



W.P.No.29067 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

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

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- 1.N.Loganathan
- 2.S.Velu-II
- 3.G.Basker
- 4.K.R.Pandiyan
- 5.J.Sajahan
- 6.M.Ramesh-II
- 7.P.Sundaramurthy
- 8.K.K.Kumaran
- 9.V.Sundaramurthy
- 10.Y.Baskar
- 11.R.Nataraj
- 12.A.J.Dhamu
- 13.A.M.Thirunavukarasu
- 14.M.Navanithakrishnan
- 15.L.Murugan
- 16.P.Muruthi
- 17.T.Venkatesan
- 18.R.Prem Kumar
- 19.A.Mohan
- 20.P.Vijaya Kumar
- 21.M.Dayalaganesh
- 22.M.Soma Sundharam
- 23.M.Sankar



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24.F.C.Irfan Basha
25.M.Loganathan
26.C.Krishnamoorthi
27.J.Kannan
28.A.Kanmani Dass
29.G.Subbiah Kannan
30.R.Santhankumar
31.T.Kumaresan
32.M.Stephen
33.A.Murugan
34.G.Ramesh Babu
35.S.Ladees Melvin

... Petitioners

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Home Department,
Fort St.George, Secretariat, Chennai – 600 009.
- 2.The Deputy Secretary to Government,
Finance Department,
Fort St.George, Secretariat,
Chennai – 600 009.
- 3.The Registrar General,
High Court,
Madras – 600 104.

... Respondents

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 herein relating to letter No.23190/PC-3/2019 dated 19.06.2019, order in G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009 of the 2nd respondent and the letter of the 1st respondent in



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Government letter No.63305/PC/2010-1 dated 08.11.2010 and quash the same and direct the respondents herein to grant similar pay structure for the selection grade on par with the selection grade/special grade drivers between 01.01.2006 and 31.05.2009 with arrears from the date on which the petitioners moved to selection grade with interest thereon.

(Prayer amended *vide* order dated 29.09.2020 made in W.M.P.No. 17233/2020 in W.P.No.29067 of 2019 by CJ, SKRJ)

For Petitioners	: Mr.AR.Karthik Lakshmanan for Mr.C.Santhoshkumar
For R1 and R2	: Mr.U.M.Ravichandran Special Government Pleader
For R3	: Mr.M.Santhana Raman

ORDER

(Order of this Court was made by S.M.SUBRAMANIAM,J.)

The amended prayer sought for in the present writ petition is to call for the records of the 2nd respondent relating to letter No.23190/PC-3/2019 dated 19.06.2019, order in G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009 and the letter of the 1st respondent in Government letter



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No.63305/PC/2010-1 dated 08.11.2010 and quash the same and direct the respondents herein to grant similar pay structure for the selection grade on par with the selection grade/special grade drivers between 01.01.2006 and 31.05.2009 with arrears from the date on which the petitioners moved to selection grade with interest thereon.

2. All the petitioners are serving as Drivers in the High Court of Madras. It is not in dispute that the petitioners were awarded with Selection Grade from the year 2010 onwards. None of the petitioner was awarded with the Selection Grade during the cut off period from 01.01.2006 and 31.05.2009.

2.1 The claim of the writ petitioners are that they are entitled to get Grade Pay on par with the Drivers, who were awarded Selection Grade in between 01.01.2006 and 31.05.2009 (Prior to issuance of G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009.)



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2.2 G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 was issued implementing the recommendations of the Official Committee on revision of pay and allowances etc., The said order was issued on 01.06.2009. On the date of issuance of the revised Pay Rules, the petitioners were not awarded with the Selection Grade/Special Grade.

2.3 The question arises whether the petitioners are entitled to claim revised Grade Pay on par with the Drivers who are awarded Selection Grade/Special Grade in between 01.01.2006 and 31.05.2009?

3. Learned Counsel for the petitioners would submit that the petitioners are also similarly placed persons. Though they were granted Selection Grade from the year 2010 onwards, in the matter of Grade Pay they cannot be discriminated. There is no rationale behind fixation of cut off date for grant of Grade Pay and thus, the order impugned passed by the Government in proceedings dated 19.06.2019 is to be set aside.

4. Regarding the fixation of cut off date in economic policy/fixation of pay, the Government is empowered to fix such cut off



dates. The principles laid down in D.S.Nakara's case was watered down by the Hon'ble Supreme Court in catena of judgments.

4.1. 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.”

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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



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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.

4.2 In the case of ***Government of Andhra Pradesh and others Vs. N.Subbarayudu and Others*** reported 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.



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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 right 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



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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.”

4.3 In the case of ***State of Tripura and others Vs. Anjana Bhattacharjee and others*** reported in ***2022 SCC Online SC 1071***, the 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.



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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



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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.”

5. In view of the principles laid down by the Apex Court, the ground raised by the petitioners that the cut off date fixed by the Government is in consonance with the legal principles. It is not in dispute that the petitioners are not falling within the cut off date fixed by the Government for extending the benefit of enhanced Grade Pay, since the petitioners were awarded Selection Grade from the year 2010 onwards. However, the benefit of enhanced Grade Pay of Rs.2,400/- was issued to the Drivers, who were awarded Selection Grade/Special Grade between 01.01.2006 and 31.05.2009. Pertinently, from 01.06.2009 onwards the Revised Pay Scale came in to force, pursuant to the Government Order issued in G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009. That being the position, the claim of the petitioners is beyond the scope of the Pay Rules in force and such a new claim in financial matters cannot be considered by the High Court in a Writ Petition.



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6. Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

[S.M.S.J.] [K.R.S.J.]
04.03.2024

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

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Home Department,
Fort St.George, Secretariat, Chennai – 600 009.
- 2.The Deputy Secretary to Government,
Finance Department,
Fort St.George, Secretariat,
Chennai – 600 009.
- 3.The Registrar General,
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Order in
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