

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on: 09.11.2016

Orders pronounced on : 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
W.P.No.33025 of 2016
and
W.M.P.No.28534 of 2016

S.Mani ... Petitioner
Vs.

1. The Principal Chief Conservator of Forests,
and Head of Forest Department,
Panagal Buildings, Saidapet, Chennai-15.
2. The District Forest Officer,
Tirupathur Division,
Tirupathur, Vellore District.
3. The Principal Accountant General (A & E),
Teynampet, Chennai- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent relating to S.O.No.144/2016/E2, dated 31.05.2016 to the limited extent of imposing a condition in the order of retirement and quash the same and consequently direct the respondents to grant all consequential benefits including retirement and pensionary benefits on the basis of the proceedings No.3570/12 E(2), dated ...06.2012 (signed on 31.05.2012) with interest on the delayed payment of the said benefits to be compounded annually.

For petitioner : Mr.M.Ravi
For respondents: Mr.K.Venkataramani, AAG-VII, assisted
by
Mr.N.Inbanathan, Govt. Advocate for
RR-1 & 2

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent relating to S.O.No.144/2016/E2, dated 31.05.2016 to the limited extent of imposing a condition in the order of retirement, quash the same and consequently direct the respondents to grant all consequential benefits including retirement and pensionary benefits on the basis of the proceedings No.3570/12 E(2), dated ...06.2012 (signed on 31.05.2012) with interest on the delayed payment of the said benefits to be compounded annually.

2. It is the case of the petitioner that he was working as Driver in the Forest Department and retired from service on attaining the age of superannuation. Some of the Drivers are eligible for Selection Grade and Special Grade as on 1996. Based on the recommendation of the Official Committee 1998, orders were issued in G.O.Ms.No.162, Finance (PC) Department, dated 13.04.1998, for revision of scale of pay for posts, with retrospective effect from 01.01.1996. On the basis of the said Government Order, most of the Drivers working in different Government Departments, who had no promotional avenue, were extended the benefits of Selection/Special Grade scale of pay at Rs.5,000/- and Rs.5,500/-. Since the petitioner had put in more than ten years of service as on 1996, he is eligible for Selection Grade pay, but he has not been paid the increased scale of pay in Selection Grade on the basis of the said G.O., even after repeated representations to the respondents.

3. Hence, the petitioner filed W.P.No.10836 of 2012 for issuance of a Writ of Mandamus to direct the respondents to implement the Selection Grade scale of pay as indicated in Schedule-II of the Tamil Nadu Revised Scales of pay Rules, 1998, dated 13.04.1998 to the petitioner/Driver with all consequential monetary benefits and to pay all arrears within a stipulated period. This Court disposed of the said W.P.No.10836 of 2012 along with other Writ Petitions filed by similarly placed persons in W.P.Nos.10423 to 10426 of 2012, by common order dated 18.04.2012, allowing the Writ Petitions.

4. Pursuant to the above said common order of this Court, dated 18.04.2012, the second respondent, in and by proceedings in Proc.No.3570/12.E2, dated ...06.12 (signed on 31.05.2012), re-fixed the scale of pay of the petitioner in the Selection Grade, subject to the condition that the pay fixation was made subject to the outcome of the Writ Appeal filed against the common order, dated 18.04.2012 passed in W.P.Nos.10423 to 10426

of 2012 and also based on the undertaking given by the petitioner. But the second respondent, without even waiting for the outcome of the Writ Appeal filed against the said common order, dated 18.04.2012, issued the proceedings in Proc.No.3570/12.E2, dated 28.09.2012 and ordered that the proceedings issued in Proc.No.3570/2012 E2, dated 31.05.2012 regarding re-fixation of the petitioner's pay, is kept in abeyance, in view of the similar matters pending before the Supreme Court of India and also observed that so far as the recovery of payment of arrears consequent to re-fixation of pay is concerned, further action would be taken up depending upon the outcome of the pending Special Leave Petition filed by the Government.

5. Since the earlier proceedings, dated ...06/12 (signed on 31.05.2012), re-fixing the petitioner's Selection Grade pay and granting consequential benefits, had been kept in abeyance by the above said proceedings, dated 28.09.2012, the petitioner filed W.P.No.4200 of 2013 before this Court challenging the said proceedings, dated 28.09.2012 and this Court earlier granted interim stay of the said proceedings. The said W.P.No.4200 of 2013 was subsequently tagged along with a batch of Writ Appeals preferred by the Government and also along with batch of the Writ Petitions preferred by the Drivers on the very same issue of re-fixation of Selection Grade. The said cases were taken up by a Division Bench of this Court, which took a different view on the subject, in favour of the Government and rendered common judgment, dated 08.07.2015 in W.A.Nos.1398, of 2013, etc. batch cases, thereby allowed the Writ Appeals preferred by the Government and dismissed the Writ Petitions preferred by the Drivers. It is the grievance of the petitioner that the Division Bench, without advertng to the individual facts of the case, dismissed W.P.No.4200 of 2013 preferred by the petitioner herein, which was disposed of along with the said batch of cases in W.A.No.1398 of 2013, etc.

6. It is the further grievance of the petitioner that he is entitled to pensionary benefits based on the re-fixation of the Selection Grade pay and he is also entitled to consequential benefits, i.e. the petitioner is entitled to the benefits flowing from the order dated ...06/2012 (signed on 31.05.2012) of the second respondent and the consequential disbursing of terminal benefits. In the meantime, by the impugned order, dated 31.05.2016 in S.O.No.144/2016 E-2, the second respondent has permitted the petitioner to retire from service on attaining the age of superannuation on 31.05.2016 without prejudice and further observed that the terminal benefits will be disbursed as per the orders passed by the Division Bench of this Court in W.P.No.4200 of 2013, dated 08.07.2015. Since the said relief was not granted even after lapse of more than three years from

2012, despite his representation, the petitioner has come forward with the present Writ Petition for the relief stated supra.

7. When the Writ Petition is taken up for consideration, learned counsel for the petitioner, while advertg to the averments made in the affidavit filed in support of the Writ Petition, submitted that the petitioner herein earlier filed W.P.No.10836 of 2012 for a direction to the respondents to implement the Selection Grade scale of pay as indicated in Schedule-II of the Tamil Nadu Revised Scales of pay Rules, 1998, dated 13.04.1998 to the petitioner, with all consequential monetary benefits and to pay all arrears within a stipulated period. The said W.P.No.10836 of 2012 was allowed by common order, dated 18.04.2012 passed along with W.P.Nos.10423 to 10426 of 2012. Pursuant to the said order, dated 18.04.2012, since the Writ Petitions were allowed, the second respondent, by proceedings, dated ...06/2012 (signed on 31.05.2012) re-fixed the petitioner's scale of pay at Rs.5000-150-6000 in the Selection Grade and granted the consequential benefits. Learned counsel further submitted that as against the common order passed in W.P.No.10836 of 2012, dated 18.04.2012, the respondents preferred Writ Appeal in W.A.No.2243 of 2012. In the meantime, pending the said Writ Appeal, the second respondent, all of a sudden, by proceedings, dated 28.09.2012, has kept in abeyance the benefits arising out of the proceedings, dated ...06/2012 (signed on 31.05.2012). Learned counsel further submitted that challenging the said proceedings dated 28.09.2012 keeping in abeyance the benefits arising from the earlier proceedings, dated ..06/2012 (signed on 31.05.2012), the petitioner preferred W.P.No.4200 of 2013. In the meantime, W.A.No.2243 of 2012 filed by the respondents, was dismissed by a Division Bench of this Court, by judgment dated 09.10.2012, against which, the respondents preferred Special Leave Petition before the Supreme Court in S.L.P.No.31760 of 2013, which was also dismissed on 27.09.2013. Learned counsel therefore submitted that so far as the petitioner is concerned, the matter has attained finality and hence, the petitioner is entitled to the benefits granted by the second respondent in proceedings dated ...06/2012 (signed on 31.05.2012). Since the respondents have not granted necessary benefits, the learned counsel prayed that the Writ Petition may be allowed.

8. Learned Additional Advocate General, assisted by the learned Government Advocate, by referring to the counter affidavit filed by the second respondent on his behalf and also on behalf of the first respondent, submitted that W.P.No.4200 of 2013 filed by the petitioner challenging the validity of the proceedings, dated 28.09.2012 by which the earlier proceedings, dated ..06.2012 (signed on 31.05.2012) was kept in abeyance, was

subsequently posted along with Writ Appeals and Writ Petitions filed by similarly placed persons and this Court, by judgment, dated 08.07.2015 dismissed the Writ Petitions filed by the individuals including the petitioner who is a party to the common judgment rendered by the Division Bench in W.A.No.1398 of 2013, etc. batch. Therefore, the said dismissal order passed in the batch of cases, will equally apply to this writ petitioner also, and hence, the learned Additional Advocate General prayed for dismissal of the present Writ Petition.

9. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the entire materials available on record.

10. No doubt, subsequent to the common order dated 18.04.2012 passed in W.P.No.10836 of 2012 etc., the second respondent issued proceedings dated ...06.2012 (signed on 31.05.2012) re-fixing the petitioner's Selection Grade scale of pay and granted the consequential benefits. But subsequently, by proceedings dated 28.09.2012 issued by the second respondent, the said re-fixation of Selection Grade pay granted by the earlier proceedings, dated ...06/2012 (signed on 31.05.2012), was kept in abeyance. The said proceedings, dated 28.09.2012 had been challenged by the petitioner in W.P.No.4200 of 2013. In the meantime, Writ Appeal in W.A.No.2243 of 2012 preferred by the respondents against the order passed in W.P.No.10836 of 2012, dated 18.04.2012, was dismissed by the Division Bench on 09.10.2012, against which, SLP preferred before the Supreme Court in SLP.No.31760 of 2013, was also dismissed. Hence, so far as the petitioner is concerned, the issue has ultimately reached finality.

11. That being so, the other Writ Petitions/Writ Appeals filed by similarly placed persons were posted before the Division Bench, which included W.P.No.4200 of 2013 filed by the present Writ Petitioner challenging the proceedings, dated 28.09.2012, by which, the proceedings dated ...06.2012 (signed on 31.05.2012) was kept in abeyance, and all the Writ Petitions including W.P.No.4200 of 2013 were dismissed and the Writ Appeals filed by the respondents were allowed. But the fact remains that so far as the present Writ Petitioner is concerned, the matter has already reached finality in SLP.No.31760 of 2013 preferred against W.A.No.2243 of 2012, which was preferred against the order passed in W.P.No.10836 of 2012, which was earlier filed by the petitioner herein seeking implementation of the Selection Grade pay as per the relevant Rules.

12. Further, the dismissal of Writ Petition filed by the petitioner in W.P.No.4200 of 2013 along with batch cases, viz., W.A.No.1398 of 2013, etc., has also no consequence for denying

the benefit arising out of the proceedings of the second respondent, dated ...06/2012 (signed on 31.05.2012) in Proc.No.3570/12.E2. In the said Writ Petition, the petitioner has challenged only the validity of the order dated 28.09.2012, by which, the above said earlier proceedings dated ...06/2012 (signed on 31.05.2012) was kept in abeyance. Therefore, the effect of dismissal of W.P.No.4200 of 2013 only invalidates the order dated 28.09.2012, by which, the earlier proceedings dated ...06/2012 (signed on 31.05.2012) was kept in abeyance. Hence, as per earlier proceedings, dated ...06/2012 (signed on 31.05.2012), the petitioner is entitled for all the benefits.

13. Therefore, the respondents are bound to grant the benefits arising out of the proceedings of the second respondent, dated ...06/2012 (signed on 31.05.2012) in Proc.No.3570/12.E2 to the petitioner and thus, the petitioner is entitled for the relief sought for in this Writ Petition.

14. Accordingly, this Writ Petition is allowed as prayed for and the impugned order, dated 31.05.2016 passed by the second respondent, is set aside to the limited extent of imposing condition in the order of retirement, thereby not disbursing the terminal benefits. The respondents are directed to grant all consequential benefits including the retirement/pensionary benefits on the basis of the proceedings issued by the second respondent in No.3507/12/E(2), dated ...06/2012 (signed on 31.05.2012). No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

cs

Copy to

1. The Principal Chief Conservator of Forests,
and Head of Forest Department,
Panagal Buildings, Saidapet, Chennai-15.
2. The District Forest Officer,
Tirupathur Division,
Tirupathur, Vellore District.

3. The Principal Accountant General (A & E),
Teynampet, Chennai-18.

+1cc to M/S.M.Ravi, Advocate Sr.71097

+1cc to the Special Government Pleader Sr.71550

W.P.No.33025 of 2016

mv[co]
srg 06/01/2017



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