

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28-07-2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.Nos.42790 to 42793 of 2002, 700 of 2003, 32231 and 32468 of 2004

1. M.Nalluchamy Petitioner in WP.No.42790 of 2002
2. S.Kulandaivelu Petitioner in WP.No.42791 of 2002
3. M.Geetha Petitioner in WP.No.42792 of 2002
4. C.Muralidharan Petitioner in WP.No.42793 of 2002
5. M.Rajendran Petitioner in WP.No.700 of 2003
6. K.Karuppiah Petitioner in WP.No.32231 of 2004
7. B.Veera sikku Petitioner in WP.No.32468 of 2004

vs

1. State of Tamil Nadu
rep. by Secretary to Government
Home (Courts V) Department
Fort St. George
Chennai 600 009. Respondents
2. The Registrar General
High Court
Chennai 600 104. ... Respondents WP.Nos.42790 to
42793/2002, 700/2003, 32231/2004 and
Respondents 1 and 2 in WP.No.32468 of
2004.
3. The Accountant General,
Tamil Nadu, Chennai 18. 3rd Respondent in W.P.No.32468 of 2004

(R3 impleaded as per order of
this Court dated 24.3.2005
and made in WPMP.No.7685 of 2005)

Petitions filed under Article 226 of the Constitution of India praying for an issuance of writs of certiorari and mandamus

(1). Calling for the records comprised in the proceedings of first Respondent dated 7.3.2002 in G.O.(D) No.264, Home (Courts V) department and dated 1.10.2002 of the second Respondent in ROC.No.7028-A/2002/Estt IV and quash the proceedings of the first Respondent in so far it affects the pay of the petitioner already fixed by granting two advance increments as on 10.12.1999 and the consequential of the 2nd Respondent and consequently issue a writ of Mandamus, directing the Respondents not to in any manner, tinker or revise the pay of the petitioner already fixed by extending the benefit of two advance increments from 10.12.1999 by virtue of G.O.Ms.No.1638, Home dated 10.12.1999 and implement the recommendations of this Hon'ble Court to extend the benefit of grant of advance increments from 25.3.1999 by confirming the same to those who had not been earlier granted the benefit during the period from 25.3.1999 to 10.12.1999. (in WP.Nos.42790 to 42793 of 2002).

2. Calling for the records comprised in the proceedings of the first Respondent, dated 7.3.2002 in G.O.(D).No.264, Home (Courts V) Department and the proceedings of the Second Respondent in ROC.No.7028-A/2002/Estt/IV and quash the same thereby directing the 2nd Respondent not to receive the amount of dues from the petitioner's monthly salary. (in W.P.No.700 of 2003).

3. Calling for the records comprised in the proceedings of the first Respondent dated 7.3.2002 in G.O.(D).No.264, Home (Courts V) Department and quash the said Government order dated 7.3.2002 in so far as the petitioner is concerned and consequently issue a writ of mandamus, directing the Respondents not to, in any manner tinker or revise the pay of the petitioner already fixed by extending the benefit of two advance increments from 10.12.1999 by virtue of G.O.Ms.No.1638, Home (Court V) Department dated 10.12.1999 not with standing the Government order in G.O.(D).No.264 Home (Courts V) Department dated 7.3.2002 which was intended to be confined to the beneficiaries for whose benefit the same was issued including, if necessary by allowing the petitioner to exercise the option for sanction of two advance increments from 10.12.1999 Viz., the date of issue of G.O.Ms.No.1638, Home (Courts V) Department, thereby enabling the petitioner to have his pay protected by retaining the pay fixation already done with effect from 10.12.1999 by virtue of the said G.O. (in W.P.Nos.32231 and 32468 of 2004).

For petitioner : Mr. Ravichandran
in Wps.42790 to for M/s. Sathish Parasaran
42793/2002

For petitioner : Mr. M.V. Muralidharan
in WP.700/2003

For petitioner : Mr. R. Bharanidharan
in Wps.32231,
32468/2004

For respondents : Mr. S. Srinivasan
Government Advocate for R.1 in all the
Writ petition.

Mr. B. Rajendran for R.2 in all the
Writ petition.

Mr. V. Vijay Shankar for R.3
in WP.No.32468/2002.

..

COMMON ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the first respondent dated 07.03.2002 made in G.O.(D) 264 Home (Courts V) Department, these petitioners have approached this Court to quash the same in so far as it relates to the petitioners and consequently direct the respondents, viz., the Government and the Registrar General, High Court, Chennai, not to in any manner, tinker or revise the pay of the petitioners already fixed by extending the benefit of two advance increments from 10.12.1999 by virtue of G.O.Ms.No.1638 Home (Courts V) Department dated 10.12.1999.

2. Since the issue raised in these writ petitions is one and the same, they are being disposed of by the following common order.

3. The brief facts leading to the filing of the above writ petitions are stated hereunder:

(a) Some of the staff members of Madras High Court Establishment, who were working as Section Officers / Court Officers / Appeal Examiners / Assistant Section Officers and Assistants have made representations for sanction of two advance increments to all

Law Graduates right from the post of Assistant to the post of Section Officer till their superannuation without merging it with their basic pay at the time of revision of their pay scales. After consideration, the then Hon'ble Chief Justice has recommended that the employees of the High Court possessing higher educational qualification, viz., Degree in Law should be granted two advance increments, which should be part of their personal pay and would merge with their salary on their promotion as Assistant Registrar. Based on the above recommendations of the Hon'ble Chief Justice, the High Court, in its letter dated 28.08.1997, have addressed the Government for sanction of two advance increments to all eligible candidates.

(b) Pursuant to the above request, the Government in their letter dated 03.10.1997, informed that they have constituted an Official Committee with regard to revision of pay and other allowances and requested that the aforesaid proposal may be placed before the Official Committee for its consideration. Accordingly, the said proposal was referred to the Official Committee as one among other things by the High Court in their letter dated 25.11.1997. Subsequently, the Government in G.O.Ms.No.162 Finance Department dated 13.04.1998 issued orders for revision of pay and allowance based on the recommendations of the Official Committee. However, the Government Order was silent in respect of the recommendation of the Hon'ble Chief Justice. While so, one S. Palanisamy and three other staff members of this Court filed WP.No.16131 of 1998 and the members of the Tamil Nadu Judicial Ministerial Service Law Graduates Association filed WP.No.4080 of 1999, seeking direction to the Government to grant two additional increments to those employees who have obtained Bachelor Degree in Law.

(c) A Division Bench of this Court in its order in WP.No.16131 of 1998 dated 25.03.1999 and in WP.No.4080 of 1999 dated 25.03.1999 have allowed the writ petitions and issued directions to the Government to reconsider its decision and pass orders. In accordance with the direction of the Division Bench of this Court, the Government reconsidered the recommendations of the then Hon'ble Chief Justice and issued orders in G.O.Ms.No.1638 Home (Courts V) Department dated 10.12.1999, sanctioning two advance increments to the Ministerial Staff of the High Court below the post of Assistant Registrar and Ministerial Staff of the Subordinate Courts, who possess B.L. Degree with effect from 10.12.1999, i.e., from the date of the said Government Order.

(d) Subsequent to the said Government Order, one of the petitioners in W.P.No.16131 of 1998 and eight others have submitted a representation to the High Court Registry requesting to address the Government to advance the date of effect of the Government Order to the month of March, 1999 instead of 10.12.1999 on the ground that the writ petitioners, who were promoted as Assistant Registrars subsequent to March, 1999 could not get the benefit even though they got favourable orders from the High Court in the writ petition. The petitioners in WP.No.16131 of 1998 have filed WMP.No.1312 of 2000, seeking the aforesaid relief. The Division Bench by its order dated 30.03.2000, observed that the petitioners can seek remedy by challenging the Government Order in accordance with law and dismissed the said miscellaneous petition. Thereafter, they submitted a representation requesting the Registry to address the Government for advancing the date of effect of the Government Order from 10.12.1999 to March, 1999. The High Court, in its letter dated 20.10.2000 has addressed the Government for advancing the date of effect of the Government Order from 10.12.1999 to 25.03.1999, the date of order in the W.P.No.16131 of 1998. Based on the recommendation of the High Court, the Government in G.O.(D) No.264 Home (Courts V) Department dated 07.03.2002 accepted the proposal and directed that the two advance increments sanctioned in G.O.1638 Home Department dated 10.12.1999 to the Ministerial staff of the High Court and Subordinate Courts below the rank of Assistant Registrar who possess B.L. Degree be given retrospective effect from 25.03.1999. Consequent to the aforesaid revision of two advance increments with effect from 25.03.1999, the pay of the individuals has been refixed. Aggrieved by the same, the petitioners have filed the above writ petition challenging the G.O.Ms.No.264 Home (Courts V) Department dated 07.03.2002.

4. Heard Mr. R. Bharanidharan, Mr. Ravichandran and Mr. Muralidharan, learned counsel for the petitioners, Mr. S. Srinivasan, learned Government Advocate for R.1 / Government and Mr. B. Rajendran for R.2 / High Court.

5. The only point for consideration in these writ petitions is, whether the Government is justified in giving benefit of advance increments for B.L. Degree qualification from 25.03.1999 as stated in the impugned Government Order?

6. In order to consider the above question it is useful to note that S. Palanisamy and three other persons working in this Court filed WP.No.16131 of 1998, praying to issue writ of mandamus

directing the Government of Tamil Nadu, Home Department to grant two additional increments in the case of Assistants, Assistant Section Officers, Personal Assistants of the High Court, who have obtained B.L. Degree as recommended by the then Hon'ble Chief Justice, communicated by the Registrar General in his letter dated 28.08.1997 in so far as they are concerned. The Division Bench, after finding that when a recommendation is made by the Hon'ble Chief Justice with regard to staff of the High Court, Governor or State Government cannot reject the same and the same must be given due respect, directed the Government to pass final orders on the recommendation of the Hon'ble Chief Justice of the High Court communicated by the Registrar General on 28.08.1997 and disposed of the said writ petition on the said terms.

7. It is further seen that pursuant to the said order, the Government accepted the recommendation of the Hon'ble Chief Justice and issued orders in G.O.Ms.No.1638 Home (Courts V) Department dated 10.12.1999, sanctioning two advance increments to the Ministerial staff of the High Court below the post of Assistant Registrar and Ministerial staff of Subordinate Courts, who possess B.L. Degree with effect from 10.12.1999 i.e., from the date of the said Government Order. It is further seen that based on the said order, the second respondent, Registrar, High Court while implementing the said Government Order by granting two advance increments, revised the pay scales of the respective persons, inasmuch as the Government passed orders on 10.12.1999, sanctioning two advance increments. In the same order, the Government have also informed that the same has to be given effect to from the date of the Government Order, viz., 10.12.1999. Similar direction was issued by the High Court in W.P.No.4080 of 1999 filed by Tamil Nadu Judicial Ministerial Service Law Graduates Association through its State President R. Shanmugasundaram.

8. It is further seen that it is the grievance of some of the persons, who filed WP.No.16131 of 1998 that though they were subsequently promoted as Assistant Registrars, in spite of the fact that a direction was issued in their writ petition, they were not benefited by the Government Order 1638 dated 10.12.1999, since the same came into force from 10.12.1999. Accordingly, they filed a petition in WMP.No.1312 of 2000 in WP.No.16131 of 1998 praying for direction to the Government to clarify the order in G.O.Ms.No.1638 dated 10.12.1999. The Division Bench declined to accede to the request, however, permitted them to challenge the said Government Order if they so advised in accordance with law. Then, they made a representation to the Registrar General, to persuade the Government for the advancement of the cut off date from 10.12.1999 to the date of order passed in W.P.No.16131 of 1998 i.e., 25.03.1999. A

communication was addressed by the Registrar General, High Court in Roc.No.21/00/G2 dated 20.10.2000. The Government, on receipt of the above communication, reconsidered their earlier decision and issued the present impugned G.O.No.264 dated 07.03.2002, granting two advance increments with effect from the date of order passed in WP.No.16131 of 1998 i.e., 25.03.1999.

9. It is not in dispute that the communication of the Registrar General dated 20.10.2000 was sent based on the recommendation of the then Hon'ble Chief Justice. While disposing of WP.No.16131 of 1998, the Division Bench after referring the decision of the Supreme Court has concluded that, "the Chief Justice of the High Court alone knows the requirement of staff of the High Court and how far they are eligible for any additional remuneration and in what way their work will have to be extracted." The Division Bench has also noted the dictum laid down by the Supreme Court in many cases to the effect that when recommendation is made by the Hon'ble Chief Justice of High Court with regard to staff of the High Court, the Governor or State Government cannot reject the same and the recommendation must be given due respect. No doubt, the Government accepting the earlier recommendation of the Chief Justice, passed G.O.Ms.No.1638 dated 10.12.1999, granting two advance increments with effect from the said date. However in view of the grievance expressed by some of the persons who filed the writ petition, that they were not given the benefit because the said Government Order came into effect from 10.12.1999, considering their representation and of the fact that the High court on judicial side passed orders only at their request, the Chief Justice recommended to the Government for consideration of their claim, which necessitated the Government to pass the impugned order extending the same benefit from 25.03.1999.

10. As rightly pointed out by Mr. B. Rajendran, learned counsel appearing for the Registrar General, High Court, the said Government Order does not in any manner take away the benefits of the petitioners for the simple reason that by giving retrospective effect to the Government Order from 25.03.1999 instead of 10.12.1999, the two advance increments were sanctioned to the petitioners in the ordinary grade - C.O./S.O./A.E., the post which the petitioners were holding on 25.03.1999.

11. Even though the petitioners had already been granted the benefit of advance increments from the date of issue of orders in G.O.No.1638 dated 10.12.1999, it cannot be accepted that they have accrued vested right and such right cannot be sought to be deprived of by virtue of subsequent G.O.Ms.No.264 Home dated 07.03.2002. As said earlier, the petitioners have been sanctioned

two increments, but in the lower cadre of post i.e., ordinary cadre - C.O./S.O./A.E., the post in which the petitioners were working as on 25.03.1999. We are satisfied that the impugned Government Order is in consonance with the intention of the orders passed in WP.Nos.16131 of 1998 and 4080 of 1999 dated 25.3.1999 and 23.3.1999. We are also satisfied that the respondents have not in any way interfered with or altered the right of the petitioners as the pay of the petitioners has been refixed as per G.O.No.264 dated 07.03.2002 with effect from 25.03.1999. Inasmuch as on the relevant date i.e., 25.03.1999, these petitioners were working in the cadre of ordinary grade, the respondents cannot be faulted with. To put it clear the rights of the petitioners have not been taken away, as claimed by them. We are also satisfied that by extending the benefit retrospectively, the refixation of pay has to be done necessarily and it is a consequential act which cannot be avoided. We are also in agreement with the claim of the respondents that there is no need to give notice or opportunity to the petitioners since as observed earlier, the pay of the petitioners has been refixed in the cadre of ordinary grade prevailing on 25.03.1999. We are also satisfied that there is no discrimination in the impugned Government Order. As pointed out earlier, there is no revision of pay scales and in such a circumstance, the question of exercising option does not arise as claimed by the petitioners.

Under these circumstances, we do not find any merit in all these writ petitions, consequently, they are dismissed. However, there shall be no order as to costs.

kh

Sd/

Asst.Registrar

/true copy/

सत्यमेव जयते

Sub Asst.Registrar

WEB COPY

To

1. The Secretary to Government
State of Tamil Nadu
Home (Courts V) Department
Fort St. George
Chennai 600 009.

2. The Registrar General
High Court
Chennai 600 104.

3. The Accountant General,
Tamil Nadu,
Chennai 18.

+ 1 cc to Mr.M.V.Muralidaran, Advocate SR No.31294

+ 1 cc to Mr.R.Karthikeyan, Advocate SR No.31401

+ 1 cc to the Government Pleader SR No.31456

+ 1 cc to Mr.R.Karthikeyan Advocate SR No.31664

+ 1 cc to Mr.V.Vijay Shankar, Advocate SR No.31661

+ 1 cc to M/S.B.Rajendran Advocate SR No.31715

PS (CO)
SR/1.8.2005

Common Order in
W.P.Nos.42790 to42793/02,
700/03, 32231 & 32468 of
2004

WEB COPY