BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.15390 of 2024
and
W.M.P.(MD).No.13491 of 2024

S.Meenakshi ... Petitioner

Vs.

1.The State of Tamil Nadu,
Secretary to Government,
Finance Department,
Fort George, Chennai.

2.The District Collector,
Office of District Collector,
Sivagangai District.

3.The Assistant Treasury Officer,
Sub-Treasury Office,
Thiruppuvanam,
Sivagangai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the third Respondent dated 23.06.2023 and quash the same with a consequential direction, directing the 3rd respondent to implement the order of the second respondent dated 22.01.2022 and refix the petitioner's salary by granting the fitment benefits from the date of the petitioners appointment as per G.O.Ms.No. 340 Finance (Pay Cell) Department, dated 26.08.2010.

For Petitioner : Ms.P.Subathra Devi,
for M/s. Polax Legal Solutions

For Respondents : Mr.J.Ashok,
Additional Government Pleader

O R D E R

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

2. Heard Ms.P.Subathra Devi, learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

3. This Writ Petition has been filed challenging the impugned proceedings issued by the third Respondent, dated 23.06.2023 and consequently to direct the third respondent to implement the order of the second respondent dated 22.01.2022 and refix the petitioner's salary by granting the fitment benefits from the date of the petitioners appointment as per the Government Order in G.O.(Ms).No.340, Finance (Pay Cell) Department, dated 26.08.2010.

4. The petitioner was issued with an appointment order on 10.09.2009 and she joined duty on 11.09.2009 as a 'Typist' in the office of the District Collector, Tirunelveli and she is presently working as a 'Senior Revenue Inspector' at the Taluk Office, Tiruppuvanam.

5. Ms.P.Subathra Devi, learned counsel appearing for the petitioner submitted that the petitioner had sent several representations to the respondents and lastly the petitioner has sent a representation to the third respondent on 17.12.2021 to grant benefits of the Government Order in G.O.(Ms).No.340, Finance (Pay Cell) Department, dated 26.08.2010. After considering the same, the second respondent through his proceedings, dated 22.01.2022, allowed the fitment benefit and directed the third respondent to revise the scale of pay notionally from the date of her initial appointment with monetary benefits from 01.08.2010. Thereafter, the petitioner approached the third respondent to implement the order of the second respondent. But the third respondent has passed the impugned order, dated 23.06.2023, stating that as per the Government Order in G.O.(MS).No.340, Finance (Pay Cell) Department, dated 26.08.2010, she is not eligible for fitment benefit and hence, the refixation cannot be granted. Challenging the same, the petitioner has filed this Writ Petition.

6. The issue on hand is no longer a *res-integra.* This Court has already dealt with 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 already approached this Court through the above petition and got favourable orders in their favour, wherein, it is held as follows :

"7. The entire issue arose on account of the belated implementation of the 6 th 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 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."*

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 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. In view of the decision cited supra, the writ petition is **allowed** and the impugned order passed by the third Respondent, dated 23.06.2023 is set aside and the third respondent is directed to implement the order of the second respondent, dated 22.01.2022 and refix the petitioner's salary by granting the fitment benefits from the date of her appointment as per the Government Order in G.O.(Ms).No.340, Finance (Pay Cell) Department, dated 26.08.2010. No costs. Consequently, the connected miscellaneous petition is closed.

11.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG
To
1.The Secretary to Government,
State of Tamil Nadu,
Finance Department,
Fort George, Chennai.
2.The District Collector,
Office of District Collector,
Sivagangai District.

3. The Assistant Treasury Officer,
Sub-Treasury Office,
Thiruppuvanam,
Sivagangai District.

R.N.MANJULA, J.

TSG

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