Represented by its Additional Chief Secretary
to Government,
Home (Courts-V) Department, Secretariat,
Chennai – 600 009.

3.Registrar General,
High Court of Madras. ... Respondents
(R-3 impleaded *vide* order in W.M.P.No.18162
of 2021 in W.P.No.14386 of 2021 by SMSJ & KRSJ)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in Government Letter No.62489/Courts-V/2019-3 dated 30.12.2019 and quash the order dated 30.12.2019 and consequently, direct that the instructions/orders issued in Government letter No.168, P&AR(S) Department, dated 28.09.1999, be given effect from 10.11.1996 as far as the petitioner is concerned, with all service benefits.

For Petitioner	: Mr.G.Ravisankar
For R1 & R2	: Mr.P.Ananda Kumar Government Advocate
For R3	: Mr.E.K.Kumaresan

ORDER

(Order of the Court delivered by S.M.SUBRAMANIAM,J.)

The *lis* on hand has been instituted questioning the validity of the order of rejection dated 30.12.2019, passed by the Additional Chief Secretary to Government, Home (Courts-V) Department, Chennai.

2. The petitioner is a retired Sub Assistant Registrar served in the High Court of Madras and a pensioner as of now.

3. The petitioner originally entered into regular service as Lower Division Clerk in Tamil Nadu Revenue Ministerial Service in the year 1961.

He was appointed on transfer as Shorthand writer (later designated as P.A. to the Hon'ble Judges) in the year 1976. Selection Grade was awarded to the petitioner in the post of Shorthand Writer from 10.11.1986. Subsequently, he was promoted to the post of Sub Assistant Registrar with effect from 03.07.1996 and attained the age of superannuation on 30.06.1998 and retired from service.

4. The writ petition was instituted relying on the Government Order issued in G.O.Ms.No.210, Personnel & Administrative Reforms (Per.S) Department dated 11.03.1987 and a consequential circular issued by the Secretary to Government, Personnel and Administrative Reforms(S) Department dated 28.09.1999.

5. Mr.G.Ravisankar, learned Counsel for the writ petitioner would submit that the Government letter was issued based on the recommendations of the One Man Commission and it clearly states that the concession of counting the services rendered by employee in the Selection Grade/Special Grade/Special Temporary post of the lower post having identical or higher scales for the purpose of awarding Selection Grade in the promotion post be

extended to all employees irrespective of whether it is first level promotion or not, but limited to only once in the service period.

6. Admittedly, the order will take effect from 01.09.1998,which is mentioned in the Circular dated 28.09.1999, relied on by the petitioner.

7. Learned Counsel for the petitioner would further submit that fixing of cut of date for extending the service benefits of this nature becomes arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Once the benefit of Selection Grade/Special Grade and counting of services are extended to the serving employees, the said benefit is to be extended to the retired employees also.

8. In support of the said contention, the Constitutional Bench Judgment of the Hon'ble Supreme Court of India in the case of ***D.S.Nakara & Others Vs. Union of India*** reported in ***1983 AIR 130, SCR (2) 165*** is relied upon.

9. Learned Counsel for the petitioner reiterated that the employees both serving and retired belong to the homogenous class. Therefore, the benefit of Selection Grade/Special Grade extended to the in-service candidates are to be extended to the retired employees, in view of the principles settled in ***D.S.Nakara's*** case.

10. In the case of ***All Manipur Pensioners Association Vs. The State of Manipur and Others*** in Civil Appeal No.10857 of 2016, the Hon'ble Supreme Court of India again re-emphasised the principles laid down in ***D.S.Nakara's*** case and applying the principles, the cut of date of 01.09.1998, fixed in Government Order dated 28.09.1999 is opposed to the settled principles. Thus, the benefit as granted to the in-service candidates are to be extended to the petitioner by counting the services rendered by him in the Selection Grade/Special Grade/Special Temporary post for the purpose of revising his pay and pension and consequential arrears of pay.

11. Mr.P.Ananda Kumar, learned Government Advocate appearing on behalf of the respondents would oppose by stating that the cut of date was

fixed based on the Government Orders issued and a policy decision taken by the Government. In respect of implementation of Pay Commission, the cut off date is fixed by the Government and the Courts consistently upheld cut off dates fixed for the purpose of extending the monetary benefits to the employees. The petitioner is a retired employee and superannuated from service on 30.06.1998. That being so, the Government Orders issued subsequent to his retirement cannot be implemented retrospectively, so as to extend the benefit of counting of services rendered by the employees in the Selection Grade/Special Grade/Special Temporary Post. Such services cannot be counted for awarding Selection Grade in the promotion post for the purpose of effecting revision of pay and pension. Thus, the claim of the petitioner is untenable.

12. We have given consideration to the rival submissions made on behalf of the parties to the *lis* on hand.

13. It is not in dispute that the Government has constituted One Man Commission after implementation of Pay Commission for the purpose of rectification of pay anomalies. The One Man Commission submitted its

recommendations. Accepting the recommendations of the One Man Commission, the Government issued G,O.Ms.No.210, P&AR(PER.S) Department dated 11.03.1987. Accordingly, the Government directed that the services in the Selection Grade of the lower post shall be counted for Selection Grade in the promoted post provided that the Selection Grade scale of the lower post is identical to the Ordinary Grade of the higher post and that the concession be allowed only at the first promotion level. Further directed that in the case of posts with different grades, one who has put in 10 years or more of services in the lower post (e.g.Grade-II) shall be advanced to the next higher post (i.e.Grade-I) under the Scheme of Flexible complementing and one with a service of 20 years or more be advanced to Selection Grade of the higher post (i.e.Grade-I) whichever it has already been provided.

14. The Government Order implementing One Man Commission itself stipulates that G.O.Ms.No.210 shall take notional effect from 01.10.1984 for the purpose of fixation of pay with monetary benefit from 01.04.1986. Subsequently, the Government issued further orders in G.O.Ms.No.375 dated 22.10.1993 and a letter dated 26.09.1997 and finally a a letter dated 28.09.1999, relied on by the petitioner was issued.

15. The One Man Commission in its recommendation has observed that at the time of issuance of Orders, many employees could not avail the benefit, as it was confined to first level promotion only. Therefore, the Commission has recommended counting of services rendered in the Selection Grade of the lower post for awarding the Selection Grade in the promotion post be to extended to all employees, irrespective of whether they are in first level promotion or not, but limited to only once in the service period.

16. The above recommendations would unambiguously portray that the benefit of counting of services rendered in the Selection Grade of the lower post is counted in the promotional post was extended only to the in-service candidates. In view of the fact that the said benefits are extended to the in-service candidates, the Government has clearly stated that the orders will take effect from 01.09.1998.

17. Admittedly, the petitioner retired from service before issuing the Circular dated 28.09.1999. The date of superannuation of the petitioner was 30.06.1998. Thus, the retired employee cannot claim the benefit of counting of Selection Grade services granted in the Government Letter Ms.No.168

dated 28.09.1999. As rightly pointed out in the impugned order of rejection, in the event of extending such monetary benefits with retrospective effect, the same will result in opening of pandora's box and all similar retired employees will claim monetary benefits which will result in huge financial implication to the State exchequer. The Hon'ble Supreme Court has time and again held that the financial burden of the State is also a ground to be considered by the Courts, while extending monetary benefits with retrospective effect. Pertinently, the principles laid down in ***D.S.Nakara's*** case has been subsequently watered-down by the Hon'ble Supreme Court in catena of Judgments. Now the cut off date fixed for implementation of pay commission and extending the monetary benefits to the serving employees and retired employees are upheld by the Courts and the Government is empowered to fix the cut off date for the purpose of extending monetary benefits.

18. The Hon'ble Supreme Court in the case of ***Mohammad Ali Imam and others Vs. State of Bihar*** reported in ***(2020) 5 Supreme Court Cases 685*** *held as follows:*

“.On the other hand, the learned counsel for the respondents have pointed out that much water flowed after that judgment and inter alia, invited our attention to the judgment in State of W.B. V. Ratan Behari Dey (referred to in the impugned judgment itself) opining that it is open to the State or the Corporation to change the conditions of service unilaterally, and terminal benefits as well as pensionary benefits constitute conditions of service. Thus, the power to revise salaries and/or pay scales, as also terminal benefits/pensioners benefit can be made as a concomitant of that power so long as the date is specified in a reasonable manner.”

9. .....

10. .....

11.Apart from this, there may be other considerations in the mind of the executive authority while fixing a particular date i.e. economic conditions, financial constraints, administrative and other circumstances, and if no reason is forthcoming from the executive for fixation of a particular date, it should not be interfered with by the Court unless the cut-off date leads to some blatantly capricious or outrageous result. In such cases, it has been opined that there must be exercise of judicial restraint and such matters ought to be left to the executive authorities, to fix the cut-off date, and the Government thus, must be left with some leeway and free play at the joints in this connection. Even if no particular reasons are given for the cut-off date by the Government, the choice *of cut-off date cannot be held to be arbitrary (unless, it is shown to be totally capricious or whimsical)-State of A.P. v. N.Subbarayudu.*

18.1 In the case of ***Government of Andhra Pradesh and others Vs. N.Subbarayudu and Others*** *r*eported in ***2008 14 SCC 702,*** the Apex Court ruled as follows:

> "*5.In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary.*
>
> *6. No doubt in D.S.Nakara V.Union of India this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigit view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab V. Amar Nath Goyal.*

7. There may be various consideration in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Buhar V. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary, etc. It follows, therefore, that even if no reasons has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in Aravali Golf Club v. Chander Hass and in Govt. of A.P. v. P.Laxmi Devi the Court must maintain judicial restraint in matters relating to *the legislative or executive domain."*

18.2 In the case of ***State of Tripura and others Vs. Anjana Bhattacharjee and others*** *r*eported in ***2022 SCC Online SC 1071,*** *t*he Hon'ble Supreme Court observed as follows:

17. When specific statistics were provided before the High Court justifying its policy decision and the financial crunch/financial constraint was pleaded, there was no reason for the High Court to doubt the same. As such the findings recorded by the High Court in the impugned judgment and order is contrary to the averments made in affidavit filed on behalf of the State Government. From the affidavit filed before the High Court reproduced hereinabove, we are satisfied that a conscious policy decision was taken by the State Government to grant the benefit of revision of pension notionally from 01.01.2006 or from the date of superannuation till 31.12.2008 and to pay/grant the benefit of revision of pension actually from 01.01.2009. which was based on their financial crunch/financial constraint.

18. Whether the financial crunch/financial constraint due to additional financial burden can be a valid ground to fix a cut-off date for the purpose of granting the actual benefit of revision of pension/pay has been dealt with and/or considered by this Court in the case of Amar Nath Goyal (supra). In the aforesaid decision, it is observed and held as under:-

"26.It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 01.04.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

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32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases: In State of Rajasthan v. Amrit Lal Gandhi [(1997) 2 SCC 342 : 1997 SCC (L&S) 512 : AIR 1997 SC 782] this Court went so as far as to note that:

"Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the Writ Petitions and substituting the date of 01.01.1986-01.01.1990."

33. More recently, in Veerasamy [(1999) 3 SCC 414 : 1999 SCC (L&S) 717] this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis *[supra fn 2 SCC at p.421 (para 15).]. In that case, the pension scheme applied differently to persons who had retired from service before 01.07.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes."*

19. In the aforesaid decision this Court after considering the earlier decisions of this Court in the cases of State of Punjab v. Boota Singh (2000) 3 SCC 733 and State of Punjab v.J.L.Gupta, (2000) 3 SCC 736, it is specifically observed and held that for grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.

20. In the subsequent decision in Bihar Pensioners Samaj (supra), the decision in the case of Amar Nath Goyal (supra) is followed and it is observed and held that financial constraints could be a valid ground for introducing a cut-off date while introducing a pension scheme on revised basis. It is further observed and held by this Court in the aforesaid decision that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration."

19. In the case of ***N.Subbarayudu*** cited *supra,*the Hon'ble Supreme Court considered the rigidity of ***D.S.Nakara's case***. Further, considered the ratio laid down in the case of ***State of Punjab v. Amar Nath Goyal. C***onsciously the Hon'ble Apex Court held that in ***D.S.Nakara's case,*** the Hon'ble Supreme Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions, the Hon'ble Supreme Court has considerably watered down the view taken in ***D.S.Nakara's case*** as observed in para 29 of the decision of the Hon'ble Supreme Court in the case of ***State of Punjab v. Amar Nath Goyal.*** The Hon'ble Supreme Court further held that several decisions of the Supreme Court have gone to the extent of saying that the choice of cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same.

19.1 In the case of ***Mohammad Ali Imam,*** the Hon'ble Justice Mr.Sanjay Kishan Kaul, J. who authored the Judgment held that there might be other consideration in the mind of Executive Authority while fixing the cut of date i.e. economic conditions, financial constraints, administrative and other circumstances. Even if no reason is forthcoming from the Executive

Authority for fixation of particular date, it should not be interfered with by the Court, unless the cut-off date leads to some blatantly capricious or outrageous result. There must be an exercise of judicial restraint and such matters ought to be left to the Executive Authorities to fix the cut of date.

19.2 In view of the principles laid down in the above recent judgments cited *supra,* the principles laid down in ***D.S.Nakara's case*** has been considerably watered down. Therefore, the petitioner is not entitled to succeed merely on the basis of the Judgment in the case of ***D.S.Nakara's Case.***

19.3 This being the principles as of now, being adopted by the Government, which is upheld by the Constitutional Courts across the country, we are not inclined to consider the relief as such sought for in the present writ petition. More so, the Government Orders and fixing of cut off date in the Government letter in the year 1999, remains unchallenged.

20. Accordingly, the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [K.R.S.J.]
16.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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Represented by its Secretary to Government,
Personnel & Administrative Reforms Department,
Secretariat, Chennai – 600 009.

2.State of Tamil Nadu,
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to Government,
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3.Registrar General,
High Court of Madras.

S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.

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Order in
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