



W.P.(MD)No.15470 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.15470 of 2024

Shanmuga Sundari

... Petitioner

VS.

1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Finance Department,
Fort St. George,
Chennai 600 009.

2.Personal Assistant (Accounts)
to the District Collector,
Tirunelveli District,
Tirunelveli.

3.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.

4.The Special District Revenue Officer,
River Linkage Project,
Tirunelveli District.

5.The District Treasury Officer,
Tirunelveli District,
Tirunelveli.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to implement the order of the third respondent of revised pay scale to the petitioner as per G.O.Ms.No. 340 dated 26.08.2010 which was followed in the 3rd respondent's order vide his proceeding number Na.Ka.J5/6711/2023, dated 31.10.2023 within a time stipulated by this Court.

For Petitioner : Mr.K.P.Sankarakumarakurubaran

For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.K.P.Sankarakumarakurubaran, learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

3. This petition has been filed seeking direction to the respondents to implement the order of the third respondent of revised pay



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scale to the petitioner as per the Government Order in G.O.Ms.No. 340, Finance (Pay Cell) Department, dated 26.08.2010, which was followed in the order of the third respondent vide his proceedings in Na.Ka.M2 22282/2021, dated 25.09.2023, within the time stipulated by this Court.

4. The petitioner is presently working as a ‘Senior Revenue Inspector’ in the office of the Special District Revenue Office, River Linking Project, Tirunelveli. The Tamil Nadu Public Service Commission issued Recruitment No.135 of 2007, dated 15.11.2007, calling for applications for the post of Typists and Steno Typists. The petitioner, who applied for the same, had appeared for written examination on 27.01.2008. She was selected and her name found place in the list of candidates published on 07.11.2008. She participated in the certificate verification held in December 2008. However, she was issued with an appointment order only on 23.07.2009 and she joined duty on 27.07.2009 as a ‘Typist’ in the office of the District Collector, Tirunelveli.



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5. Mr.K.P.Sankarakumarakurubaran, learned counsel appearing for the petitioner submitted that the pay fixation of the petitioner has not been properly done. According to him, she was denied with the benefit of the Government Order in G.O.Ms.No. 340, Finance (Pay Cell) Department, dated 26.08.2010.

5.1. He further submitted that the petitioner had preferred a detailed representation to the third respondent on 01.04.2022 and the same was received by the third respondent. Thereafter, the third respondent has passed an order vide his proceedings in Na.Ka.M2 22282 /2021, dated 31.07.2023, stating that the petitioner was recruited / selected prior to 01.06.2009 by the Tamil Nadu Public Service Commission. Hence, the petitioner has to be given with the benefit of the Government Order in G.O.(MS).No.340, Finance (Pay Cell) Department, dated 26.08.2010 only to those who were recruited and appointed after the cut-off date i.e., 01.06.2009.



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5.2. As per the above observation, the third respondent ordered ratio of 1.86 Fitment Factor benefit from the date of her appointment notionally with effect from 01.08.2010 and refixed the basic salary. Further, the third respondent has passed another order in Na.Ka.M2 22282 /2021, dated 25.09.2023 in favour of the petitioner and forwarded the same to the fourth respondent. But the orders of the third respondent were not implemented by the fourth respondent. Hence, the petitioner made a representation to the respondents on 20.05.2024. Since the same has not been considered, the petitioner has filed this present Writ Petition.

6. The issue on hand is no longer a *res-integra*. This Court has already dealt a similar issue in ***W.P.(MD).Nos.13775 to 13779 of 2022, dated 13.10.2022***, in the case of ***G.Gomathy and Others Vs. The Principal of Secretary, the State of Tamil Nadu, Finance Department, Fort St.George, Chennai and others***. Similarly placed persons have approached this Court through the above petition and got orders as follows :



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“7. The entire issue arose on account of the belated implementation of the 6th Pay Commission Recommendations by the Government of Tamil Nadu. The Tamil Nadu issued orders for implementation of the 6th Pay Commission Recommendations only on 01.01.2009. It was come into force on 01.01.2006. This gave rise to certain pay anomalies. In order to rectify the same, One Man Commission was appointed. Orders were issued in terms of the said One Man Commission also. Three G.Os are relevant namely G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, G.O.Ms.No.258, Finance (Pay Cell) Department, dated 23.06.2009 & G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010. G.O.Ms.No.234 dated 01.06.2009 is the order implementing the revised scales of pay and allowances. G.O.Ms.No.258 dated 23.06.2009 endeavored to rectify the anomalies. To that effect, the following amendment was made:-

(9) Fixation of pay of employees appointed on or after 01.01.2006 Fixation of pay in the revised pay structure of employees appointed as fresh recruits on or after 01.01.2006 and before 01.06.2009, their pay in the revised pay structure shall be fixed as per Rule 4(1) above with effect from the date of their joining service. Notwithstanding the aforesaid amendment, the issues of pay anomalies still remained. To set right the same, One



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Man Commission was appointed. G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010 was issued by the Government after examining the recommendations of the One Man Commission to rectify the anomalies pointed out by it. The operative portion is Paragraph No.4 and it reads as follows:- “4. The Government has carefully examined the above recommendations of the One Man Commission and decided to rectify the anomaly as pointed out by the One Man Commission. Accordingly, Government direct that in exercise of the powers conferred under Rule 13 of the Tamil Nadu Revised Scales of Pay Rules, 2009 relax the Rule-9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants / Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 01.06.2009 and joined / appointed on a subsequent date on or after 01.06.2009 due to administrative reasons duly allowing the fitment benefit to the individual employees concerned as a special case. However, the Government direct that the above fixation benefit shall be given notional effect from the date of appointment of the individual employees concerned with monetary benefit from 01.08.2010.”



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8. *Though the learned Additional Advocate General would call upon this Court to interpret the aforesaid Paragraph No.4 in the light of the reasons set out in Paragraph No.3, I am of the view that the plain meaning of Paragraph No.4 must be given effect to. It is not as if the issue is cropping up for the first time before the High Court.*

11. *The only issue that calls for consideration is this, whether the writ petitioners were recruited / selected prior to 01.06.2009 by TNPSC. If the answer is in the affirmative, the petitioners have to be given the benefit of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010. Even the respondents cannot dispute that the writ petitioners were selected prior to 01.06.2009. To be precise, all the writ petitioners were selected in November 2008. Therefore, I have no hesitation to follow the aforesaid decision relied on by the learned counsel appearing for the petitioners. That apart, Paragraph No. 6 of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010, makes the position fully clear. It is as follows:-*

(6) The above orders allowing fitment benefit is not applicable to the new recruits in whose cases the selection list have been issued by the Tamil Nadu Public Service Commission / Employment Exchange and consequent appointment orders issued by the Heads of Department after



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01.06.2009 ie., after the date of issue of notification of the Tamil Nadu Revised Scales of Pay Rules, 2009, in the G.O first read above. In such cases, the new recruits are entitled to have their pay fixed only at the minimum of the Pay Band plus grade pay applicable to the respective posts.

12. It can be seen therefrom that the Government wanted to deny the benefit of G.O.Ms.No.340, Finance (Pay Cell) Department, dated 26.08.2010 only to those who were recruited and appointed after the cutoff date ie., 01.06.2009. Admittedly, the petitioners do not fall within the scope of Paragraph No.6. Therefore, the orders impugned in the writ petitions are set aside. The writ petitions are allowed. No costs.”

7. Against which, the State has filed W.A.(MD).No.520 of 2023 etc., batch, before the Division Bench of this Court and the same was dismissed on 01.12.2023, by confirming the order of the learned Single Judge. The relevant portion of the said Judgment is extracted hereunder:

“6. From a reading of the said Government Order in its entirety, it is manifest that the fitment order under G.O.(Ms)No.340, dated 26.08.2010, was not restricted to the Junior Assistants/Agricultural Officers. It would be applicable to those



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who were recruited earlier, but the posting/appointment orders were issued after 01.06.2009. The Government in exercise of the powers conferred under Rule 13 of the Tamil Nadu Revised Scales of Pay Rules, 2009, relaxed Rule 9 of the Tamil Nadu Revised Scales of Pay Rules, 2009, in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants / Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 01.06.2009 and joined/appointed on a subsequent date on or after 01.06.2009 due to administrative reasons.

7. It is not disputed that the recruitment process of the respondents was undertaken in the year 2008. The select list was also published on 07.11.2008. The certificate verification was also conducted on 05.12.2008. Only due to administrative reasons, the appointment orders were issued to these respondents on 03.08.2009. It would appear that the respondents are not at fault. The respondents are similarly situated as that of the Junior Assistants/Agricultural Officers covered under G.O.(Ms)No.340, dated 26.08.2010. There was no reason to apply different yardstick to these respondents. A Division Bench of this Court in W.A.No.186 of 2023, dated 02.02.2023 [The State of Tamil Nadu and others vs. C.Jayapradha and others], was dealing with the



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case of Assistant Agricultural Officers. The Assistant Agricultural Officers were also not named in G.O.(Ms)No.340, dated 26.08.2010. The benefit was accorded to the Assistant Agricultural Officers recruited prior to 01.06.2009, however, appointment orders were issued after 01.06.2009.

8. The learned Single Judge has considered the said aspect in proper perspective. As per the said Government Order, the monetary benefits were given from 01.08.2010 and not from 01.06.2009. It was only the fitment that was permitted. The same would also apply to the respondents herein. The respondents will not get monetary benefits prior to 01.08.2010. It is only the notional fitment that will be applicable.”

8. Aggrieved over the same, the Government has filed a S.L.P. before the Hon’ble Apex Court and the same was also dismissed on 19.02.2024.

9. As the issue raised in this case is no more a *res integra*, in view of the above judgment, the petitioner is entitled to the relief as prayed for.



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10. In view of the above, the writ petition is **disposed of** with a direction to the respondents to implement the order of the third respondent for revised pay scale to the petitioner as per the Government Order in G.O.Ms.No. 340, Finance (Pay Cell), dated 26.08.2010 within a period of four weeks from the date of receipt of a copy of this order. No costs.

12.07.2024

NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order

TSG

To

1.The Secretary to Government,
State of Tamil Nadu,
Represented by
Finance Department,
Fort St. George,
Chennai 600 009.

2.The Personal Assistant (Accounts)
to the District Collector,
Tirunelveli District,
Tirunelveli.

3.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.



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4. The District Treasury Officer,
Tirunelveli District,
Tirunelveli.



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R.N.MANJULA, J.

TSG

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