

(2011) 07 MAD CK 0150

In the Madras High Court

Case No : Writ Petition (MD) No. 263 of 2006

Krishna P. Nair

APPELLANT

Vs

The Commissioner, The Special Commissioner and
Commissioner, Treasuries and Accounts and The District
Treasury Officer, Huzur Treasury

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2011) 07 MAD CK 0150

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

**Advocate : V. Madhavan Kutty, for the Appellant; D. Muruganandham, Addl.
Govt. Pleader, for the Respondent**

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner has invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India,

praying for the issuance of a Writ in the nature of Certiorari to quash the order, dated 22.5.2005 with consequential prayer for issuance of writ in

the nature of writ of Mandamus directing the Respondents to re-fix the salary of the deceased husband of the Petitioner at par with the with his

junior Thiru.S.M.Nayanar in the post of Chief Accounts Officer, Class(II) with the consequential benefits arising therefrom.

2. The husband of the Petitioner was regularized in the Tamil Nadu Government Service on 04.03.1983 and he retired from the post of Joint

Director of Treasury and Accounts on 02.08.1989. The case of the Petitioner is that one Shri. S.M.Nayanar, class II Officer of the Tamil Nadu

State Treasury and Accounts Service was acting as Chief Accounts Officer, Madras

Corporation during 1990 and was junior to the husband of the Petitioner Shri. S.M.Nayanar though junior to the husband of the Petitioner was paid higher salary w.e.f. 01.01.1988 due to anomaly in the fixation of pay during the relevant period. It is the case of the Petitioner that though her husband was paid higher salary than Mr. S.M.Nayanar as on 01.01.1987, i.e., Rs. 2,500.00 as against Rs. 2365.00/-. The late husband of the Petitioner, submitted a representation to step up his salary to be at par with the junior. As no action was taken on the representation of the late husband of the Petitioner, thereafter submitted number of representations. Vide letter No. Dis.16239/03/A1, dated 03.04.2003, the Petitioner was informed that Shri. S.M.Nayanar retired as Clause II Officer and his service had not yet been regularised in Clause II, and as and when his service are regularized, a revised proposal would be sent to the Government for re-fixing the pay of the husband of the Petitioner.

3. The hopes of the Petitioner were completely dashed, when an impugned order was passed denying the relief, on the ground that the claim of the husband of the Petitioner, did not fall under Fundamental Rule 32(b) as the scale of pay in the lower post and the higher post was not identical.

4 The reason given by the Respondents to reject the claim is that the husband of the Petitioner was promoted as Chief Accounts Officer Clause from the post of Accounts Officer, whereas, his junior Shri. S.M.Nayanar was promoted to Clause II(A) Treasury Officer and thereafter to the post of Chief Accounts Officer.

5 This reasoning on the face of it cannot be sustained in law. It is not disputed that at the time of promotion for the Petitioner's husband, there was no post of Treasury Officer.

6 It is also not disputed that as an Accounts Officer, the husband of the Petitioner as well as Shri. S.M.Nayanar were in the same cadre, where the husband of the Petitioner was drawing higher pay. Therefore, for the purpose of Fundamental Rule, it is the pay in the cadre of Accounts Officer which was required to be seen.

7. The husband of the Petitioner had no occasion to work as a Treasury Officer. If this principle is applied, there is no justification to deny the claim of step up of pay to bring it equivalent to that of the junior.

8. It is well settled law that in the same cadre the senior cannot be granted pay lesser than the junior on the principle of justice unless and until the reduction on pay is outcome of some disciplinary proceedings or certain acts of similar nature.

9. The impugned order therefore on the face of it is arbitrary thus hit by Article 14 of the Constitution of India.

10. Consequently, the Writ Petition is allowed, the impugned order is set aside, and a writ in the nature of mandamus is issued directing the

Respondents to pay re-fix the pay of the husband of the Petitioner at par with that of his junior w.e.f 1.1.1988.

11. The consequential benefits arising therefrom are directed to be released to the Petitioner within a period of two months from the date of re-

fixing of pay of the Petitioner's husband. No costs.