



WP No. 25005 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2025

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THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 25005 of 2018

and

WMP No.29045 & 29046 of 2018

1. M.Thenmozhi
Section Officer (Retd.)
Commercial taxes & Registration
Department,
Secretariat,
Chennai – 600 009.

Petitioner(s)

Vs

1. The Secretary to Government,
Personnel and Administrative Reforms
Department,
Secretariat,
Chennai – 600 009.

2.The Deputy Secretary to Government,
Commercial Taxes & Registration
Department,
Secretariat,
Chennai – 600 009.

Respondent(s)



PRAYER: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified mandamus to call for the records relating to the impugned order passed by the second respondent in Letter No.9785/OP1/2017-2, Commercial Taxes and Registration Department, dated 06.12.2017 and quash the same and consequently direct the first and second respondents to issue necessary orders stepping up of pay on par with her junior Thiru R.Ayyavoo in Finance Department as mentioned in U.O.Note No.37433/U.Spl./2013-33, P &AR Department dated 04.07.2017 with all monetary benefits.

For Petitioner(s): M/s.T.Ranganathan

For Respondent(s): Mr.T.Chezhiyan
Additional Govt. Pleader

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order passed by the second respondent in Letter No.9785/OP1/2017-2, Commercial Taxes and Registration Department, dated 06.12.2017 and quash the same and consequently direct the first and second respondents to issue necessary orders stepping up the pay on par with her junior Thiru R.Ayyavoo with all monetary benefits.

2. The petitioner was appointed as a Typist in the Tamil Nadu Secretariat Service of the Tamil Nadu Government from the year 1981 and has been

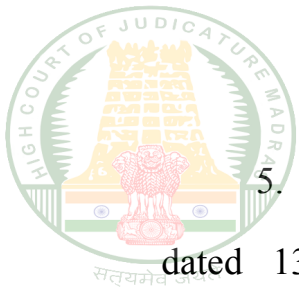


allotted to the Commercial Taxes and Religious Endowment Department at the Secretariat. In the Secretariat all the departments are considered as one unit for the purpose of appointment / promotion and transfer except Law and Finance Department. Prior to the year 1978 even the Finance Department did not have separate Service Rules and hence the juniors in Secretarial Services were also allotted to the Finance Department without any requirement to possess any additional qualification or experience.

3. During the year 1994 the juniors in the Finance Department were given promotion overlooking the Seniors in the Unit. Hence the aggrieved employees challenged the promotion proceedings before the Tamil Nadu Administrative Tribunal and the Original Application filed was allowed and the first respondent was directed to promote the applicants on par with the juniors in the Finance Department in accordance with the combined TNPSC Seniority list. The Tamil Nadu Secretariat Association had also made a representation to the Government to extend the same benefit to all the employees in order to rectify the anomaly between the juniors and the seniors in the matter of promotion. Thereafter the Government has issued Government Order in G.O.Ms.No.126 P & AR Department dated 29.05.1988 by stepping up the pay of the seniors in one unit on par with the juniors in the Finance Department and thereby the anomaly was set right.



4. As the persons allotted to the Finance Department are frequently promoted to higher post irrespective of their seniority in the list, once again a representation has been made to the Government requesting to make the stepping up of the pay as a continuous process at every stage. Hence, the Government has issued an order in G.O.Ms.No.154 P&AR Department dated 30.10.2009 in order to find an equitable solution. In pursuant to the said Government Order the positions occupied by the juniors in the Finance Department were extended to the senior working in one unit departments. However in G.O.Ms.No.154 P&AR Department dated 30.10.2009, the positions occupied by the Typist, Personal Clerk and Personal Assistants were not included but it has been stated that orders will be issued separately in respect of those staffs. But thereafter no separate orders have been issued. Further, a Government Order has been issued in G.O.Ms.112 P & AR Department dated 13.07.2012 to the benefit of persons appointed as Typist, Personal Clerk before 28.01.1994 and who have been promoted as Assistant Section Officers from the combined seniority list of Assistant Section Officer's Panel. The other condition that those persons should be in service on the date of issuance of this order and in that case their pay will be also be stepped up on par with the junior in one unit and it is subject to the terms and conditions prescribed in the G.O.Ms.No.154 P&AR Department dated 30.10.2009. Accordingly the anomaly is rectified.



5. The above condition imposed in G.O.Ms.112 P & AR Department dated 13.07.2012 with reference to the earlier G.O.Ms.No.154 P&AR Department dated 30.10.2009, have been challenged by one Saraswathi by filing a Writ Petition in W.P.No.2556/2013. In the said writ petition an order has been passed on 08.04.2014 to the following effect:

“ .. 22. In view of the above, G.O.Ms.No.112, dated 13.07.2012 is quashed insofar as the direction issued for upgradation / stepping up of pay on par with juniors in one unit in paragraph No.6 and consequently the respondents are directed to give similar benefit to the petitioner as granted to the promotees from the post of Assistant in G.O.Ms.No.154, dated 30.10.2009 by making necessary amendment in G.O.Ms.No.112, dated 13.07.2012. So far as the prayer relating to quashment of paragraph No.14 is concerned, the same is rejected.”

6. By virtue of the above order, G.O.Ms.112 P & AR Department dated 13.07.2012 was quashed in so far as the direction issued under paragraph No. 6 and the respondents were directed to extend the same benefits to those petitioners as the benefit given to the promotees from the post of Assistant as prescribed under G.O.Ms.No.154 P&AR Department dated 30.10.2009 by making necessary amendment in G.O.Ms.112 P & AR Department dated 13.07.2012. Subsequently, amendment has been made in paragraph No.6 of G.O.Ms.112 P & AR Department dated 13.07.2012, as under:

“ The post and pay of the seniors in One Unit, who have been recruited and appointed as Personal Clerks and typists in the Tamil Nadu



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Secretariat Service before 28.01.1994 and promoted as Assistant Section Officers and who are in service on the date of issue of the order in G.O.(Ms) No.112, Personnel and Administrative Reforms (U-spl) Department dated 13.07.2012 shall be upgraded and stepped up on par with their juniors in Finance Unit with effect from 13.07.2012, subject to the terms and conditions prescribed in G.O.(Ms) No.126, Personnel and Administrative Reforms (U-Spl) Department, dated 29.05.1998.”

7. By virtue of the above amendment the position stipulated in G.O.Ms.No.126 Personnel and Administrative Reforms Department dated 29.05.1988, has been extended to the Personal Clerks and Typist irrespective of any requirement of any additional qualification. But the said benefits will be available only in respect of the promotions from the cadre of 'Assistant' in One Unit Departments and on par with the juniors in the Finance Unit.

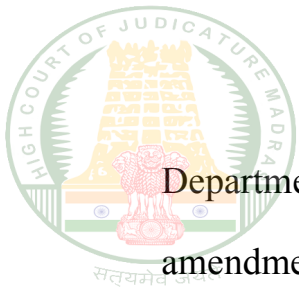
8. Subsequent to the amendment, the petitioner in W.P.No.25556/2013 namely Saraswathy has been given with upgradation on par with her junior R.Ayyavu, Joint Secretary to Government, Finance Department. Similar benefits have been extended to similarly placed other petitioners also when they have filed a writ petition in W.P.No.27145/2013.

9. However, the learned Additional Government Pleader for the respondents submitted that G.O.Ms.No.31 P&AR (U.Spl) Department dated



01.03.2017 would prescribe certain conditions under paragraph No. 10. The Government Order has been attached with the appendix wherein a list of persons who have to be upgraded on par with their juniors in Finance Department have been given. In the said list the petitioners name is found placed in paragraph No. 13. It is further submitted by the learned Additional Government Pleader that in the Appendix also there are certain conditions stipulated and as per condition No.III, the stepping up of pay cannot be granted to those persons who have already been overlooked for promotion at any stage for want of educational qualification in accordance with Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The educational qualification prescribed under Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 are fundamental to the appointment of the post and it cannot be read for promotion or upgradation unless the appointment itself is by way of promotion or transfer.

10. It is learnt from the Government Order in G.O.Ms.No.88 P & AR Department dated 15.06.2012 that the amendment has been issued with regard to the qualification for appointment to the post of Section Officer in the departments other than Law and Finance Department by recruitment by transfer from the category of 'Assistant Section Officer' other than the Law and Finance in the Tamil Nadu Secretarial Service. The post of Section Officer to the Department of Law and Finance is done by recruitment by transfer. In such case the persons who are appointed as Section Officer in the Law and Finance

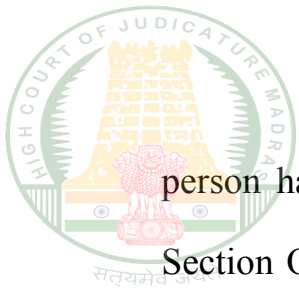


Department should possess certain fundamental qualification. To that effect, an amendment has been issued in G.O.Ms.No.88 P & AR Department dated 15.06.2012, which prescribe that the person who has to be appointed as 'Section Officer' by transfer in the Department of Law and Finance should have not less than six years of service in the post of 'Assistant Section Officer' other than Law and Finance Department. So any appointment that has to be made as Section Officer in the Department of Law and Finance is required to possess Bachelor Degree with not less than 6 years of service in the post of Assistant Section Officer.

11. This petitioner was functioning as a Section Officer at the time of retirement. She claims that one Ayyavoo who was her junior has been retired in the cadre of Joint Secretary to Government and hence her pay should also be stepped up to the post of Joint Secretary by giving her the benefit of G.O.Ms.No.126 Personnel and Administrative Reforms Department dated 29.05.1988 along with the amendment.

12. The learned Additional Government Pleader submitted that the petitioner does not have degree qualification but she is entitled to stepping up of pay though not for promotion as Joint Secretary in the Finance Department.

13. When a post prescribes certain fundamental conditions, then it is obligatory on the part of the respondent Government to ensure whether the



person has got the qualification to the said post. So far as the post until the Section Officer in the other departments is concerned, no specific requirement of degree qualification is needed. In fact G.O.Ms.No.88 P & AR Department dated 15.06.2012 itself prescribes the special qualification for persons who have been appointed as Section Officer in the Department of Law and Finance. To put it shortly in order to get promotion post of Section Officer in the Departments other than Law and Finance, there is no necessity to have a Bachelor's Degree.

14. The petitioner appears to have got her promotion to the post of Section Officer. It would have been alright if the petitioner aspires to get her next level promotion in the Department other than Law and Finance, but she claims parity with the Joint Secretary of Law and Finance Department, which prescribes the basic qualification of Bachelor's Degree along with certain years of service as Assistant Section Officer. So the petitioner's claim for parity and stepping up can be accepted until her juniors who are in Law and Finance Departments are promoted to the level of Assistant Section Officers and not beyond that, because the next level post in Law and Finance Department requires special qualification as prescribed under G.O.Ms.No.88 P & AR Department dated 15.06.2012.



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15. In view of the reasons stated above, this Writ Petition is dismissed.

No costs. Connected miscellaneous petitions are closed.

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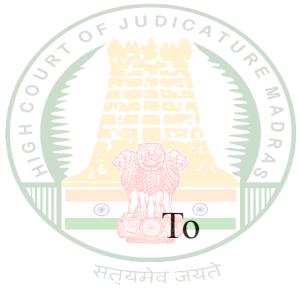
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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Chennai – 600 009.

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