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W.P.No.15690 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.15690 of 2018

M.Kumaravelu

... Petitioner

Vs.

1. The Government of Tamil Nadu,
represented by the Principal Secretary
to Government, Finance Department,
Fort St.George, Chennai 600009.
2. The Director,
Tamil Nadu State Health Transport Department,
Guindy, Chennai 600032.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in Na.Ka.No.145/A2/2017, dated 13.03.2017 and quash the same and direct the respondents to grant five per cent personal pay to the petitioner with effect from 01.09.1998 and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran



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For Respondents : Mr.V.Jeeva Giridharan,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

2. This Writ Petition has been filed against the order in Na.Ka.No.145/A2/2017, dated 13.03.2017 issued by the second respondent, wherein it is informed to the petitioner that he is not entitled to 5% personal pay with effect from 01.09.1998 and for the consequential direction to grant 5% personal pay to the petitioner with effect from 01.09.1998.

3. The case of the petitioner is that he was retired from service on 31.05.2015 as Supervisor in District Workshop (Health), Thanjavur. He was initially appointed as Helper on 21.06.1982 and he was promoted as Mechanic-II (Fitter Grade-I) on 25.10.1988 in the scale of pay of Rs.1100-25-1150-30-1660 with effect from 25.10.1998 with monetary benefits from 01.09.1994. Consequent on the introduction of Personal Pay for certain



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categories of employees in all Departments with effect from 01.08.1992, he was granted 5% personal pay in the post of Fitter Grade-I with effect from 01.08.1992. In the year 1998, the personal pay was cancelled on the ground that it was not admissible as per Rules to the scale of Rs.1100-25-1150-30-1660 and directed to recover all the excess pay made to the petitioner from 1992 to 1998. Aggrieved by the said order, the petitioner approached the Administrative Tribunal by filing OA.No.7351 of 1998 and the said order was stayed. Thereafter, the Original Application pending on the file of the Tribunal was transferred to the High Court and numbered as WP.No.35170 of 2006. The said Writ Petition was allowed on 07.10.2009 directing the respondents to refund the amounts recovered, if any.

4. Though the personal pay was included in the pay of the petitioner as per the order of this Court for the period from August 1992 to August 1998, he was not granted personal pay from 01.09.1998. After repeated representations, the second respondent issued an order dated 13.03.2017, informing the petitioner that he was promoted as Fitter Special from 24.05.2000 and as per G.O.Ms.No.497, Finance Department dated 15.05.1998, there is no provision to grant 5% personal pay to Fitter Grade-I



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and only if the petitioner had worked as Fitter Special on or before 01.09.1998, he would be eligible for 5% personal pay as per the Government Letter No.1448/CMPC/2009-1, dated 22.06.2010. The claim of the petitioner to grant 5% personal pay has been rejected by the order of the second respondent dated 13.03.2017. Aggrieved by the said order, the petitioner filed this Writ Petition.

5. The learned counsel for the petitioner submits that in the impugned order, it is stated that as per G.O.Ms.No.497, Finance Department dated 15.09.1998, there is no provision to grant 5% personal pay to Fitter Grade-I. However, there is no such reference to the category of Fitter Grade-I in the said Government Order. The learned counsel would submit that the said Government Order states that personal pay should be paid to all categories of employees who have been granted with 5% personal pay prior to 01.01.1996 in the pre-revised scales of pay.

6. The learned counsel further submits that in G.O.Ms.No.497, Finance Department dated 15.09.1998, it was specifically stated that the personal pay shall not apply to any promotion beyond the scale of pay of



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Rs.5500–9000. As the petitioner was drawing pay only in the scale of Rs.4000–100-6000 as on 01.09.1998 and he was not granted selection grade on 25.10.1998 as stated in the impugned order, the petitioner is entitled to get personal pay from 01.09.1998. Therefore, the learned counsel sought to set aside the impugned order declaring it as illegal.

7. On behalf of the respondents, a counter affidavit has been filed. In the counter affidavit, it is stated that the petitioner was awarded selection grade with effect from 25.02.1998 in the post of Fitter Grade-I and the pay was fixed at Rs.4600/- in the scale of pay of Rs.4300 – 100 - 6000. He was not eligible for 5% personal pay from 01.09.1998 in the post of Fitter Special, since he had not worked as Fitter Special on or before 01.09.1998 as per Government Letter No.14488/CMPC/2009-1, dated 22.06.2010. It is further averred that 5% personal pay is eligible to the person who were holding the post as Fitter Special from 01.08.1992, on or before 01.09.1998. The petitioner is not eligible for 5% personal pay in the post of Fitter Special as referred to and this fact was intimated to the petitioner vide the impugned order.

8. The learned Additional Government Pleader further submits that



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the Government has issued orders granting 5% personal pay for the similar categories of Grade I posts in other trades with same scale of pay since the ordinary pay scales of the post of Electrician Grade-I, Tinker Grade-I, Liner Grade-I and Painter Grade-I are not one among the four specified pre-revised and revised scales of pay as noted in G.O.Ms.No.664, Finance (PC) Department, dated 24.08.1992. The Government letter dated 07.06.2017 clarified that posts of Electrician Grade-I, Tinker Grade-I, Liner Grade-I and Painter Grade-I are not eligible for grant of 5% personal pay and sought to dismiss the Writ Petition.

9. At this stage, the learned counsel for the petitioner has drawn attention of this Court to G.O.Ms.No.497, Finance (Pay Cell) Department, dated 15.09.1998. The relevant paragraph of the said G.O. is extracted hereunder:

“3. The personal pay is sanctioned as one time benefit and shall not be altered once fixed as on 01.09.1998 in the event of promotion/reversion and movement to Selection Grade / Special Grade. It will apply also to the employees in the Selection Grade and Special Grade of the respective categories. The personal pay will be computed on basic pay



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only as on 01.09.1998. The fraction of personal pay shall be rounded off to the nearest rupees (i.e) 50 paise and above shall be treated as a rupee and below 50 paise shall be ignored. The personal pay shall not apply to any promotion beyond the scale of pay of Rs.5500-9000. The personal pay shall be considered as pay for all purposes such as Pension, Dearness Allowance, House Rent Allowance and City Compensatory Allowance. There shall be no entitlement for this personal pay from any other category in any other scale. This scheme of personal pay is exclusive to the specified scales of pay, keeping in mind the job responsibilities attached to these categories as laid down in the Government Order first read above.”

10. On bare perusal of the same it is clear that the personal pay was not applied to any promotion beyond the scale of pay of Rs.5500-9000. Admittedly, in the present case, the petitioner was granted selection grade in the post of Fitter Grade-I on 25.10.1988 and pay fixation was done at Rs.4,600/- in the pay scale of Rs.4300–100–6000 as mentioned in the impugned order. As such, the contention of the respondents that as per the Government Order in G.O.Ms.No.497, Finance Department dated 15.09.1998, 5% personal pay is not applicable to the post of Fitter Grade-I,



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is not tenable.

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11. In view of the fact that the petitioner is not in the pay scale of Rs.5500–9000, in the considered opinion of this Court, the petitioner is entitled for 5% of personal pay as per G.O.Ms.No.497, dated 15.09.1998. Accordingly, the order impugned in this Writ Petition is liable to be set aside.

12. For the above said reasons, this Writ Petition is allowed with the following directions:

- i) The order impugned in this Writ Petition is hereby set aside;
- ii) The petitioner is entitled for 5% personal pay in terms of G.O.Ms.No.497, Finance Department dated 15.09.1998; and
- iii) The petitioner is entitled for consequential benefits.

No costs.

04.09.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs

To

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