(2013) 08 MAD CK 0157

In the Madras High Court

Case No : Writ Petition No. 10201 of 2012

C.H. Manohar APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0157

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : G. Mutharasu, for the Appellant; R. Vijayakumar, AGP for R1 and R2 and Ms. Hema Muralikrishnan for R3, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the impugned orders passed by the first respondent/the Secretary to Government, Finance (T & AII) Department, Chennai, namely, letter No. 36845/ka.ka.2/2009, dated 31.03.2010 and the letter No. 46234/T & A II, dated 09.11.2011, by calling for the records connected thereto and consequently, to direct the respondents to issue orders re-fixing the basic pay of the petitioner as Rs. 1550/- on 01.07.1988 and to revise consequentially the petitioner''s pay and pension till date and to pay all consequential benefits including the arrears of pay and pension from 01.07.1988 to till date. Learned counsel appearing for the petitioner submitted that, after the petitioner and one Mr. R.V. Muthukrishnan were selected by the TNPSC for the post of Junior Assistant, they were allotted to the Treasuries and Accounts Department and their respective seniority are 196 and 200 and they had also joined to the said post on 16.09.1974. Although the initial pay was fixed for both of them at Rs. 205/-, subsequently, after the introduction of Vth Pay Commission, the petitioner''s pay was fixed as Rs. 1500/-, while fixing the scale of pay to one Mr. R.V. Muthukrishnan at Rs. 1550/-, relying upon a higher scale of pay fixed to one Mr. K.N. Mohan, who is junior to both of them. He further stated that, in the seniority list prepared to the post of

Sub-Treasury Officer/Superintendent in Treasuries and Accounts Subordinate Service, both Mr. R.V. Muthukrishnan and Mr. K.N. Mohan were placed below the petitioner. Therefore, on coming to know this fact that the scale of pay of one Mr. R.V. Muthukrishnan was stepped up, the petitioner made a representation to the second respondent seeking re-fixation of his pay at Rs. 1550/- with effect from 01.07.1988 on par with his juniors ---Mr. R.V. Muthukrishnan and Mr. K.N. Mohan, but, the same was rejected and finally, on appeal, the first respondent also rejected his appeal on 31.03.2010.

2. By narrating so, he further submitted that the Joint Director of Treasuries and Accounts, Chennai, while considering a similar dispute from the petitioner''s junior - Mr. R.V. Muthukrishnan, has re-fixed the scale of pay of Mr. R.V. Muthukrishnan at Rs. 1550/- with effect from 01.07.1988, on par with his junior Mr. K.N. Mohan, in the time scale of pay of Rs. 1400-50-2300-60-2600, therefore, the case of the petitioner cannot be denied. On that basis, he further contended that when the case of the petitioner''s junior- Mr. R.V. Muthukrishnan was accepted on the ground of pay anomaly in comparison with his Junior Mr. K.N. Mohan by fixing the scale of pay at Rs. 1550/-, the petitioner, who is much senior to Mr. R.V. Murthukrishnan and Mr. K.N. Mohan, cannot be allowed to draw the pay at Rs. 1500/- and to that effect, when a representation was made by the petitioner, the respondent rejected his claim on the ground that each district is a separate unit for the purpose of seniority, promotion, etc., therefore, the case of the cannot be considered, since he belongs to Vellore Unit, whereas Mr. R.V. Muthukrishnan and Mr. K.N. Mohan belong to Chennai Unit. Finally, it was stated that all three persons were appointed on selection by the TNPSC, therefore, the Seniority fixed by the Government cannot be differentiated to the petitioner in comparison to his juniors.

3. Learned Additional Government Pleader appearing for the respondents 1 and 2, by filing a detailed counter affidavit, submitted that, as per the Tamil Nadu Ministerial Service Rules, all the posts upto the level of the Accountants, each District is considered as a separate Unit for the purpose of seniority, promotion, etc., therefore, in this regard, the Government also issued a clarification vide letter dated 06.05.1988, clarifying that in cases, where the seniors and juniors belong to the two different districts, in the lower post of Accountant, the conditions prescribed in ruling 2 under Fundamental Rule 22B cannot be invoked to their advantage or in other words, the disparity in pay cannot be rectified in such cases. Therefore, he pleaded, the petitioner, who belongs to Vellore Unit, cannot claim pay parity with his counterpart, namely, Mr. R.V. Muthukrishnan and Mr. K.N. Mohan, working at Chennai Unit, who may happen to be his juniors. On this basis, he prayed for dismissal of the writ petition.

4. Heard both sides.

5. It is no doubt true that the seniority of the petitioner, Mr. R.V. Muthukrishnan and Mr. K.N. Mohan were fixed at 196, 200 and 352 respectively, while they were promoted to the post of Accountant. It is also an admitted fact that the

Government while granting selection grade pay in the post of Accountant, fixed the scale of the petitioner at Rs. 1500/-, whereas the scale of pay of one Mr. R.V. Muthukrishnan, junior to the petitioner, was fixed at Rs. 1550/-. In view of this pay anomaly, when the petitioner made a representation to the respondents, the same was rejected by them, without assigning any good reason, however, in a similar circumstances, one Mr. R.V. Muthukrishnan made a representation complaining that his junior was given higher pay than to him, the Joint Director (Admin.) of Treasuries and Accounts, Chennai, accepting the case of the said Mr. R.V. Muthukrishnan, refixed the scale of pay of Mr. R.V. Muthukrishnan at Rs. 1550/- with effect from 01.07.1988, on par with his junior Mr. K.N. Mohan, in the time scale of pay of Rs. 1400-50-2300-60-2600. For better appreciation, relevant portion of the said proceeding is extracted hereunder: .... It is evident from the above that the senior is getting lesser pay than his junior with effect from 01.07.1988. The above anomaly is due to the fall of the normal increment of the junior at an earlier date while that of the senior at a later date, after fixation of their pay in the revised pay rules 1989 with effect from 01.06.1988.

The above anomaly falls under Rule 5(2) of the TNRSP Rules 1989 read with Government letter No. 133966/PC 1/89 Fin (PC) dated 20.12.1989. As such by applying Rule 5(2) of the TNRSP Rules 1989 and in pursuance of the Government letter read above, the pay of Thiru R.V. Muthukrishnan formerly Accountant, now Superintendent is ordered to re-fixed at Rs. 1550/- with effect from 01.07.1988 on par with his junior Thiru K.N. Mohan formerly Accountant, now Superintendent in the time scale of Rs. 1400-50-2300-60-2600. He is eligible for his next increment on completion of one year of qualifying service from the date of the above re-fixation. He is entitled for the arrears upto 31.05.1989 and 60% of arrears from 01.01.1996 to 31.03.1998 shall be credited to his GPF A/c and the remaining arrears shall be paid to him in cash.

Though the scale of one Mr. R.V. Muthukrishnan, who was junior to the petitioner, was re-fixed, as per the above proceeding, the Joint Director of Treasuries and Accounts, has not stated anywhere that they were working in different places, therefore, the stand of the respondent that the persons working in different district cannot claim pay parity, is not justifiable. Further, a mere perusal of the above said proceeding clearly shows that the senior appointed on the same date should not be given lesser scale of pay in comparison to his junior. Hence, I am of the opinion that the petitioner is also eligible to get revised scale of pay, as given to one Mr. R.V. Muthukrishnan, who is junior to the petitioner.

Therefore, for the aforesaid reasons, the respondents are directed to issue orders re-fixing the basic pay of the petitioner at Rs. 1,550/- with effect from 01.07.1988, along with all other consequential benefits. The said exercise shall be done by the respondents within a period of 10 weeks from the date of receipt of a copy of this order. In the result, the writ petition stands allowed. No Costs.