(2005) 04 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No. 24392 of 2004

M.K. Santhanam APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Citation : (2005) 04 MAD CK 0088

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; P. Chandrasekaran, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The writ petitioner was appointed as Junior Assistant on 14.12.1965 . He was promoted as Assistant in 1974, as

Superintendent in 1991 and as Personal Assistant in June, 2001, in which post he continued till his attainment of superannuation on 31.8.2004. He

has filed this writ petition for appropriate orders with regard to his retiral benefits.

2. G.O. Ms. No. 538, Finance (CMPC) Department dated 27.11.2000 and the subsequent Govt. Letter No. 16650/2002-7, Finance (CMPC)

Department dated 12.5.2004 are sought to be quashed because the petitioner''s retiral benefits were calculated based on them. According to the

petitioner, the computation is incorrect.

3. The Fifth Pay Commission recommended, inter alia, that the pay scales in the State may be brought on par with the Central pay scales.

Representations were received from various quarters complaining that anomalies that would arise out of the implementation of such recommendations. Orders were issued by the first respondent in G.O. Ms. No. 595, Finance Department dated 1.8.1992 prescribing norms for

the creation of new posts, but the State Government made it clear that the Fifth Pay Commission''s recommendations to move over to the Central

scales of pay would be adhered to. Various Associations continued to reiterate their plea that some alternative benefit should be given to them to

set right the difficulties that would be faced by the government servants when moving over to the new scale system. In consideration of this plea,

the Government sanctioned 5% Personal Pay as on 1.8.1 992, in addition to the Central scale of pay to select categories. This included the posts

of Superintendent. The Assistant Section Officers in the State Secretariat were given the scales of pay on par with the Assistants in the Central

Secretariat and this post is not granted 5% of basic pay as personal pay benefit.

4. The following paragraphs in G.O. Ms. No. 664, Finance (PC) Department dated 24.8.1992 are relevant :-

This was a radical reform involving the change over from about 17 scales in the State to 25 Central scales of pay. Further, the old scheme of

Selection Grade and Special Grade was dispensed with and a new scheme introduced. Since the guiding principles was to move over to equivalent

Central scales of pay, some consequent changes in horizontal relativities which prevailed in the State were inevitable.

The main grievance has been voiced by Record Clerks, Junior Assistants, Assistants and Superintendents. Their case was referred to the Official

Committee constituted in the Government Order second read above. Orders were issued on the report of the Committee in the Government Order

fourth read above. In these orders, the request for further revision of scales of pay by the ministerial staff categories has been rejected. Instead, a

scheme of promotions for the ministerial staff on a rationalised basis has been announced. Government has also made its intention clear that the

guiding principle of the Fifth Pay Commission''s recommendations namely to move over to Central scales of pay will be adhered to. Various

Government Employees'' Associations have continued to urge the Government that at least some alternative means should be found to redress their

main grievance namely that certain comparable categories prior to the Fifth Pay Commission have moved to higher scales of pay. In making a major transition to the new pay scale system as incorporated in the Central scales of pay, some difficulties are inevitable. The effort should be to

iron out such difficulties without disturbing the realisation of the main objective to shift to Central scales of pay.

After detailed discussions, it has been agreed upon that the Government will not accept any plea for further revision of scales of pay beyond the

equivalent Central scales of pay. Hence, there shall be no further revision of scales of pay of all categories in the new scales of pay namely Rs.775

- 1030, Rs.950 - 1500, Rs.975 - 1660, Rs.1200 - 2040 and Rs.1600 - 2660. These scales for the categories therein are therefore treated as final

and firmly settled.

At the same time, the plea of these employees for Government to extend some sympathetic consideration has been taken note of. Government

consider that these categories should be positively motivated in undertaking important items of work entrusted to them. Further, job responsibilities

of these categories require due recognition. Keeping in mind the importance of the job responsibilities attached to the categories in these scales of

pay and the need to positively motive these categories to undertake their responsibilities, Government have decided to grant a personal pay at five

per cent of the basic pay to all categories of staff in the following scales of pay :

i) .....

ii) .....

iii) .....

iv) All categories of staff in the pre-revised scale of pay of Rs.90 5 - 1545 moving over to the revised scale of pay of Rs.1600 - 2660.

These orders shall take effect from 1st August, 1992.

5. The Tamil Nadu Office Superintendents'' Association filed O.A. No. 5928 of 1993 for revision of the scale of pay of the post of Superintendent

from Rs.1600-2660 to Rs.1820-3200 with effect from 1.6.1988. It appears that the Tribunal, by its order dated 17.4.1996, had directed the

State Government to grant the pay scale of Rs.1,820 to Rs.3,2 00 for Superintendents with effect from 1.6.1988. On 15.9.1998, G.O. Ms. No.

497, Finance (PC) Department was issued. It is seen from this G.O. that the One Man Commission appointed to examine this issue had made some recommendations. The Government preferred a SLP in Civil Appeal No. 14148 of 1996 and the Supreme Court passed the following order

on 18.7.2000 :

The appeal is allowed in part.

6. The Supreme Court did not accept the contention on behalf of the State Government that unless there is a rationalization or equalization insofar

as the Superintendents of the Ministerial Cadre is concerned as in the case of the Assistant Section Officer of the Secretariat Cadre, the salary of

the Superintendents cannot be enhanced. The Supreme Court held as follows :

We do not find much force in the same inasmuch as the Superintendents in the Ministerial Cadre were all through getting a higher salary than the

Assistant Section Officers in the Secretariat Cadre, and therefore when the State Government enhances the salary of the Assistant Section Officer

in the Secretariat Cadre, the Government was duty bound to enhance the salary of Superintendents in the Ministerial Cadre.

However, the Supreme Court accepted the objection of the State Government that even if the Tribunal was entitled to hold that the salary of

Superintendents should be enhanced, the Tribunal could not fix the prescribed scale of pay. Finally, the civil appeal was disposed of in the

following terms :-

We direct that the State Government should fix up the pay-scale of the Superintendent in the Ministerial Cadre bearing in mind that these category

of employees have all along been given a higher scale of pay than the Assistant Section Officer of the Secretariat Cadre.

7. On 27.11.2000, the Government passed the impugned Government Order and the crucial paragraphs are as follows:-

The Government after careful consideration have decided to provide new scale of pay of Rs.1700-60-2480-75-3005 for the post of

Superintendent. They accordingly direct that the pay scale of Superintendent in Tamil Nadu Ministerial Service be revised as Rs.1700-60-2480-

75-30 05 with effect from 1.6.88 and corresponding new pay scale of Rs.5700 -175-9200 with effect from 1.1.96.

The Government also direct that consequent on grant of higher revision of pay scale given to Superintendent with effect from 1.6.88 and 1.1.96 the

Superintendents are not eligible for 5% of basic pay granted as personal pay given from 1.8.92 and 1.9.98 and the personal pay shall be adjusted

in arrears while fixing the pay in the revised scales as ordered in para - 7 above."" It is this Government Order which is assailed now. Subsequently,

the Superintendents'' Association filed Contempt Petition No. 149of 2001 for violation of the order passed in Civil Appeal No. 14148 of 1996.

This was dismissed on 17.9.2001. The Tamil Nadu Hindu Religious and Charitable Endowments Administration Department Officials'' Association

filed O.A. No. 847 of 2002 for fixation of scale of pay in view of the order in Civil Appeal No. 14148 of 1996 and without withdrawing any of the

benefits hitherto availed of and enjoyed by the Superintendents. Originally, interim injunction was granted and thereafter, it was vacated on

12.4.2004. On 12.5.2004, the Development Commissioner and Secretary to Government issued Letter No. 16650/CMPC/2002-7, dated 1

2.5.2004 and the following paragraph therein is relevant :

In the above circumstances, I am directed to state that inasmuch as the Hon''ble Tamil Nadu Administrative Tribunal has vacated the interim stay

in O.A. No. 847 of 2002 consequent on the filing of the counter affidavit in the above Original Application, there is no question of ambiguity. The

Superintendents in the Tamil Nadu Ministerial Service are entitled for the revised scale of pay of Rs.1700-60-2480-75-30 05 with effect from

1.6.88 with corresponding revised scale of pay of Rs.5700-175-9200 with effect from 1.1.96 as per the orders issued in G.O. Ms. No. 538,

Finance (CMPC) Department, dated 27.11.2000 without 5% personal pay. Hence, I am to request you to ensure that the orders issued in G.O.

Ms. No. 538, Finance (CMPC) Department, dated 27.11.2000 are implemented scrupulously.

8. The objection of the petitioner appears to be that the proposal of the pensionary benefits is not accepted by the respondents on the basis of

G.O. Ms. No. 538 dated 27.12.2000 and G.O. Ms. No. 15 dated 12.1.2001 and the subsequent Letter No. 16650/CMPC/2002-7 dated

12.5.2004 , which have been stayed. According to the petitioner, the arbitrary action of the respondents denying the petitioner''s accrued benefits

which came to be extended on the basis of the G.Os. and which have been bona fide utilized by the petitioner as belonging to him, cannot be taken

away and that he is entitled to the application of the principle of legitimate expectation.

9. G.O. Ms. No. 664 referred to above was issued on the basis of the recommendation of the Fifth Pay Commission that the pay scales in the

Centre and the pay scales in the State should be equivalent. The Government Order acknowledged that if the basic principle was to move over to

equivalent Central scales of pay, some changes in the "" horizontal relativities would be inevitable"". The various Associations comprising of Clerks,

Junior Assistants, Assistants and Superintendents appealed that while making the major transition, they should not suffer. Therefore, on a

sympathetic consideration, the Government decided to give 5% basic pay as personal pay computed as on 1.8.1992.

10. Thereafter, the One Man Commission was constituted by G.O.Ms. No. 170, Finance (PC) Department dated 24.1.1988. The One Man

Commission had to take into account the representations made by various Associations because of the wide difference that had crept in, in the pay

scales of teachers and ministerial categories while adopting the Central scales of pay. The Associations also requested improvement in pay scales

or for grant of 5% of pay as personal pay. This is crucial. The Government, after taking note of the fact that the ministerial categories had already

been granted with appropriate Central scales of pay, felt that any further revision of scales will distort the pay structure already evolved. Therefore,

between the two alternatives, viz. a) improvement of pay scale, or b) grant of 5% pay as personal pay, the Gov Government decided to grant

personal pay at the rate of 5% of the basic pay as on 1.9.1988 as an alternative benefit to all categories of employees who have been granted with

5% personal pay prior to 1.1.1996 in the pre-revised scales of pay as ordered and modified in the Government Order first and second read

above.

11. On 13.1.1999, the Government again examined the position on the representations of certain Associations regarding the protection of higher

pay drawn by employees which is already fixed if it is higher compared to the pay fixed on the basis of the recommendations of the One Man

Commission. The Government then ordered that the higher scale of pay will be protected by allowing the difference in pay as personal pay with

effect from 1.9.1998 and this personal pay would be absorbed in future increments. For instance, in Illustration 1 of the Annexure, which is with

regard to the post of Superintendent, the pay fixed as per G.O. Ms. No. 162 dated 13.4.1998 would be Rs.6,050/- and the pay fixed and

regulated as per G.O. Ms. No. 428 notionally with effect from 1.1.1996 with monetary benefit from 1.9.1998 would be Rs.6,02 5/. Then, the sum

of Rs.25/-, that is the difference, would be given as personal pay. Illustration 2 deals with pay fixation of an Assistant who is promoted as

Superintendent with effect from 23.1.1998. The difference in the scale of pay as per G.O. Ms. No. 162 and G.O. Ms. No. 428 is Rs.75/ as on

1.1.2000 and this is given as personal pay. This amount becomes Rs.50/- when it comes to 1.1.2001 and this is given as personal pay. The

amount becomes Rs.25/- when it comes to 1.1.2002 and Rs.25/- is given as personal pay and after 1.1.2003, the disparity disappears. So, it is

seen that the original grant of 5% personal pay payable to Assistants has been modified to one-of payment to protect only to the extent of the

disparity so long as the disparity exists. It is not a fixed percentage, but the actual difference. For instance, as on 1.1.2000, the personal pay of

Rs.75/- is just about 1.1% of the scale of pay that is received, which is Rs.6,725/-.

12. When the pay scale of the Assistant Section Officers of the Tamil Nadu Secretariat was revised on par with the Assistants in the Central

Secretariat, the Tamil Nadu Office Superintendents'' Association filed O.A. No. 5928 of 1993 for revision of their scales of pay. The Tribunal, by

its order dated 17.4.1996, directed the State Government to grant the pay scale of Rs.1,820/- to Rs.3,200/- to Superintendents. The Supreme

Court had rejected the objections of the State to any upward revision of the pay scales of Superintendents. The relevant paragraph has already

been extracted above. The opinion of the Additional Advocate General of Tamil Nadu was obtained by the Government for complying with the

judgment of the Supreme Court and the Government examined the question of providing a higher pay scale for Superintendents above that of

Rs.1,640/- to Rs.2,900/- and a new scale of pay of Rs.1,700-60-2,480-75-3005 was fixed with effect from 1.6.1988 with the corresponding

new pay scale of Rs.5,700-175-9200 with effect 1.1.1 996. In view of the upward revision of pay scale given to the Superintendents with effect from 1.6.1988 and 1.1.1996, the Government directed that Superintendents were not eligible for 5% of basic pay granted as personal pay given

from 1.8.1992 and 1.9.1998 and that the personal pay would be adjusted in arrears while fixing the pay in the revised scales.

13. When the Tamil Nadu Superintendents'' Association filed O.A. No. 5 928 of 1993, they were aware that the Government had given the grant

of 5% of pay as personal pay only because the Government at that time felt that further revision of scales of pay will distort the pay structure

already evolved. This is seen from G.O. Ms. No. 497 dated 15.1 1.1998 which refers to the One Man Commission constituted to examine the

anomalies, if any, in the implementation of the revised scales of pay. The One Man Commission had taken into account the representations made

by various Associations to revise the scales of pay because of the wide difference that had crept in while adopting Central scales of pay.

Therefore, the One Man Commission recommended grant of 5% of pay as personal pay to Record Clerks, Junior Assistants, Assistants and

Superintendents. It is only to avoid any further revision of scales of pay and at the same time, to protect the Superintendents from the effect of

reduction in the pay scale consequent to the switching over to the Central scales of pay that the Government decided to grant personal pay at the

rate of 5% of basic pay. In these circumstances, when the demand of the Superintendents for upward revision of pay is granted, the natural

corollary is that they will have to give up their claim for 5% of basic pay as personal pay. They cannot have both. It is only at their instance that the

Administrative Tribunal ordered that when the scales of pay of Assistants are upwardly revised, there is no justification not to grant the same

benefit to Superintendents and this reasoning was accepted by the Supreme Court. It is, therefore, not possible to quash G.O. Ms. No. 538 dated

27.11.2000, impugned in this writ petition. It is clear from a reading of the said Government Order that the Government had taken into account all

the aspects, viz. the prior representations, the effect that the judgment of the Supreme Court will have on the pay scales and had accordingly

revised the scales of pay of Superintendents. The impugned letter dated 12.5.2004 is also in conformity with the said Government Order and

therefore, it cannot be quashed either.

14. If one refers to G.O. Ms. No. 13 dated 13.1.1999, what was protected by the said Government Order was the difference in pay in case the

pay fixed by G.O. Ms. No. 162 is higher than the pay fixed in the revised scales pursuant to the recommendation of the One Man Commission.

The basic pay of the Superintendents is revised from Rs.5,500/- to Rs.9,000/-, but as per G.O. Ms. No. 538, the scale of pay would be Rs.5,700

to Rs.9,200/-. Therefore, as rightly observed by the first respondent, there can be no ambiguity. Further, in G.O. Ms. No. 664, it is seen that the

request for further scale revision was rejected beyond the revision already brought about and it is in these circumstances that the 5% personal pay

was granted under the four categories of staff mentioned in the said G.O. The fourth category related to such of those staff in the pre-revised scale

of Rs.905-1545 moving over to Rs.1600-1660. Prior to 1.6.1988, the pay scale of Superintendents was Rs.905-1545 and on revision, it was

moved to Rs.1600-2660, while Assistants got Rs.1640 - 2900. It is this difference between the scale of pay for a Superintendent and an Assistant

that was rectified by G.O. Ms. No. 538 dated 27.11.2000, which is impugned herein. And the Government, examining the possibility of providing

a higher pay scale for a Superintendent above Rs.1640-2900, fixed the new scale of pay at Rs.1700-3005 with effect from 1.6.1988 and

correspondingly from 1.1.1996, it was Rs.5700-175-9200. Therefore, there is neither anomaly nor any arbitrariness in the present Government

Order, viz. G.O. Ms. No. 538. It is only in conformity with the earlier Government Orders as well as the judgments referred to above.

15. The writ petition is accordingly dismissed. No costs. Consequently, W.P.M.P. No. 29639 of 2004 of 2004 is closed.

