

(2013) 07 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 18665 of 2009 and M.P. No's. 2/09, 1/10 and 2/10

P. Balakrishnan, N.C. Muthusamy and P. Anbazhagan

APPELLANT

Vs

The Government of Tamil Nadu, The Director of Rural
Development and Panchayat Raj and The District Collector
(PD Section)

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2013) 07 MAD CK 0069

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : V. Suthakar, for the Appellant; R. Vijayakumar, A.G.P. for R1 to R3,
for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The petitioners herein by name P. Balakrishnan, N.C. Muthusamy and P. Anbazhagan, have jointly filed this Writ Petition

seeking to issue a writ of certiorari to call for the records pertaining to paragraph No. 4 of the letter bearing No. 38566/Pay Cell/2009-1, dated

06.08.2009, of the 1st respondent in so far as it relates to the petitioners and quash the same. While assailing the impugned clarification, learned

counsel for the petitioner submits that petitioner Nos. 1 to 3, working as Deputy Block Development Officers at Edapadi, Panamarathupatti and

Kadyampatti Blocks respectively in Salem District, are aggrieved by the unilateral fixation of cut-off date by the Government as 31.05.2009 with a

clarification that the employees can exercise option to remain in the existing scale of pay (pre-revised scale of pay) to their choice between

01.01.2006 and 31.05.2009. According to him, fixing the cut-off date unilaterally

through a clarification is wholly unsustainable in law particularly when the petitioners, after getting promotion as Deputy Block Development Officer on 12.06.2009, 09.07.2009 and 01.08.2009 respectively, opted to remain in the pre-existing scale of pay. It is further submitted that, as per the earlier Clarification issued by the first respondent in Letter No. 34124/(Pay Cell)/2009-1, dated 26.06.2009, it was made clear that option can be exercised by the employees to come to the revised scale -

a) after earning increment in the pre-revised scale on or after 01.01.2006, or b) after obtaining promotion on or after 01.01.2006 or c) obtaining Selection Grade/Special Grade and therefore, only on the basis of the above letter, dated 26.06.2009, when the petitioners have already exercised their option to come to the revised scale of pay on 12.06.2009, 09.07.2009 and 01.08.2009 respectively, the present impugned letter issued with clarification at para No. 4 to the effect that employees can opt to remain in the existing scale of pay (pre-revised scale of pay) upto any period of their choice between 01.01.2006 and 31.05.2009 i.e., prior to the issue of notification of Tamil Nadu Revised Scales of Pay Rules, 2009, is nothing but taking away the petitioners' rights accrued on the basis of the earlier clarification dated 26.06.2009. Inasmuch as the present impugned clarification came to be issued with retrospective effect to take away the accrued right already enjoyed by the petitioners, it is wholly unsustainable in law.

Adding further, learned counsel for the petitioners would submit that when Rule-8 of the Tamil Nadu Revised Scale of Pay Rules, 2009 (in short "Rules") states that a government employee may exercise option to remain in the existing scale of pay until the date on which he earns his next or any subsequent increments in the existing scale of pay or until he vacates his post or ceases to draw pay in that pay scale, without even amending the said Rule by duly following the procedure contemplated under Article 309 of the Constitution of India, issuing only a clarificatory letter to the extent of taking away an accrued right is totally contrary to the above Rule itself for the reason that the petitioners have already exercised their option to come to the pre-revised scale of pay on the respective dates as mentioned above. In any event, when the respondents have got sufficient powers to issue any clarificatory order, unless Rule 8(1) of the Rules is suitably

amended, the impugned clarificatory order will not have any legal

basis to stand. So submitting, learned counsel sought to quash the impugned clarification in so far it relates to the petitioners herein.

2. A detailed counter affidavit has been filed by the respondents. Learned Additional Government Pleader appearing for the respondents stated

that the contentions raised by the learned counsel for the petitioners challenging the authority of the respondents to issue the impugned clarificatory

letter are untenable in view of the fact that Rule 12 of the Rules provides that the Government may, by passing any order, remove any difficulty that

may arise in giving effect to the provisions of the Rules. Having regard to a doubt raised as to whether Assistant Section Officers/Personal

Assistants and Section Officers/Private Secretaries may give an option to come over to the revised scale of pay on 12.12.2007 i.e., from the date

on which their scale of pay was enhanced in the pre-revised scale of pay subsequent to the date of implementation of the revised scale of pay, the

Government, in letter No. 38566/PC/2009-1, Finance Department, dated 06.08.2009, had clarified that employees can opt to remain in the pre-

revised scale of pay upto any period of their choice between 01.01.2006 and 31.05.2009 i.e., prior to the date of issue of notification of the Rules.

When the period from 01.01.2006 to 31.05.2009 has been rightly mentioned by exercising the power under Rule-12 of the Rules, the contentions

made by the petitioner challenging the correctness of the impugned clarificatory letter on the ground of want of authority cannot be entertained by

this Court.

3. This Court is unable to agree with the learned Additional Government Pleader for more than a couple of reasons.

Firstly, when Rule-8(1) of the Rules provides that a Government employee may exercise option to remain in the existing scale of pay until the date

on which he earns his next or any subsequent increments in the existing scale of pay or until he vacates his post or ceases to draw pay in that pay

scale, it is not open to the first respondent to issue the impugned clarification with retrospective effect so as to take away the option/right already

given/accrued to the petitioners.

Secondly, if the respondents, after amending the said rule by duly following the procedure contemplated under Article 309 of the Constitution,

issued the impugned letter, of course, the petitioners may not have a case at all to challenge the fixation of cut-off date. But, having failed to carry

out the amendment in the manner known to law, the present impugned clarificatory letter cannot have any legal sanctity and therefore, this Court is

of the considered view that this is a fit and deserving case warranting interference.

Thirdly, based on the earlier clarification and having regard to Rule 8(1) of the Rules, the petitioners already exercised their options after getting

promotion on 12.06.2009, 09.07.2009 and 01.08.2009 respectively and in such circumstances, the present impugned letter unilaterally fixing the

cut-off date no doubt amounts to taking away the option already exercised by the petitioners in terms of the Rules.

For all the above mentioned reasons, Writ Petition stands allowed, quashing the impugned letter insofar as it relates to the case of the petitioners

herein alone. No costs. Connected Miscellaneous Petitions stand closed.