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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)Nos.10279 to 10281 of 2024

V.Ayyadurai ... Petitioner in W.P.(MD).No.10279 of 2024

R.Rajagopal ... Petitioner in W.P.(MD).No.10280 of 2024

K.Selvaraj ... Petitioner in W.P.(MD).No.10281 of 2024

Vs.

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

2.The Principal Secretary to the Government,
School Education Department,
Fort St. George, Chennai – 600 009.

3.The Director of School Education,
DPI Compound, College Road,
Chennai – 600 006.

4.The Joint Director (Vocational),
Directorate of School Education,
DPI Compound, College Road,
Chennai – 600 006. ... Respondents in all writ petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the

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respondents to re-fix the scale of pay and consequential retirement monetary benefits by way of granting the benefits of Additional Fitment Table 15 and Rule 4 (i) & (iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009, within the time limit stipulated by this Court.

For Petitioners : Mr.R.Saravanan

For Respondents : Mr.J.Ashok
Additional Government Pleader
(in all writ petitions)

COMMON ORDER

By consent of both sides, these writ petitions are taken up for final disposal at the admission stage itself.

2. Heard Mr.R.Saravanan, learned counsel for the petitioners and Mr.J.Ashok, learned Additional Government Pleader for the respondents.

3. The petitioners have filed these Writ Petitions seeking direction against the respondents to re-fix the scale of pay and consequential retirement monetary benefits by way of granting the benefits of Additional Fitment table 15 and Rule 4(i) and (iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009.

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4. The petitioners are the Vocational Teachers. The first respondent implemented the 6th Pay Commission vide G.O.No.234, Finance (Pay Cell) Department, dated 01.06.2009 and revised pay was implemented with effect from 01.01.2006. Consequent to the implementation of the 6th Pay Commission, the Government issued Tamil Nadu Revised Pay Scale Rules, 2009. According to the said Rules, the petitioners are entitled to fix their pay by getting the benefit of Rule 4(1)(iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009. However, the above benefit was denied to the petitioners by misconstruing the pay fixation of selection grade pay that is allowed for the employees who have completed 10 years of qualifying service for selection grade.

5. The issue raised in this Writ Petition has been elaborately discussed and covered in the earlier judgment passed in the batch of Writ Petitions in ***W.P.Nos.15570 of 2021 batch dated 29.02.2024*** (***C.Arumugam Vs. The Government of Tamil Nadu, represented by its Secretary, Finance (Pay Cell) Department, Fort St.George, Chennai – 600 009***), wherein the order has been analysed as under:

> *3. The petitioners' main thrust is only for pay fixation as per the 6th Pay Commission recommendation.*

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Consequent to the issuance of Tamil Nadu Revised Scale of Pay Rules 2009, by adopting the recommendations of the 6th pay commission vide G.O.No.234 dated 01.06.2009, further instruction has also been given through Government Letter No.51082/Pay Cell/2010-1 dated 15.09.2010. The said Government Letter contains the Additional Fitment Tables corresponding to the fixation of pay that should be done according to Rule 4 of the Tamil Nadu Revised Scale of Pay Rules, 2009. For the sake of clarity, Rule 4 of the Tamil Nadu Revised Scale of Pay Rules, 2009 is extracted hereunder:

" *4. Fixation of Pay in the revised pay structure:-- The initial pay of a Government employee who elects to be governed by the revised pay structure from 1 January 2006 shall be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have had a lien if it had not been suspended and in respect of his pay in the officiating post held by him, in the following manner, namely:--*

(1) In the case of all employees :--

(i) The pay in the pay band / pay scale shall be determined by multiplying the existing basic pay as on 1-1-2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

(ii) If the minimum of the revised pay band / pay scale is more than the amount arrived at as per (i) above, the pay

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shall be fixed at the minimum of the revised pay band / pay scale;

(iii) Where, in the fixation of pay, the pay of Government employees drawing pay at two or more consecutive stages in the existing scale gets bunched, that is to say gets fixed, in the revised pay structure at the same stage in the pay band, then for every two stages so bunched, benefit of one increment shall be given so as to avoid bunching of more than two stages in the revised running pay bands. For this purpose, the increment will be calculated on the pay in the pay band only and grade pay should not be taken into account for the purpose of granting increments to alleviate bunching.

(iv) In the case of pay scales in Higher Administrative Grade (HAG) in the Pay Band 4, benefits of increments due to bunching shall be given taking into account all the stages in different pay scales in this grade.

(v) If by stepping up of the pay as above, the pay of a Government employee gets fixed at a stage in the revised pay band / pay scale (where applicable) which is higher than the stage in the revised pay an employee who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be

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stepped up only to the extent by which it falls short of that of the former.

(vi) the pay in the pay band will be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing scall will be payable.

NOTE:- See Illustration-1 to 9 in Schedule Ill to these rules.

(2) If a Government employee is on leave on 1 st January 2006, he shall be entitled to the revised pay structure from that date, but the pay so fixed in the revised scale shall be admissible to him only from the date of his return to duty in the post after the expiry of leave and the period commencing on the 1 st January 2006 and ending with the date of such return will count for future increment in the revised pay structure depending on whether it will count for future increments in the existing scale.

(3) Similarly where a Government employee is on study leave on the first day of January, 2006 he will be entitled to the benefits under these Rules from 1-1-2006 or the date of option.

(4) A Government employee who on the 1 January 2006 is on leave preparatory to retirement, shall be entitled to choose his pay either in his substantive post or in the officiating post in the revised scale with effect from date for the purpose of computing his gratuity and pension.

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(5) If a Government employee was under reduction of pay or stoppage of increment as a penalty on the 1 st January 2006 his pay shall be fixed in the revised pay structure on the basis of present emoluments he drew on the 1 st January 2006 and he shall continue to draw the pay so fixed in the revised scale till the expiry of the period of penalty. His pay in the revised scale shall be refixed immediately following the date of expiry of the period of penalty with reference to the present emoluments which he would have drawn on the 1 st January, 2006 taking the fact into consideration whether the penalty awarded is with or without cumulative effect. If, for instance, a Government employee's increment falling due on the 1 January, 2006 had been postponed for a year without cumulative effect, his actual present emoluments as on the 1 st January 2006 would be the basis for determination of his revised pay with effect from the 1st January, 2006 and the pay so fixed shall be in force upto the 31st December 2006. However, for purpose of determination of his pay with effect from 1st January 2007 his pay on the 1st January 2006 shall be refixed notionally based on the present emoluments which he would have received on the 1st January 2006 but for his penalty and he will get the next increment on the 15th January 2007 from that stage.

(6) If, however, the penalty of stoppage of increment due on the 1st January 2006 had been awarded with cumulative

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effect, the revised pay shall be fixed based on the actual present emoluments as on the 1st January 2006. There shall be no refixation of pay in this case.

(7) If a Government employee is under suspension on the 1st January 2006, or if he was discharged or reverted from a post before that date and is reappointed to that post after that date, he shall be entitled to the revised scales of pay only from the date on which he returns to duty in the post or from the date of his reappointment to that post."

5. The claim of the petitioners rests on Rule 4(1)(iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009. As per the Additional Fitment Table No.15, the benefit of one increment is given in the revised pay structure for every two stages bunched at the same stage in the pay band. For instance, in Additional Fitment Table No.15, if the stage in the existing scale is 6900 over a span of three years and 7900 over a span of four years, both consecutive stages will be bunched together and the revised basic pay will be given with 3% increase in the basic pay. The Vocational Teachers, who are in the existing stage of 6900 and 7100 will be given with 470 which is 3% addition with the revised basic pay and thereby their pay will be fixed at 21470. Accordingly when two consecutive stages fall in respect of the stage of 7300 and 7500, the revised basic pay will be fixed at 21960

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by giving 3% addition on the basis of the earlier basic pay. So it goes on with such addition in the fitment table in view of Rule 4(1)(iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009. But it is made clear that the revised basic pay by giving 3% addition for the bunching effect would be only on the basis of the pay band. And the grade pay will not be taken into account.

6. There is no dispute on the point that pay band alone be taken for addition. The above Fitment method of giving one increment addition is in view of considering the fact that the persons who put more number of service should not get equal pay as that of their far below juniors. Taking into account of the service rendered by the seniors in the same cadres, the above increment for one bunching effect is given. If the same benefit is not given and the pay is fixed devoid of such addition of 3%, naturally the persons who have put many years of service as Vocational Teachers and their juniors would be getting the revised basic pay only at 21000 uniformly.

7. Earlier, a similarly placed person by name K.Kolanjiyappan filed a writ petition in W.P.No.30253 of 2019 and in which an order has been passed to consider the representation of that petitioner in accordance with

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Rule 4 (1) (i) and (iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009 in the light of Letter No.51082/Pay Cell/2010-1 dated 15.09.2010. Pursuant to the said direction, the impugned order has been passed by denying the above benefit and in the same order direction has been given to the Director of School Education to pass orders accordingly. Even though the order has been passed in pursuant to the writ petition filed in W.P.No.30253 of 2019, the impact of the order would be on the petitioners as well. Hence the petitioners have chosen to challenge the same.

8. On perusal of the order, it is seen that the respondents have invoked the application of G.O.Ms.No. 306, Finance (CMPC) Department, dated 18.09.2018 for the claim of the petitioners. Admittedly, the petitioners' claim is only for pay fixation as per the pay revision recommendation and as per the Rule 4 of the Tamil Nadu Revised Scale of Pay Rules, 2009. In fact much clarification has been made in the Government Letter No. 5108/Pay Cell/2010-1 dated 15.09.2010 by giving the relevant tables as illustrations. But the respondents, without taking cue from the said orders and the tables attached therewith, had chosen to invoke G.O.Ms.No.306, Finance (CMPC) Department, dated 18.09.2018 (which speaks about the grade scale of pay for the Vocational

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Teachers who have completed qualifying years of service for getting selection grade). Obviously in view of the above confusion, the respondents have chosen to deny the benefit of Rule 4 (1) (iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009 to the petitioner.

9. Mr.P.Gurunathan, the learned Government Advocate, submitted that a case has already been filed before the Madurai Bench of this Court and in which an order has been passed by partly allowing the writ petition. With regard to the same the following averments have been made in paragraph No.10 of the Counter of respondents 1, 2, 3 & 5.

10. The above judgment is with regard to the allowance of grade pay and not in respect of pay fixation. This is a claim based upon the pay fixation as per the Rules and hence the above judgment has got no application to the facts of the present case.

11. For the reasons above stated and in view of the real import of Rule 4 (1) (iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009 read with Government Letter No. 51082/Pay Cell/2010-1 dated 15.09.2010 along with the Additional Fitment Table No.15, the petitioners are entitled to the relief as prayed.

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> *12.Therefore, the respondents are directed to reconsider the pay fixation and pass orders by fixing the pay strictly in accordance with the Additional Fitment Table No.15, within a period of six weeks from the date of receipt of a copy of this order and also grant consequential retirement benefits to the petitioners by applying Rule 4(1)(iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009.*

6. Since similarly placed persons were given with the benefits and in view of the above detailed discussions and findings, the respondents are directed to reconsider the pay fixation and pass orders by fixing the pay strictly in accordance with the Additional Fitment Table No.15, within a period of six weeks from the date of receipt of a copy of this order and also grant consequential retirement benefits to the petitioners by applying Rule 4(1)(iii) of the Tamil Nadu Revised Scale of Pay Rules, 2009.

7. In view of the above, this Writ Petitions are allowed. No costs.

26.04.2024

Index:yes/no
Internet:yes/no
Ncc : yes/no
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To

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R.N.MANJULA, J.

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