

P.Subbaiah. Vs. the Child Development Project Officer and ors.

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Court : Chennai

Decided On : Jul-13-2012

Judge : D.Hariparanthaman, J.

Acts : [Constitution of India](#) - Articles 226; Tamil Nadu Revised Scales of Pay Rules 1998

Appeal No. : W.P.(MD)No. 2925, 2926, 2927, 2928, 2939, 2940, 2942 of 2012

Appellant : P.Subbaiah

Respondent : The Child Development Project Officer and ors.

Advocate for Def. : Mr.B.Pugalenth, Adv.

Advocate for Pet/Ap. : Mr.M.Ravi, Adv.

Judgement :

PRAYER in W.P.(MD) No.2925 of 2012 Writ petition is filed under Article 226 of the [Constitution of India](#) praying to issue a Writ of Mandamus, to direct the 1st respondent to refix the Selection Grade and Special Grade Scale of Pay as indicated in Schedule-II of the Tamil Nadu Revised Scales of Pay Rules 1998, at Rs.5000-150-8000 and 5500-175-9000 respectively to the petitioner driver with all consequential monetary benefits and to pay all arrears with effect from 01.01.1996 within a stipulated time period.

COMMON ORDER

1. In view of the direction sought for in the writ petitions, the Secretary to Government, Department of Social Welfare Nutrition (NMS) Department, Secretariat, Chennai, is suo motu impleaded as fourth respondent.

2. The petitioners are working as Drivers in the Noon Meal Project Offices in the fourth respondent department. The date of entry into service, the date of grant of Selection Grade, the date of grant of Special Grade and the date of retirement in service of the petitioners are given below:

Sl.	Name of the petitioner	Date of entry	date of grant	date of grant	date of No into service	of Selection	of Special Grade	retirement
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Grade

1. Subbuiah (W.P.No.2925 20.11.1984 20.11.1994 20.11.2004 31.05.2008 of 2012)

2. Santhanam 12.03.1976 12.03.1986 12.03.1999 31.01.2009 (W.P.No.2926 of 2012)

3. Govindasamy 16.09.1981 16.09.1991 16.09.2001 30.09.2005 (W.P.No.2927 of 2012)

4. Panchavarnam 04.04.1983 04.04.1993 04.04.2003 31.10.2010 (W.P.No.2928 of 2012)

5. S.Chandrasekaran 28.04.1993 05.01.2004

..... Petitioner is in (W.P.No.2939 of 2012) service

6. R.Ravindranathan 02.03.1998 02.03.2008..... Petitioner is in (W.P.No.2940 of 2012) service

7. P.Chandrasekaran 05.11.1990 05.11.2000

..... Petitioner is in (W.P.No.2942 of 2012) service

The grievance of the petitioners is that the Drivers in various departments are given different scales of pay and there was no uniformity.

3. It is the case of the petitioners that the Government issued G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, granting Selection Grade Pay and Special Grade pay as provided in Schedule-II of the Government Order. Schedule-II of the Government Order provides 18 Ordinary Grade pay and corresponding 18 Selection Grade pay and Special Grade Pay. The Drivers in some of the departments of Tamil Nadu Government are granted 4000- 100-6000 as Ordinary Grade pay and 5000-150-8000 and 5500-175-9000 are the corresponding Selection Grade pay and Special Grade pay. But, the petitioners herein are not treated alike and they are granted lesser pay viz. 4000-100-6000 in Selection grade and 4300-100-6000 in Special Grade, since they are granted Ordinary Grade Pay of Rs.3200-85-4900.

4. According to the petitioners, the Drivers belonging to various departments, who are similarly situated come to this Court and obtained orders for Selection Grade pay in 5000-150-8000 and Special Grade pay in 5500-175-9000. Those orders are produced before this Court. The petitioners have prayed for grant of 5000-150-8000 as Selection Grade pay and 5500-175-9000 as Special Grade pay as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 as given to other drivers by virtue of various orders of this Court.

5. The first respondent has filed counter affidavit. The first respondent has stated that other departments are giving 4000-100-6000 as Ordinary Scale of pay and the corresponding Selection Grade pay and Special Grade are given as 5000-150-8000 and 5500-175-9000. It is stated that the first respondent has no power to change the scales of pay to the petitioners as requested by them.

6. Heard both sides.

7. The petitioners are Drivers working in the fourth respondent Department. Pursuant to G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, the ordinary pay in this Department is 3200-85-4900 and the corresponding Selection Grade pay and Special Grade pay are 4000-100-6000 and 4300-100-

6000 respectively. Their claim is that in other Departments, the Drivers are situated like the petitioners and they were given the Selection Grade pay 5000-150-8000 and Special Grade pay of 5500-175-9000 corresponding to the Ordinary Grade pay of 4000-100-6000, based on the various judgments of this Court and various judgments are produced before this Court.

8. The matter was considered by the Division Bench of this Court in a batch of writ appeals in W.A.Nos.383 to 391 and 393 of 2009 and the writ appeals were disposed of on 01.09.2009. The following passage from para 7, 14 and 15 of the said judgment are extracted hereunder:

"7. Learned counsel appearing for the writ petitioners submitted that based on the recommendations of the Official Committee 1998, orders were issued in G.O.Ms.No.162 Finance (PC) Department, dated 13.04.1998 for revision of scale of pay of posts with retrospective effect from 01.01.1996 and on the basis of the said G.O., most of the Heads of Departments have extended the benefits of Selection/Special Grade scale of pay at Rs.5000/- and Rs.5500/- to most of the Drivers working in different Government Departments, who had no promotional avenue and issued orders to that effect. Since most of the Drivers have put in 20 years of service as on 1996, they are eligible for Special Grade of pay. According to the learned counsel, the petitioners were forced to approach this Court since they were denied the right conferred to the drivers in various Government Departments by fixing the basic pay of Rs.5000/- and 5500/- to the Selection Grade and Special Grade drivers.

14. Further, in all the cases where the drivers from various departments were given enhanced pay is not denied by the learned Special Government Pleader. On the contrary, it is the specific admission of the learned Government Advocate before the learned Single Judge that the amount already paid to the Drivers of various Departments continued to remain the same. When the fact remains so, we are at dark to understand as to how the authorities can now go back and say that the writ petitioners are not entitled for the same benefits conferred to the similarly situated drivers. The learned Judge is perfectly right in coming to the conclusion that unless and until G.O.Ms.No.162, Finance (Pay Cell) Department, dated

13.04.1998 is modified or superceded in the manner known to law, it is not open to the authorities to clarify especially in the circumstances that G.O. has been given effect to in respect of drivers of various other Departments. We are of the opinion that the learned Judge has gone into the matter in depth and has rightly quashed the impugned letter dated 01.10.2007 passed by the Secretary to Government, Finance (Pay Cell) Department, with a direction to pass appropriate orders in respect of fixation of pay for Selection Grade and Special Grade to the drivers of various Government Departments relating to the writ petitioners as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 and confer the said benefits. We do not find any illegality or infirmity in the order of the learned Single Judge so as to take a different view from that of the same.

15. In that view of the matter, the authorities are bound to implement the Selection Grade and Special Grade Scale of pay as indicated in Schedule-II of the Tamil Nadu Revised Scales of Pay Rules 1998 and they cannot refuse to extend the benefit uniformly to all the drivers who have no promotional avenues. We find no illegality or infirmity in the order of the learned single Judge warranting interference of this Court." Following the same, another Division Bench has passed an order dated 14.02.2011 in w.A.(MD) Nos.130 to 132 of 2011.

9. At this juncture, it is relevant to extract paras 5 to 7 of the counter affidavit filed by the first respondent in W.P.(MD) No.2925 of 2012 and the same is extracted hereunder:

"5.I submit the petitioner claims that the scale of pay of Drivers working in various Departments of the State are not uniform. I submit that the above anomaly has to be redressed by the Government after a proper scrutiny into the work nature of such posts and after getting all statistical details regarding the Budgetary provisions possible for such a sanction.

6. The claim of the petitioner is that he was a Special Grade Driver in the 1st respondent Office and is in scale of pay of 4300-100-6000 as per G.O.Ms.No.162 dated 13.04.1998 and retired superannuation on 31.05.2008. The ordinary scale of pay for the above post is 3200-85-4900. Several Departments of the State seems to have 4000-100-6000 as ordinary scale of pay and 5000-150- 8000 as Selection

Grade scale and 5500-175-9000 as Special Grade scale of pay for the post of Driver. The above variation between the scale of pay between various Department has resulted in this writ petition.

7. I submit that the 1st respondent is only a drawing officer and has no powers to change the scale of pay of the petitioner as requested by him."

10. In view of the aforesaid two Division Bench judgments, the writ petitions are allowed and the fourth respondent is directed to grant necessary monetary benefits to the petitioners in terms of the aforesaid two Division Bench judgments, within a period of three months from the date of receipt of a copy of this order. No costs.

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