

Writ Appeal Nos.2109 to 2150 of 2018
and
C.M.P.Nos.16539 to 16579 & 16580 to 16621 of 2018

K.K.SASIDHARAN,J.

and

P.T.ASHA,J.

(Order of the Court was made by K.K.SASIDHARAN, J.)

INTRODUCTORY:-

These miscellaneous petitions are filed by the State to stay the operation of the order dated 4 June 2018 in W.P.No.29097 of 2017 etc. batch of cases, pending disposal of the intra court appeals. To put it otherwise, even after the failure to obtain interim orders from the Hon'ble Supreme Court, in Civil Appeal No.10029 of 2017, the State is not willing to restore the pay scale sanctioned to the employees by its order dated 26 August 2010.

2. The intra court appeals are at the instance of the State and the challenge is to the order dated 4 June 2018 in W.P.No.29097/2017 etc. batch, allowing the writ petitions filed by the respondents by quashing the Government Order in G.O.Ms.No.242 Finance dated 31 October 2017 and directing the Government to fix their pay in the pay structure in the Tamilnadu Revised Pay Rules, 2017, at the appropriate level corresponding to the pay scales indicated in the judgment dated 27 February 2014 in W.A.No.504 of 2012 etc. batch.

BASIC FACTS:-

3. The State of Tamilnadu, pursuant to the Sixth Pay Commission Report, constituted an Official Committee to examine and make recommendations for the revision of pay scales to the State Government employees. The Committee submitted its report dated 27 May 2009 to the Government. The Government of Tamil Nadu accepted the recommendation and issued an order in G.O.Ms.No.234 dated 1 June 2009 revising the pay scale notionally with effect from 1 January 2006 and with monetary benefits from 1 January 2007.

4. The Government of Tamilnadu constituted a One Man Commission under the Chairmanship of Thiru. Rajeev Ranjan, I.A.S., to rectify the pay anomalies which had arisen on account of the implementation of the revised pay scale. The report dated 31 March 2010 submitted by Thiru.Rajeev Ranjan was accepted by the Government, resulting in issuing an order in G.O.Ms.No.254 to 340, Finance (Pay Cell) Department dated 26 August 2010. The pay scales were re-fixed in accordance with the recommendation.

5. Subsequently, the Government found certain glaring mistakes in the revised pay scale and the same resulted in issuing an order in G.O.Ms.No.71 Finance Department dated 26 February 2011. The

Government, while downgrading the pay scale, made it clear that the excess payments would not be recovered from the employees.

6. The writ petitions filed by the employees challenging the order in G.O.Ms.No.71 Finance Department dated 26 February 2011 were all dismissed by the learned single Judge by order dated 8 March 2012. The learned single Judge, while dismissing the writ petitions, directed the State to constitute a Pay Grievance Redressal Cell. The common order dated 8 March 2012 on the file of the writ court was challenged before the Division Bench.

7. The Government, as per the order in G.O.Ms.No.123 dated 10 April 2012, constituted a Pay Grievance Redressal Cell under the Chairmanship of Thiru.Krishnan I.A.S. The report submitted by the One man Commission was accepted by the Government and the same resulted in issuing an order in G.O.Ms.No.242 dated 22 July 2013. The pay scales were drastically reduced and refixed with an indication that the excess paid would not be recovered. The pay of Assistant Engineers who were drawing Rs.15600-39100 + Grade Pay (GP) 5100 in the pay Band-3 was brought down to pay Band-2 in the scale of Rs.9300-34800 + Grade Pay 5100.

8. The writ petitions challenging the order in G.O.Ms.No.242 dated 22 July 2013 and the writ appeals filed against the order dated 8 March 2012 were taken up together by the Division Bench. The Division Bench was pleased to appoint a former Judge of the High Court as the Chairman of the Pay Grievance Redressal Cell. The Division Bench directed the Government to keep in abeyance the implementation of the Government Orders relating to the downward revision, more particularly, the orders in G.O.Ms.Nos.71 and 242 dated 26 February 2011 and 22 July 2013 respectively, till a decision is taken by the Commission.

9. The common judgment dated 27 February 2014 passed by the Division Bench was challenged by the State before the Honourable Supreme Court. We are informed that there are 159 Special Leave Petitions filed by the Government, challenging the judgment rendered by the Division Bench. The Honourable Supreme court granted only a limited stay. The stay was only in relation to the direction to constitute a new Pay Grievance Redressal Committee under the Chairmanship of a former Judge of the High Court. The Civil Appeals are pending before the Honourable Supreme Court without any stay in respect of the direction not to act in accordance with the Government Order in G.O.Ms.No.71 and 242 and to pay the salary as per the order dated 26

August 2010.

10. Subsequently, the Government issued the Revised Pay Rules, 2017, in G.O.Ms.No.303, Finance Department dated 11 October 2017 indicating that separate orders will be issued in respect of those employees who are before the Supreme Court.

11. The Government also issued an order in G.O.Ms.No.328 Finance Department dated 31 October 2017 indicating that it is open to the employees to opt either to stay in the same pay as per the judgment in the writ appeals or to migrate to the revised pay structure as per the order in G.O.Ms.No.242 Finance (PC)Department dated 22 July 2013, whichever is advantageous to them financially. It was the said order dated 31 October 2017, which was challenged in the writ petitions, which ultimately, resulted in filing these intra court appeals.

Submissions :-

12. The learned Advocate General contended that the writ appeals in W.A.No.504/2012 etc. batch were allowed only on the ground of violation of principles of natural justice. The learned Advocate General contended that in case, the Special Leave Petitions are allowed, the State has to recover more than Rs.1200 crores from

the employees. It was the further contention of the learned Advocate General that in case, the revised pay scale is given, it would be an additional burden on the exchequer, as the State has to pay a sum of Rs.260 crores every year in excess of the present pay to the concerned employees and pensioners. The learned Advocate General further submitted that the respondents are claiming arrears of salary on the basis of the Division Bench Judgment which would also cause substantial financial burden on the exchequer.

13. The learned Senior counsels for the respondents contended that the senior employees are drawing less pay than the juniors. According to the learned counsel, the seniors are made to sign the pay bills of juniors, giving them salary on the basis of higher scale which was not given to them.

Events pending appeals:-

14. There is no dispute that the related Civil Appeals are now pending before the Honourable Supreme Court. Even though a request was made by the State to stay the operation of the entire directions given by the Division Bench, the fact remains that the constitution of the One Man Committee alone was stayed by the Supreme Court. The learned single Judge considered the events that took place after the

judgment dated 27 February 2014 and allowed the Writ Petitions.

15. After hearing the learned Advocate General on behalf of the State and the learned Senior Counsel for the respective respondents, we passed an order on 20 June 2019, directing the Advocate General to take instruction from the Government as to whether as an interim measure, the pay scale could be restored prospectively, pending disposal of the appeals before the Supreme Court. The matter was adjourned on multiple occasions to enable the learned Advocate General to take instruction and make a statement.

16. When the appeals were taken up for hearing on 16 July 2019, the learned Advocate General, on instructions from the Government, submitted that it would not be possible to extend the benefits to the employees even prospectively.

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Discussion :-

17. The respondents filed the Writ Petitions before the writ court challenging the Government Order in G.O.Ms.No.328, Finance (Pay Cell) Department, dated 31 October 2017 and for a consequential direction to fix their scale in the pay structure at the appropriate level, taking into account the earlier orders and the judgment of the Division

Bench dated 27 February 2014 in W.A.No.504 of 2012 batch etc.

18. The learned Single Judge having found that there was no stay granted by the Supreme Court in the appeals filed by the State against the judgment dated 27 February 2014 in W.A.No.504 of 2012, negated the contentions taken by the State and allowed the Writ Petitions.

19. The respondents obtained orders from this Court for restoring their pay scale in W.A.No.504 of 2012 etc. batch. There was a specific direction issued by the Division Bench in W.A.No.504 of 2012 that till a decision is taken by the Committee, the Government Order in G.O.Ms.No.71 and 242 dated 26 February 2011 and 22 July 2013 shall not be implemented. It is a matter of record that in the related appeals filed by the State, the Hon'ble Supreme Court was not inclined to grant absolute stay. The stay is limited to the constitution of "Pay Redressal Committee" under the Chairmanship of a former Judge of this Court.

20. The One Man Commission headed by a Senior Indian Administrative Service Officer examined the question regarding the pay anomaly and recommended measures to rectify such anomalies.

The Government accepted the report without any reservation and fixed the pay scales to the Engineers of different cadres. The orders were passed on 26 August 2010 and payments were also made in accordance with the revised pay scale. The pay was downgraded later unilaterally by issuing an order in G.O.Ms.No.71 Finance Department dated 26 February 2011. The Government in the meantime appointed another One Man Committee headed by Thiru.Krishnan, I.A.S., the present Finance Secretary, as the Pay Grievance Redressal Cell and based on his report, issued the order dated G.O.Ms.No.242 dated 22 July 2013.

21. The Government Orders in G.O.Ms.No.71 and 242 dated 26 February 2011 and 22 July 2013 respectively were ultimately quashed by the Division Bench.

22. The employees succeeded in their effort to restore the pay scale given to them as per the order dated 26 August 2010. We are informed that the Hon'ble Supreme Court was not inclined to stay the restoration of the pay scale.

23. The learned Senior counsels for the respondents demonstrated before us that the juniors were receiving more pay than

the Seniors on account of the orders which were challenged before the writ court.

24. The respondents are now claiming implementation of the order impugned in the appeals, which is more in the nature of a consequential order pursuant to the judgment dated 27 February 2014 in W.A.No.504 of 2012 etc. batch.

25. The State is seeking an absolute stay of the order passed by the learned Single Judge without any condition. The respondents on the other hand are seeking implementation of the restored pay scale retrospectively, meaning thereby payment of arrears.

26. The State is opposing the claim made by the respondents primarily on the ground that the additional financial commitment per year would be around Rs.260 crores. Even according to the State, the Supreme Court agreed to take up the Special Leave Petitions very shortly.

27. We are therefore of the view that interest of justice would be sub-served, in case, the State is directed to implement the pay scale indicated in the order dated 26 August 2010 with consequential

revisions and as per the order passed by the learned single Judge prospectively and with a specific condition that in case, the Special Leave Petitions are ultimately allowed, the employees are liable to refund the excess salary with interest.

DIRECTION:-

28. We direct the appellants to implement the pay scale in accordance with the order passed by the learned Single Judge with effect from the month of July 2019. The question of payment of arrears should await the decision of the Supreme Court in the related Special Leave Petitions. The above direction would also apply in the case of the pensioners and their pension should be re-fixed, taking into account the restoration of the pay scale. The concerned employees, including the pensioners, shall give an undertaking that in case the appeals are ultimately allowed by the Supreme Court, they would refund the excess salary/pension with interest.

29. The order passed by the learned Single Judge shall remain stayed till the disposal of the intra court appeals, subject to the condition that the pay scale shall be implemented prospectively with effect from 1 July 2019 both in the case of present employees and the pensioners.

K.K.SASIDHARAN, J.

and

P.T.ASHA, J.

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30. The miscellaneous petitions are disposed of with the above direction. No costs.

(K.K.SASIDHARAN,J.) (P.T.ASHA,J.)

23.07.2019

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Office to note :-

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