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W.P.Nos.24266 of 2021 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

**W.P.Nos.24266, 24270, 24271, 24273,
24274, 24276, 24277 & 24278 of 2021 and
W.M.P.Nos.25583 & 25587 of 2021**

W.P.No.24266 of 2021

H.Abdul Rowof

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Transport Department,
Secretariat, Chennai - 600 009.

2.The Director,
Motor Vehicle Maintenance Department,
Velacherry, Chennai - 600 042.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order passed by the second respondent in his Letter No.Na.Ka.No.A5/7245/2018 dated 05.02.2019 and quash the same and consequently direct the second respondent to fix the pay scale of Charge-man and Foreman in respect of selection grade and special grade to the petitioner herein.



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For Petitioner : Mr.V.S.Jagadeesan

For Respondents : Mr.K.H.Ravikumar, GA

COMMON ORDER

These Writ Petitions have been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned orders passed by the second respondent and quash the same and consequently direct the second respondent to fix the pay scale of Chargeman and Foreman in respect of selection grade and special grade to the petitioners herein.

2. Heard Mr.V.S.Jagadeesan, learned counsel for the petitioners and Mr.K.H.Ravikumar, learned Government Advocate for the respondents in all Writ Petitions.

3. The petitioners were originally posted as Helpers in the years 1988 and 1989 through employment exchange by virtue of their qualification by having ITI certificate. Subsequently, the post of Helper is re-designated as Fitter *vide* G.O.Ms.No.498, Transport Department, dated



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16.05.1989. The petitioners have been promoted to the post of Chargeman and they are already eligible for getting selection grade in the cadre of Chargeman and the special grade in the cadre of Foreman, even before the pay revision came into effect.

4. The petitioners' claim that as per the Government Letter No.63305/Pay Cell/2010-1, Finance Department dated 08.11.2010, the revised selection grade / special grade scales of pay in the case of the employees awarded selection grade / special grade prior to 01.01.2006 and in whose cases the ordinary grade scales of pay have been revised based on the recommendations of One Man Commission. Their pay shall be fixed as per the scales of pay indicated under annexure 1 to the letter by following the same methodology of fixation of pay in selection grade / special grade scales of pay of the employees as it was done in pre--2006 scales of pay and subject to same condition that the revised selection grade / special grade scales of pay happens to be higher than the first level / second level promotional posts, in such cases the revised selection grade / special grade scales of pay shall be restricted to the levels of the



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first level and second level promotional post respectively.

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5. Basing on the above Government Letter, the petitioners have given a representation to the respondents to fix their scale of pay accordingly. However, in the impugned order dated 05.02.2019, the pay has been fixed by considering the post of Mechanic Grade II as the first level promotional post and Mechanic Grade I as the second level promotional post for the petitioners. But the petitioners claim that between two avenues of promotion for the post of Fitter, the petitioners have been promoted to the post of Chargeman and then Foreman. The other avenues for promotion is Fitter to Mechanic Grade - I and Mechanic Grade II. Even though the petitioners were promoted to the post of Chargeman and not to Mechanic Grade II, the impugned order has been passed stating that the post of Chargeman and Mechanic Grade II are two levels of promotion, but they have different scale of pay and hence, as per Letter No.7130/H1/2014-5 dated 30.01.2015, their pay has been fixed on the lowest promotional post of Mechanic Grade II.



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6. The learned Government Advocate for the respondents also submitted his arguments only based upon the above letter No.7130/H1/2014-5 dated 30.01.2015. For better understanding, the contents of the above letter is reproduced as under:

"I am directed to invite attention to the reference first cited and to inform that no specific rule provision is available under the Tamil Nadu Revised Scales of Pay Rules, 2009. However, according to the reference 2nd cited, (copy enclosed) among others, under para ii (d) for employees in a post having two promotional posts on different scale of pay, their selection grade scale of pay shall be on the lowest promotional posts ordinary grade scale of pay. Their Special Grade shall be determined with reference to the eligible Grade Scale of the lowest promotional post.

2. I am therefore, request to take necessary action on the analogy of the provision made in the above Government Clarification Letter and to set-right this issue at your level."

7. The attention of this Court was also drawn to the Tamil Nadu Motor Vehicles Maintenance Subordinate Service Rules, wherein, only



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15 categories of posts are found place. The post of Chargeman is not seen in the list of 15 type of posts. So it is claimed by the learned Government Advocate for the respondents that the post of Chargeman is a temporary post and hence the petitioners cannot claim the advantages of the pay fixed for the post of Chargeman as per the pay commission recommendation.

8. On a thorough perusal of the rules, there are certain qualifications and the method of recruitment are prescribed for the above said 15 type of posts. All these posts except Mechanic Grade I, Mechanic Grade II and Electrician Grade-I are through direct recruitment. However the post of Foreman and Blacksmith can be either through direct recruitment or through promotion. If the service rules do not provide a post like Chargeman, it is the duty of the respondents to amend the rules in order to include the post of Chargeman for which the promotion is given.



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9. In fact, such an amendment has also been made by issuance of G.O.Ms.No.18, Transport (H1) Department dated 18.02.1987. So far as the post of Chargeman is concerned, the amended rules only say that the said post would be a promotional post from the post of Fitter, Toolkeeper, Pump Operator or Store Attender. Once the rule is amended, then it is upto the respondents either to keep the post so created as a temporary post or a permanent post. Having amended the rules and given promotion to the said post as per the rules, the respondents cannot claim that persons who are holding the post of Chargeman are not entitled to the scale of pay fixed for Chargeman.

10. The impugned order has been passed by wrongly construing the clarification given in letter No.7130/H1/2014-5 dated 30.01.2015. The letter of the Government does not say about two avenues of promotion as how the promotional avenues open to the post of Fitter in the instant case. It only says about two promotional posts. That means, two levels of promotion. Naturally two levels of promotion will carry different scales of pay. In such case, the selection grade pay shall be on



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the lowest promotional post with ordinary grade scale of pay and the special grade shall be with reference to eligible grade scale of the lowest promotional post. But this has been construed wrongly by the authorities concerned and they presumed that the letter speaks about two avenues of promotion.

11. It is not in dispute that the Fitters have got two avenues of promotion, one is Mechanic Grade I and Mechanic Grade II and the next avenue is the Chargeman and then Foreman. It is not in dispute that the petitioners involved in these cases have been promoted to the post of Chargeman and not to Mechanic Grade II. In such circumstances, it is not fair on the part of the respondents to fix the scale of pay by considering Mechanic Grade II as the lowest promotional post, instead of considering the Chargeman as the lowest promotional post. The petitioners have never been promoted as Mechanic Grade II and they are not executing the functions of Mechanic Grade II. So it is unfair and inappropriate to fix the scale of pay in the cadre of Mechanic Grade II. Since the whole exercise relating to the impugned order has been made by wrongly



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construing the rules and the clarification, they are liable to be set aside.

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12. In view of the above stated reasons, these Writ Petitions are allowed and the impugned orders passed by the second respondent in these Writ Petitions are quashed and the second respondent is directed to fix the petitioners' scale of pay in the cadre of Chargeman and Foreman respectively and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

06.03.2024

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Neutral Citation : Yes / No
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R.N.MANJULA, J.

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Transport Department,
Secretariat, Chennai - 600 009.

2.The Director,
Motor Vehicle Maintenance Department,
Velacherry, Chennai - 600 042.

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