

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 9.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.22520 of 2014

D.Duraikannu

... Petitioner

versus

1.State of Tamil Nadu,
rep. By Secretary to Government,
Highways Department,
Fort St.George, Chennai 9

2.The Divisional Engineer,
Highways, Chepauk,
Chennai 600 005.

3.The Accountant General (A&E)
Accountant General's Office,
Chennai 600 018.

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his proceedings dated 10.10.2013 and 18.10.2013 quash the same and direct the official respondents to fix the grade pay of the petitioner at Rs.5400/- from Rs.4400/- currently drawn by the petitioner and consequent refixation of his pensionary and superannuation benefits and the arrears of earned leave salary and unearned leave salary payable on his superannuation in accordance with Schedule II of the Tamil Nadu Revised Scales of Pay Rules, 1998 and as per G.O.Ms.No.162, Finance (Pay Cell) Department dated 13.4.1998 together with interest on the said sums at such rate.

For petitioner Mr.Sundar Narayan

For respondents Mr.P.Sanjai Gandhi, A.G.P.,
for respondents 1 and 2

Mr.V.Vijay Shankar, for R-3

O R D E R

The grade pay of the petitioner was enhanced from Rs.5,400 to Rs.4,400 by order dated 30 September 2006 on the file of the 2nd respondent. The 2nd respondent thereafter by way of the impugned order dated 18 October 2013, informed the petitioner that he is not entitled to the revised grade pay of Rs.5,400/-. Feeling aggrieved, the petitioner has filed this Writ Petition.

2. The petitioner is a retired driver of Highways Department. The petitioner on attaining the age of superannuation, retired on 30 September 2006.

3. The Government have issued an order in G.O.Ms.No.162 Finance (Pay Cell) Department, dated 13 April 1998, providing for revision of pay scale in the Selection Grade and Special Grade, as indicated in Schedule II to the Tamil Nadu Revised Scale of Pay Rules, 1998. In terms of Schedule II of the said rules, an employee receiving a basic pay in the scale of Rs.4000-100-6000 was entitled to fix his pay in the Selection Grade in the pay scale of Rs.5000-150-8000 and in the Special Grade in the scale of pay Rs.5500-175-9000.

4. The petitioner after his retirement submitted an application to grant him pay applicable to selection grade.

5. The petitioner filed a Writ Petition before this Court in W.P.No.20256 of 2010, claiming benefits of the Government Order in G.O.Ms.No.162, Finance (Pay Cell) Department dated 13 April 1998. The Writ Petition was allowed. The order dated 19 January 2011 was unsuccessfully challenged in W.A.No.67 of 2012 and the related Special Leave Petition was dismissed by the Hon'ble Supreme Court on 10 September 2012. Thereafter, the 2rd respondent issued proceedings dated 13 September 2012, enhancing the grade pay of the petitioner to Rs.5,400/-. Consequently, pension was revised taking into account the proceedings dated 13 September 2012.

6. While so, the 2nd respondent informed the 3rd respondent by letter dated 18 October 2013 that the petitioner is not entitled to the revised Grade Pay of Rs.5,400/- notwithstanding the earlier order dated 13 September 2012. The petitioner therefore challenges the proceedings dated 10 October 2013 and 18 October 2013 on the file of 2nd respondent.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader on behalf of the respondents.

8. The petitioner earlier filed a Writ Petition before this Court in W.P.No.20256 of 2010. This Court having found that the case of the petitioner would come within the four corners of Government Order in

G.O.Ms.No.162, Finance (Pay Cell) Department dated 13 April 1998, allowed the Writ Petition by order dated 19 January 2011. This Court issued a positive direction to the respondents to refix the scale of pay of the petitioner in accordance with the order in G.O.Ms.No.162 dated 13 April 1998 and grant him selection grade and special grade under the Tamil Nadu Revised Scale of Pay Rules, 1998. The Division Bench upheld the said order in W.A.No.67 of 2012. The Special Leave Petition filed against the judgment dated 18 January 2012 in W.A.No.67 of 2012 was dismissed. It was only thereafter, the 2nd respondent implemented the order by issuing proceedings dated 13 September 2012.

9. The petitioner earlier filed a contempt petition in Cont.P.No.932 of 2011, alleging disobedience of the order passed by this Court in W.P.No.20256 of 2010 and upheld by the Division Bench in W.A.No.67 of 2012. When the contempt petition was taken up for consideration, the Government Pleader submitted that the pay of the petitioner has already been recognized in the grade pay of Rs.5,400/- from Rs.4,400 and in view of the same, the contempt petition was closed.

10. It is also a matter of record that subsequently, respondents filed a review petition to review the order in W.A.No.67 of 2012. The review petition was dismissed by order dated 14 November 2014. The 2nd respondent complied with the order passed by this Court by issuing proceedings dated 13 September 2012. The 2nd respondent after the disposal of the contempt petition and review petition, passed the impugned orders refixing the grade pay from Rs.5,400/- to Rs.4,400/-. The 2nd respondent exceeded his jurisdiction and in fact, flouted the order passed by this Court in W.P.No.20256 of 2010 and judgment in W.A.No.67 of 2012, by reducing the grade pay from Rs.5,400/- to Rs.4,400/-. The proceedings dated 13 September 2012 was issued pursuant to the order passed by this Court. The 2nd respondent has no jurisdiction to cancel the said order. The orders impugned in this Writ Petition were issued in utter disregard of the directions issued by this Court. The petitioner is perfectly correct in his contention that the 2nd respondent overlooked the earlier order dated 13 September 2012 while issuing the impugned orders.

11. In the result, the impugned orders dated 10 October 2013 and 18 October 2013 are quashed. The 2nd respondent is directed to restore the order dated 13 September 2012 and pay arrears of earned leave salary and unearned leave salary payable to the petitioner as expeditiously as possible and in any case, within a period of eight weeks from the date of receipt of a copy of this order.

12. In the upshot, I allow the Writ Petition. No costs.
Consequently, M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Highways Department,
Fort St.George, Chennai 9

2.The Divisional Engineer,
Highways, Chepauk,
Chennai 600 005.

3.The Accountant General (A&E)
Accountant General's Office,
Chennai 600 018.

1 cc to Mr.Sundar Narayan ,Advocate, SR.No.13126
1 cc to Mr.V.Vijay Shankar, ,Advocate, SR.No.13351
1 cc to Government Pleader,Sr.No13280

W.P.No.22520 of 2014

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