



W.P.(MD)No.7019 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.7019 of 2019

and

W.M.P.(MD)No.5601 of 2019

Julius Jawahar Devakandan

... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep by its Secretary,
Department of Highways and Minor Ports,
Fort St George, Chennai-600001.

2.The Director General,
Highways Department,
Guindy, Chennai-5.

3.The Director,
Highways Research Station,
Highways Department,
Guindy, Chennai.

4.The Divisional Engineer,
Highways,
Quality Control Division,
Madurai-625002.

5.The Superintending Engineer,
(Highways), Madurai

... Respondents

(R5 is impleaded vide Court order dated 25.02.2025 in WMP.(MD)No. 3771 of 2025 in WP.(MD)No.7019 of 2019)



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in G.O.(Ms)No.5, Highways and Minor Ports (H.M.2) Department dated 13.01.2011 in respect of petitioner's pay fixation is concerned and quash the same as illegal and consequently, direct the respondents to refix the petitioner's Pay Band as Rs.4300-100+6000 w.e.f. 30.09.2003 by protecting the pay last drawn by the petitioner and disburse the difference amount in pay to him w.e.f. 30.09.2003 within the time stipulated by this Court.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.

ORDER

Under challenge is G.O.(Ms)No.5, Highways and Minor Ports (H.M.2) Department dated 13.01.2011 in respect of petitioner's pay fixation is concerned and consequently, direct the respondents to refix the petitioner's pay by protecting the pay last drawn by the petitioner.

2.The case of the petitioner is that he was appointed as Welder Grade-I in the Central Workshop (Mechanical Wing), on 28.03.1990. He was regularized with effect from 28.03.1990. He was conferred with



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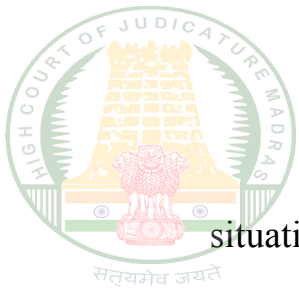
selection grade on 28.03.2000. The first respondent issued a Government Order for abolition of mechanical wing with effect from 31.08.2003. In view of the same, he was appointed as Record Clerk with effect from 30.09.2003 in the office of the fifth respondent. He was drawing a sum of Rs.5,000/- as basic pay in the scale of pay of Rs.4300-100-6000. Upon recommendation of the fifth respondent, the first respondent vide G.O.(Ms)No.5, dated 13.01.2011, has ordered pay protection. However, contrary to such pay protection, the petitioner's pay was erroneously fixed at Rs.4590+410 applicable to the Special Grade Record Clerk without considering the last drawn pay. The petitioner's pay scale was splitted up and fixed as Rs.4590+410. The petitioner's pay was not protected and he was made to receive lessor pay than that of his pre-revised pay. The pay fixation is contrary to the Rule 22 (2)(7) and contrary to the Tamil Nadu Revised Scales of Pay, Rules, 2009. Hence, the writ petition.

3.The learned counsel appearing for the petitioner would submit that the respondents have splitted up the petitioner's last drawn pay of Rs.5000/- into Rs.4590/- as basic pay and remaining amount of Rs.410/- as personal pay. In view of the split up of pay structure, the petitioner started drawing lower pay prior to his re-deployment, since the



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petitioner's case was treated as Special Case and Rules have been relaxed for pay protection, vide G.O.(Ms)No.5, dated 13.01.2011. He would submit that as per sixth pay commission benefit, the petitioner was permitted to draw increments and pay commission benefits only on the basis of the alleged basic pay of Rs.4590/- and personal pay Rs.410/- was left out. The fixation made by the respondents is contrary to the Rule 22 (2)(7) and contrary to the Tamil Nadu Revised Scales of Pay, Rules, 2009. To strengthen his contention, he has relied upon the judgment of the Hon'ble Supreme Court reported in **2018 14 SCC 435** in ***Eastern Coalfields Limited and Ors. Vs. Prativa Biswas and Ors*** to show that the pay of employees could not have been reduced as pay protection was assured to them. He would submit that in case of consequential relief like arrears for the past period cannot be rejected on the ground of delay and laches. To strengthen his contention, he relied upon the judgement of the Hon'ble Supreme Court reported in **(2008) 8 SCC 648** in ***Union of India and Ors. Vs. Tarsem Singh*** to show that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy. He would submit that though the order impugned came to be passed in the year 2011, the petitioner is not in a position to challenge the said order immediately, due to his family



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situation and he was not well and he was suffering from Tuberculosis.

He would submit that the delay in approaching this Court neither wilfull nor wanton.

4.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner was working as Welder Grade I in the workshop. At the time of re-deployment to the post equivalent to his cadre and with reference to his qualification was not available. However, considering the plight of the petitioner, the Government had taken a sympathetic view and considered him for appointment in a lower grade post of Record Clerk to his educational qualification, instead of retrenching him from service. He would submit that present writ petition came to be filed to fix his pay in the scale of pay applicable to his original post. He would submit that in a similar batch of cases W.P.Nos.17445 & 17446 of 2008, this Court vide order dated 02.11.2018 was pleased to dismiss the writ petitions stating that this Court is not inclined to interfere with the orders passed by the respondents therein. He would submit that the prayer in the above writ petitions to refix the pay at 4000-100-6000 and 4300-100-6000 respectively, which they were seeking prior to re-deployment cannot be granted.



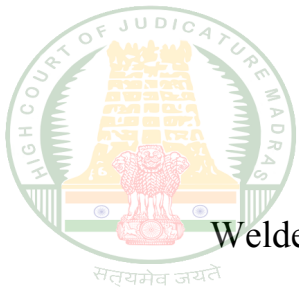
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5.This Court has considered the submissions made on either side and perused the available records.

6.It is seen from the typed-set of papers that the petitioner was appointed Welder Grade I in the Mechanical Wing of Highways Department on 28.03.1990. After completing 10 years of service, he got selection grade to the said post on 28.03.2000. As per Government letter dated 22.08.2003, the mechanical wing in which the petitioner was in duty was disbanded and the employees were surrendered to the Chief Engineer (General), Chennai. At that time, the petitioner got a pay of Rs.5,000/- in a scale of pay Rs.4300-100-6000.

7.It is seen from the records that at the time of closure of mechanical wing, the petitioner was received basic pay of Rs.5,000/-. In the selection grade Record Clerk, the highest basic pay is Rs.4590/- only. The difference in pay Rs.410/- was given under personal pay, so that the total basic pay of Rs.5000/- received by the petitioner was maintained without any reduction.

8.As per Government letter No.5/Highways and Minor ports/HM 2 dated 18.01.2011, rules relating to the personal pay was relaxed and



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Welder Grade I is reappointed as Special grade clerk to give pay protection from the year 2003-2006 he got routine annual increment. As per G.O.(Ms)No.234, Pay and Finance Commission, on 01.06.2009, 5200-20200+1900 pay band is fixed as Rs.10140+1900 vide proceedings dated 27.06.2011 and given from 01.01.2006. In 2013, the petitioner got promotion from special grade Record Clerk to Record Assistant and was given additional pay of Rs.500/-. The petitioner's pay scale was fixed as Rs.15339+2400 as on 01.10.2014. As per 7th pay commission, the petitioner's pay was fixed to Rs.50300/- on 01.10.2017. This continues till his date of retirement with routine annual increment and his basic pay turns out to Rs.56700/- on his month of retirement on 31.07.2022 AN.

9.It is relevant to refer that some of the employees were approached this Court by way of batch cases in W.P.Nos.17445 & 17446 of 2008, seeking fixation of their pay in the scale pay applicable to their original post. This Court vide order dated 02.11.2018, dismissed the said writ petitions in the following terms:- “It could be seen from the materials on records that the workshops of Highways Department, where the petitioners working were closed due to the loss sustained by the Government. Only on sympathetic view taken by the Government on the



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persons employed in the workshops, a decision was taken to grant Voluntary Retirement Scheme to its employees who were willing to accept and other persons were given an option of redeployment in various other Department as per their educational qualification. The last and final option was also for retrenching the employees if there was no suitable post available to accommodate them. In today's scenario in the country regarding getting an employment itself is a big issue that to in Government service, the petitioners have been redeployed instead of retrenchment which has to be accepted in a positive way and the petitioners cannot seek more benefits in the said redeployment. The petitioners have been redeployed and their pay has been protected instead of returning”.

10.It is pertinent to mention that the Rules were relaxed for availing pay protection for redeployed employees and the same is evident from the order impugned, wherein, it has been stated that the said difference would be adjusted by way of personal pay. Having accepted the same, the petitioner has approached this Court, that too, after a lapse of 8 years, which is inordinate delay without any plausible explanation on the part of the writ petitioner.



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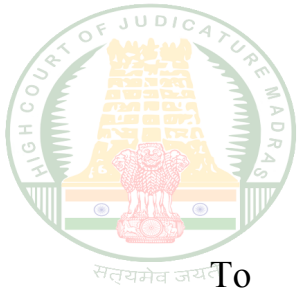
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11.This Court is of the firm view that the petitioner's interest has been protected by redeployment by the respondents and the petitioner cannot seek more pay comparing himself with others. Despite petitioner's redeployment, no recovery has been made and the same is confirmed by the learned Additional Government Pleader on instructions. Therefore, it is clear that the pay of the petitioner is duly protected till his retirement. There is no merit in this writ petition and there is no reason to interfere with the order impugned. This writ petition is liable to be dismissed.

12.In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2025

NCC : Yes / No
Index : Yes / No
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To
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M.JOTHIRAMAN, J.

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