

(1996) 02 MAD CK 0125

In the Madras High Court

Case No : Writ Petition No. 19239 of 1994

M.S. Saraswathi and Others

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 14-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 229

Citation : (1996) 1 LLJ 1060 : (1996) 2 MLJ 84

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : Vijay Narayan, for the Appellant; V.R. Rajasekaran, G.A., for the Respondent

Final Decision : Allowed

Judgement

Ar. Lakshmanan, J.—Heard Mr. Vijay Narayan for the petitioners and Mr. V.R. Rajasekaran, Govt. Advocate for the respondents.

2. The petitioners, 25 in number, who are now working as Selection Grade and Special Grade Typists in the High Court, have by this Writ Petition sought the relief of mandamus to the 1st respondent/State of Tamil Nadu to act on the recommendations of the Hon'ble the Chief Justice of this Court, as communicated in the letter of the 2nd respondent/Registrar, High Court, dated June 21, 1993 and to further grant the scale of pay of Rs. 1400- 2600 to the Selection Grade Typists in the High Court on par with the Selection Grade Typists in the Secretariat Service within a time limit to be specified by this Court.

3. The Petitioners are all working as Selection Grade and Special Grade Typists in this Court. The Petitioners had submitted their representation dated December 18, 1987 to the 2nd respondent and upon the orders of the Hon'ble the officiating Chief Justice, the 2nd respondent addressed the Government in his letter Roc. No. I 147/86/G2 dated February 1, 1988, to re-vise the scale of pay of Selection Grade Typist in the Secretariat, to maintain pay parity between the

staff of the Secretariat, Madras, and the staff of the High Court, Madras. But, the Government in their letter D.O. No. 16588/Cts. V/Home dated January 9, 1989 informed the High Court that the proposal of the High Court, Madras to revise the scale of pay of the post of Typist and Steno-typist in the High Court on par with the two categories in the Secretariat has been referred to the Tamil Nadu Fifth Pay Commission for its recommendation.

4. According to the petitioners, the Fifth Pay , commission of the Government of Tamil Nadu fixed a scale of pay of Rs. 975-1660 plus special Pay for the category of Typist. On the basis of the recommendations of the Fifth Pay Commission, the Government accordingly granted the pay scale of Rs. 975-1660 for the Typists. While accepting the recommendations of the Fifth Pay Commission, the Government also dispensed with the scheme of Selection Grade /Special Grade and it has been done by G.O. Ms. No. 666, Finance (PC) Department, dated June 27, 1989. Subsequently, by G.O. Ms. No. 384, Finance Department, dated March 28, 1990, the Government introduced the scheme of Selection Grade Special Grade and considering the post of Typist as common category, fixed the ordinary grade scale of pay of typists in all the Departments including the Secretariat Service and High Court Service as Rs. 975-1660 and Selection Grade scale of pay of typists as Rs. 1200-2040. Accordingly the typists in the High Court were also given the same scale of pay of Rs. 975-1660 in the ordinary grade and Rs. 1200-2040 in the Selection Grade. This is because, the government has always recognised parity of pay scales between the persons working in the High Court Service and in the Secretariat Service.

5. Subsequently, the Typists in the Secretariat Service made certain representations that prior to the implementation of the Fifth Pay Commission recommendations, they were enjoying Selection Grade scale of Rs. 780-1385 on par with the pay scale of Assistant Section Officers and Typists (confidential) and that with effect from June 1, 1988, the pay scale of the Assistant Section Officers had been fixed at Rs. 1400-2600 and further revised to Rs. 1640-2900 whereas the pay scale of Selection Grade Typists was still at Rs. 1200-2040. The Government considered the representations and by G.O. Ms. No. 281, Personnel and Administrative Reforms Department, dated August 14, 1992, directed that the post of Typists should hence forth be in the scale of pay of Rs. 1400-2600 by stating that Typists would be appointed to the new posts of Senior Typists and the strength of the post of Senior Typists shall include the post of typist , (confidential) in addition to the Selection Grade Typists as on June 27, 1989. It was also directed that the order for the movement of personnel i.e. Typists who were in the selection Grade as on June 27, 1989 to the new category of Senior Typists at Rs. 1400-2600 and for the creation of the requisite number of posts will be issued by the Personnel and Administrative Reforms Department. It is also stated that the orders would take effect from June 1, 1988 for purposes of fixation of pay with monetary benefits from April 1, 1992.

6. On the basis of the above Govt. Order, the Government issued further orders

in G.O. Ms. No. 357, Personnel and Administrative Reforms Dept., dated November 2, 1992 by which 250 posts of Senior Typists and Senior Personal Staff were created on a pay scale of Rs. 1400-2600 for providing regular promotional channel for the Typists and Personal Clerks in the Secretariat irrespective of whether they opt for promotion as Assistant Section Officers or not or whether they have reached Selection Grade or not. In view of these Orders, the petitioners also made representations to the 2nd respondent on November 11, 1992 that the Selection Grade scale holder Typists should be re-designated as Senior Typists on a pay scale of Rs. 1400-2600 on par with their counterpart in the Secretariat.

7. This representation was accepted by the Hon'ble Chief Justice on June 5, 1993 and upon the orders of the Hon'ble Chief Justice, the 2nd respondent in his letter Roc. No. 2445/92./G2 dated June 21, 1993 recommended to the 1st respondent to redesignate the post of Selection Grade Typist as Senior Typist in the scale of pay of Rs. 1400-2600 on par with Secretariat Service. Subsequently, the 1st respondent in their letter No. 70614/Cts.V/93-2, Home dated October 5, 1993 requested some clarification from the 2nd respondent. The 2nd respondent clarified in his letter No. Roc.2445/92/G2 dated October 25, 1993 that at the time of acceptance of pay parity of certain categories in the High Court as in Secretariat, the category of Typist, both in the High Court and in the Secretariat was in the common category. Subsequently, the Government have revised the scale of pay of Typist as Rs. 1400-2600 for Selection Grade Typist and further requested the 1st respondent to revise the scale of pay of Selection Grade Typist in the High Court on par with the Selection Grade Typist in the Secretariat. Since no orders have been passed on the said representation, the petitioners filed the present writ petition for the relief asked for.

8. The Addl. Secretary to Government of Tamil Nadu, Home Department, filed a counter affidavit opposing the relief claimed in the writ petition. The reasons given in paragraphs 5 and 8 of the counter affidavit for not accepting or acting on the recommendations of the Hon'ble Chief Justice are as follows:

"I state that the Government have recognised the pay parity only in the following three categories of posts based on the recommendations of Fourth and Fifth Pay Commissions and Official Committee:

- i. Section Officers in Secretariat on par with Section Officer, Court Officer, Appeal Examiners, Interpreters, Superintendent and Translators of High Court, Madras (Orders issued in Lr. Ms. No. 777, Home, dated March 24, 1986).
- ii. Assistant Section Officers in Secretariat on par with that of Assistant Section Officers, Steno-typists and Technical Assistant to Librarian in the High Court (Orders issued in Lr. Ms. No. 1413, Home dated August 11, 1992).
- iii. Assistants in Secretariat on par with Assistants in High Court (orders issued in G.O. Ms. No.666, Finance, dated June 27, 1989)

In other categories, i.e. Typists Record Clerk, etc., the Government have not issued any orders accepting pay parity between those categories in Secretariat and High Court, Madras as they constitute common category. The High Court, Madras, in all cases is considered as a head of Judicial Department. Whatever the pay applicable to a particular post in other Heads of Department, the same pay is applicable to the similar post in the High Court. Further, the Finance Department has stated that the scale of pay for the posts of Typists in the High Court is Rs. 610-1075 with selection grade or Rs. 705-1230, whereas the post of Typist in the Secretariat was on Rs. 610-1075 with Selection Grade on Rs. 780-1385. Hence there is difference in the Selection Grade scale of pay of Typist in the High Court and Secretariat in the pre-revised scale of pay itself. Based on the recommendation of the official committee, the posts of Senior Typist have been created in Secretariat in order to project those already in higher selection Grade Scale. But, such recommendation has not been made in respect of High Court, since there was no drop in Selection Grade Scale in the Fifth Pay Commission Scales.

With reference to the averments made in paras 8 to 10 of the affidavit, I state that after careful examination of the representation dated November 11, 1992 submitted by the Selection Grade Typists in High Court, Madras, the High Court recommended to the Government for creation of 22 posts of Senior Typists in the scale of pay of Rs. 1400-2600 in High Court, Madras, on par with their counterparts in Secretariat. Based on the proposal of the High Court and based on the recommendations of the Fourth and Fifth Pay Commissions and Official Committee, the Government have recognised the pay parity only in the following three categories of posts:

1. Section Officers in Secretariat on par with Section Officer, Court Officer, Appeal Examiners, Interpreters, Superintendent and Translators of High Court, Madras (Orders issued in Lr. Ms. No. 777, Home, dated March 24, 1986).
- ii. Assistant Section Officers in Secretariat on par with that of Assistant Section Officers, Steno-typists and Technical Assistant to Librarian in the High court (Order issued in Lr. Ms. No. 1413 Home, dated August 11, 1992).
- iii. Assistants in Secretariat on par with Assistants in High Court (orders issued in G.O. Ms. No.666, Finance, dated June 17, 1989).

Further, the Finance Department has stated that the scale of pay for the posts of Typists in the High Court is Rs. 610-1075 with Selection Grade on Rs. 705-1230 whereas the post of typist in the Secretariat was Rs. 610-1075 with Selection Grade on Rs. 780-1385. Hence, there is difference in the Selection Grade Scale of pay of Typist in the High Court and Secretariat in the pre-revised scale of pay itself. Based on the recommendations of the Official Committee, the posts of Senior Typists have been created in Secretariat in order to protect those already on Higher Selection Grade Scale. But, such recommendation has not been made in respect of High Court since there was no drop in the Selection Grade scale in

the fifth Pay Commission Scales. The reason for creating a new category of Senior Typist and Senior personal Clerk on Rs. 1400-2600 was that prior to Fifth Tamil Nadu Pay Commission, the Typists and Personal Clerks in the Secretariat Service were granted with Selection Grade Scale on Rs. 780-1385 equivalent to the pay scale of Assistant Section Officer. However, in the revised Fifth Pay Commission Scales, when the Assistant Section Officer was placed on Rs. 1640-2900, the Selection Grade for typists and Personal Clerk was fixed on Rs. 1200-2040. As there was a drop in the level of Selection Grade for the above categories, the Government decided to grant a lightly higher level to those who have already enjoyed selection grade on par with the ordinary grade scale of Assistant Section Officer. As the selection grade scheme could not be tampered with and since it has to go with the ordinary grade scale of the post, a new category of Senior Typist/Senior Personal Clerk was created in order to protect all those who were in position on June 1, 1988 and who enjoyed a higher status in Selection Grade. This situation does not exist in the case of Typist in other services. There is no justification for creation of 22 posts of Senior Typist in the scale of pay of Rs. 1400-2600 in High Court based on the orders issued in G.O.Ms.No.281; Personnel, and Administrative Reforms Department, dated August 14, 1992 and G.O. Ms. No. 357, Personnel and Administrative Reforms Department, dated November 2, 1992." The 1st respondent therefore prayed for the dismissal of the writ petition.

9. I have carefully considered the arguments of both the sides. The reasons given for not acting or accepting on the recommendations made by the Hon'ble Chief Justice of this Court are wholly untenable and cannot be sustained. The petitioners have set out in their affidavit that the Government issued further order in G.O. Ms. No. 357, Personnel and Administrative Reforms Department, dated November 2, 1992 by which 250 posts of Senior Typists and Senior Personal Staff created on a pay scale of Rs. 1400-2600 for providing regular promotional channel for the typists and Personal Clerks in the Secretariat irrespective of whether they opt for promotion as Assistant Section Officers or not or whether they have reached Selection Grade or not. In view of these orders, the petitioners also made representations to the second respondent on November 11, 1992 that the selection grade scale holder typists should be redesignated as Senior Typists on a pay scale of Rs. 1400-2600 on par with their counterpart in the Secretariat. This representation was accepted by the Hon'ble Chief Justice on June 5, 1993, and upon the orders of the Hon'ble the Chief Justice, the second respondent, the Registrar of this Court in his letter dated June 21, 1993 recommended to the first respondent to redesignate the posts of selection grade typists as senior typists in the pay scale of Rs. 1400-2600 on par with the Secretariat. The first respondent subsequently in their letter dated October 5, 1993 requested some clarifications from the second respondent and the second respondent has also clarified the same in his letter dated October 25, 1993 that at the time of acceptance of pay parity of certain categories in the High Court as in Secretariat, the category of Typist, both in the High Court and in

the Secretariat was in the common category. Subsequently the Government have revised the scale of pay of Typist as Rs, 1400-2600 for selection grade typist and further requested the first respondent to revise the scale of pay of Selection Grade Typist in the High Court on par with the Selection Grade Typists in the Secretariat.

10. Article 229 of the Constitution vests in the High Court the control over its staff in order to free the Court from any interference from the Government in relation to the administration of the Court. The nature of the work performed by the officials in the Court is best known to the Court and not to the Government and when a recommendation is made by the Hon"ble the chief Justice to the effect that the work performed by the petitioners employed in Court is similar to that of the persons similarly placed in the Secretariat and the scale of pay of the two posts should be identical, it is not permissible for the Government to disregard the recommendations and persist in holding a contrary view. Such an attitude of the Government is wholly impermissible having regard to the object of Art. 229. In such circumstances of the case, it is also violative of the petitioners' rights under Art. 14 of the Constitution inasmuch as it has not denied to them similar treatment in so far as their emoluments are concerned, on par with that of the persons similarly placed in the Secretariat Services.

11. This Court, on number of occasions had directed the Government to apply its mind and consider the matter in the hope that the Government after such consideration, would recognise the just claims of the petitioners and act in accordance with the recommendations that had been made by the Hon"ble the Chief Justice of this Court. The Government, in fact, have accepted the recommendations of the Hon"ble the Chief Justice and fixed the pay and other emoluments of 132 Assistant Section Officers in the High Court services on par with the Assistant Section Officers of the Secretariat services. That Judgment was delivered by this Court (AR. Lakshmanan, J.,) in WP.No.6800/93 on July 13, 1993, and reported in 1993 (2) L.W. 159.

A writ appeal was filed against the said order in W.A. No. 1201/94. A division bench of this Court while dismissing the same, has directed the Government to revise the scale of pay of the staff of the High Court and issued further direction that the Government is bound to give effect to the recommendations of the Hon"ble the Chief Justice. Likewise a Division Bench of this Court while confirming the decision of Venkataswami, J., (as he then was) passed in W.p. NOS. 16837/90, 1087/91 & 17134/93 has also dismissed the Writ Appeal Nos. 1199 to 1201/94 and directed the implementation of the recommendations of the Hon"ble the Chief Justice in so far as it relates to the Court Officers, Appeal Examiners, Section Officers and Librarians. The contention raised on behalf of the Government was that no mandamus could be issued to the Government by the Court in matters of revision of scales of pay, which was also rejected by the Division Bench. The Bench also observed that the provisions of Art. 229 of the Constitution of India are wide enough to empower the High Court to revise the

scale of pay of the staff members and the Government is bound to give effect to the same.

12. Jayasimha Babu, J., has also allowed a similar Writ Petition and quashed the letter of the respondent Government No. 95687/Courts-V/93-12 dated June 7, 1994 and consequently directed the Government of Tamil Nadu to fix the scale of pay of the petitioners, category on par with the Junior Assistants based on the recommendations of the Hon'ble the chief Justice of this Court with retrospective effect from June 1, 1988, the date of implementation of the 5th pay Commission recommendations and consequently directed the State Government to pay the arrears of salary forthwith. The said Writ Petition was filed by 33 persons who are now working as Selection Grade Readers/Examiners in the High Court.

13. This Court (AR. Lakshmanan, J.,) in W.P. Nos. 6641/1991 and 1187 of 1992 filed by the Tamil Nadu Civil Courts Senior Bailiffs Association to quash the G.O. Ms .No.666, Finance (Pay Commission) Department, dated June 27, 1989 and Entry No. 53 in Column No. 3 pertaining to Senior Bailiffs at page 135, shown as Rs. 825-1200 and direct the respondents to revise and fix the pay of the Senior Bailiffs in the scale . of pay on par with the scale of pay of employees in similar categories. The Tamil Nadu Civil Courts Senior Bailiffs Association Vs. The Secretary to Government, Finance Department, Government of Tamil Nadu and Another,

14. Very recently this Court (AR. Lakshmanan, J.,) has allowed the Writ Petition - in W.P. No. 24781/95 dated January 19, 1996 filed by the staff members of the Madras High Court Official Assignee Service to revise the scale of pay relating to the Madras High Court Official Assignee Service on par with that of the -members of the similar category in the Madras " High Court Service. The Hon'ble the Chief Justice has also recommended that all the posts in the Madras High Court Official Assignee Service may be given the same scale of pay as for the similar categories in the Madras High Court Service. This Court while allowing the Writ Petition, directed the respondents therein to change the nomenclature of the staff in the Madras High Court Official Assignee Service as that of the nomenclature in the Madras High Court service and the Tamil Nadu Secretariat Service and further directed the respondents to revise and refix the scales of pay of the Madras High Court Official Assignee Service on par with the Madras High Court Service and the Tamil Nadu Secretariat Service, within a specified period. This Court also recommended that the staff of the Madras High Court Official Assignee Service are to be treated as integral part of the Madras High Court service and also further recommended that there is no need to have a separate set of rules for the staff of the Official Assignee Office, as they are also a part of the staff of the High Court.

15. In the result, for the reasons stated above, the Writ Petition is entitled to succeed. Hence, I proceed to pass the following order:

1. The Writ Petition is allowed.
2. A mandamus will issue to the first respondent the State of Tamil Nadu to act on the recommendations of the Hon'ble the Chief Justice of this Court as communicated in the letter of the 2nd respondent dated June 21, 1993 and to grant the scale of pay of Rs. 1400-26007- to the Selection Grade Typists on par with the Selection Grade Typists in the Secretariat Service, and
3. The order would take effect from June 1, 1988 for the purpose of fixation of pay with monetary benefits from April 1, 1992.
4. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.