



W.A.(MD).No.41 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 23.07.2024

PRONOUNCED ON : 21.08.2024

CORAM

**THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDRA
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR**

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1. The Director of General of Police,
Chennai – 600 004.
 2. The Inspector General of Police (Administration)
Chennai – 600 004.
 3. The Commissioner of Police,
Madurai City.
 4. The Superintendent of Police,
Karur District, Karur.
- ... Appellants/ Respondents

Vs.

G.Kalaivani ...Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent Act,
against the order passed by this Court in W.P.(MD).No.10913 of 2008,
dated 11.04.2016.

For Appellants : Mr.A.Kannan,
Additional Government Pleader
For Respondent : Mr.P.murugesan



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JUDGMENT

[Judgment of the Court was delivered by K.RAJASEKAR,J.,]

Writ Appeal has been filed by the respondent-Police Department in the Writ Petition challenging the order passed by the learned Single Judge in W.P.No.10913 of 2008, dated 11.04.2016, wherein, the pay fixation of the Writ Petitioner was allowed.

2. The case of the Writ Petitioner is that she was originally appointed as Typist on 27.01.2003 on compassionate ground, in the office of the Deputy Superintendent of Police, Ramanathapuram. Then, she was promoted to the post of Assistant in the year 2006. Prior to promotion, she was qualified for the promotion on 30.12.2004 itself and was fit to be included in the Promotion Panel for the post of Assistant in the year 2005-2006. Due to some Administrative delay in passing the order of regularization of service, her name was not included in the promotion panel. Her name ought to have included next to one P.Ramesh, Typist. However, she was promoted as Assistant only on 01.11.2006. She has sent a representation, dated 24.05.2007 praying for pay fixation on par with P.Ramesh, Typist, and to place her name next to him. In this regard, the



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Inspector General of Police issued a proceedings stating that “she was eligible to be included in the promotion panel [“C” List] for the year 2005-2006 and due to some administrative reason, her name was not included and it is also ordered to regulate the pay as per ruling under FR-27”. Based on the above order, the Writ Petitioner has given a representation to the 4th respondent to re-fix her pay but the same was rejected by the 4th respondent, by order dated 07.01.2008. Challenging the rejection of her pay she had filed the present Writ Petition. During pendency, pay of one S.Balasubramaniam, who was appointed as Junior Assistant on 25.06.2002, who is also senior to P.Ramesh, re-fixed on par with P.Ramesh. The same benefit to be extended to the Writ Petitioner herein but the same was not extended to her.

3. The Respondent No.4 has filed his counter and it is stated that Fundamental Rule FR-27 (17) is not applicable to the case of the Writ Petitioner since P.Ramesh is not a junior to her and he is a senior. P.Ramesh was promoted even before the Writ Petitioner was promoted. Hence, she is not eligible for re-fixation of pay.

4. Already the proceedings issued in favour of S.Balasubramaniam,



Assistant was also cancelled and recovery is also ordered.

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5. After hearing both sides, a learned Single Judge by relying on the pay fixation order of S.Balasubramaniam, Assistant, who is junior to P.Ramesh as per rule 17 of FR-27 held that the Writ Petitioner is also entitled for re-fixation of pay and accordingly, allowed the Writ Petition.

6. Aggrieved over the order of the learned Single Judge, this Writ Appeal has been filed by the respondents-Police Department.

7. Mr.A.Kannan, learned Additional Government Pleader appearing for the appellants would submit that the Writ Petitioner sent a representation stating that her pay shall be fixed equivalent to one P.Ramesh is not sustainable since, he is not a junior to her and he is a senior to the Writ Petitioner. Further, he would submit that an order of re-fixation of S.Balasubramaniam, whose fixation of pay is made equivalent to P.Ramesh is also cancelled. Hence, the Writ Petitioner is not entitled to claim any relief in the Writ Petition. He further submitted that the Writ Petitioner was appointed as Typist on compassionate ground on 27.01.2003 and after declaration of probation period, she was promoted as Assistant on 01.09.2006.



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8. The learned counsel for the respondent would submit that after appointment of the petitioner in the post of Typist on 27.01.2003, her services were not regularized within the prescribed time. Per contra, it was regularized on 11.08.2005, only thereafter, her name was included and she was given promotion to the post of Assistant on 01.11.2006 and this delay was caused based on the administrative reason. Since, there was a delay in regularization, her name was not included in the promotion panel for the year 2005-2006 and she was promoted only on 01.11.2006. After promotion of one P.Ramesh, her name was included just below to him. Hence, she is eligible for re-fixation of pay on par with P.Ramesh.

9. We have considered the submissions made on both sides and perused the records.

10. The claim for rejection of pay of Writ Petition is made based on the principle that, senior employee who has been overlooked in promotion shall be paid equivalent to his juniors, once the senior is promoted after his junior. The relevant Rule 4 FR-27 (17) reads as follows:

“(17) In case where a Government servant has been overlooked for promotional/appointment to the



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next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post, in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

[G.O.Ms.No.977, Personnel and Administrative Reforms (FR.III), dated 6th October, 1986].

11. The careful analysis of the documents shows that, one Mr.S.Balasubramaniam, was appointed as Junior Assistant on 25.09.2002 and he was promoted as Assistant with effect from 01.09.2006. The Writ Petitioner was appointed as Typist on 27.01.2003 and she was promoted as Assistant on 01.11.2006 and admittedly both of them are juniors to P.Ramesh, Typist. It is admitted case that after promotion, the Writ Petitioner's name was placed below to P.Ramesh.



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12. According to the appellant, she was eligible to be included in the promotion panel of the year 2005-2006. The learned Single Judge, by comparing the case of S.Balasubramaniam, ordered re-fixation in favour of the Writ Petitioner. The pay fixation order of S.Balasubramaniam shows that he is senior to the Writ Petitioner herein. The seniority panel for the year 2006-2007 produced before this Court shows that the common seniority panel was maintained for both Junior Assistant and Typist, and it was regularly circulated to the all units.

13. FR 27 (17) is applicable only whenever a Government Servant was overlooked for promotion/appointment to the next higher post and subsequently, if he was promoted/appointed to the higher post after restoring his original seniority, his pay shall be fixed on the date of appointment of the higher post on par with his juniors.

14. In this case, the Writ Petitioner failed to establish her case that her promotion was overlooked and her juniors were promoted. Admittedly, either S.Balasubramaniam or P.Ramesh with whom she claimed parity for



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pay fixation are not junior to her thereby, FR-27 (17) is not applicable to her.

15. The learned Single Judge has passed an order based on the fixation made for one S.Balasubramaniam and it is now stated that pay fixation made for S.Balasubramaniam fixing his pay on par with one P.Ramesh is also cancelled since S.Balasubramaniam is not junior to P.Ramesh.

16. The Writ Petitioner also claims that, she has not been included in the promotional panel of the year 2005-2006 due to administration reason, if she had been included she would have been promoted in the year 2005-2006 itself and though she lost the promotion as she is entitled for pay as if she was promoted in the year 2005-2006 itself. This Court is unable to accept this contention, since she has promoted only on 01.11.2006 and her pay is payable as per pay scale in the promoted post only from the date of her promotion and it is not her case that, her juniors from the panel 2005-2006 have been promoted, that she has been overlooked in the promotion.



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17. Accordingly, the claim of the Writ Petitioner fails and she is not entitled for re-fixation of pay on par with P.Ramesh and the order passed by the learned Single Judge is liable to be set aside and consequently, the Writ Petition is dismissed.

18. In the result, the Writ Appeal is allowed. No order as to costs.

(A.D.J.C., J.) (K.R.S., J.)
21.08.2024

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Index :Yes/No

Speaking Order :Yes/No

Neutral Citation Case : Yes/No

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