

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.9.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.1487 of 2014

G.Karuppaiyan

.. Petitioner

Vs.

1. The District Collector,
Ariyalur.
2. The Assistant Director of Town
Panchayats,
Tiruchirapalli Zone,
Tiruchirappalli.
3. The Executive Officer,
Udaiyarpalayam Town Panchayat,
Udaiyarpalayam.

... Respondents

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 third respondent in connection with the proceedings in Na.Ka.No.437 of 2010 dated 17.10.2013 and quash the same and consequently direct the respondents to grant the petitioner with increments w.e.f.1991, fixation of pay as per 5th and 6th Pay Commissions with corresponding increments in the revised scales of pay and further grant Selection Grade scale of pay on completion of 10 years of service in the post of Over Head Tank Operator with all consequential benefits and consequently promote him as Junior Assistant on par with the junior S. John Joseph.(Prayer amended as per the order of this Court dated 02.02.2015 in MP.No.2 of 2014 in W.P.No.1487 of 2014).

For Petitioner

.. Ms.T.Aananthi

For R1 & 2

.. Mr.R.A.S.Senthilvel, AGP

For R3

.. Mr.N.Sakthivel, Spl. G.P

ORDER

The petitioner has approached this Court seeking for the following relief:

'To issue a writ of certiorarified mandamus to call for the records on the file of the third respondent in connection with the proceedings in Na.Ka.No.437 of 2010 dated 17.10.2013 and quash the same and consequently direct the respondents to grant the petitioner with increments w.e.f.1991, fixation of pay as per 5th and 6th Pay Commissions with corresponding increments in the revised scales of pay and further grant Selection Grade scale of pay on completion of 10 years of service in the post of Over Head Tank Operator with all consequential benefits and consequently promote him as Junior Assistant on par with the junior S. John Joseph'.

2.The case of the petitioner is as follows:

The petitioner was appointed as Over Head Tank Operator on 11.12.1989 at Udayarpalayam Town Panchayat. His services came to be regularised on 03.06.1991 with effect from the date of initial appointment. However, his annual increments and the other periodical revision of pay scale have not been granted to the petitioner. In the said circumstances, the petitioner has approached this Court in W.P.No.14679 of 2012 praying for a direction to grant the following benefits:

- (i) increment from 01.01.1998 upto 31.12.1994
- (ii) re-fixation of pay in V Pay Commission Scale from 01.01.1996.
- (iii) Corresponding increment from 1997 to 1999
- (iv) Fixation of pay on completion of 10 years of service viz., w.e.f., 10.12.1999.
- (v) Increment from 01.01.2000 upto 31.12.2005
- (vi) Fixation of pay in VI Pay Commission Scale from 01.01.2006 and
- (vii) Appropriate pay band and increment from 01.01.2007, upto 01.01.2012 and in further with all consequential and attendant benefits.

This Court disposed of the said writ petition on 15.08.2012, directing the respondents to consider the petitioner's representation and pass appropriate orders. In pursuance of the direction issued by this Court, the third respondent, by proceedings dated 17.10.2013, rejected the claim of the petitioner on the basis of certain observations made in the order dated 01.08.2007, passed by the Division Bench of this Court in W.A.1006 of 2007.

3. According to the learned counsel for the petitioner, the said reasoning of the authority is completely misconceived and suffers from totally non application of mind. The learned counsel would submit that originally the petitioner was appointed as Over Head Tank Operator and his appointment was cancelled and consequently, he was terminated from service. The said termination order was the subject matter of challenge before the then Tamil Administrative Tribunal in O.A.No.6591 of 1995, which was subsequently transferred to this Court and re-numbered as WP.No.6428 of 2006. When the original application was moved before the Tamil Nadu Administrative Tribunal, the termination order was stayed pending disposal of the O.A. However, the petitioner during the interregnum was out of service for a little while from 17.10.1995 to 09.11.1995. Pursuant to the interim order passed by the Tribunal, the petitioner came to be reinstated in service on 10.11.1995. The order of termination was ultimately set aside by this Court in W.P.No.6428 of 2006 dated 05.02.2007, against which, an appeal was preferred in WA.No.1006 of 2007. The Division Bench of this Court, while confirming the order passed by the learned single Judge, in the penultimate paragraph, observed that the petitioner was not eligible for payment of salary for the period when he was not in service on the basis of 'No work no pay'. The learned counsel would further submit that the observation was made only in regard to the period during which the petitioner was out of service i.e., from 17.10.1995 to 09.11.1995. This observation was relied on for the purpose of denying the petitioner whatever the service benefits he is otherwise entitled to in terms of grant of actual increments and the other periodical revision of pay of scale.

4. Upon notice, Mr.N.Sakthivel, the learned Government Pleader appearing for the third respondent filed counter affidavit. Mr.R.A.S.Senthilvel, the learned Additional Government pleader appearing for the first and second respondents would submit that in view of the observation made by the Division Bench of this Court that the petitioner was not entitled to salary, for the period when he was not in employment, the petitioner was not extended any benefit. At the out set, the basis on which the claim of the petitioner was rejected, is completely deviod of any application of mind by

the authorities and such reasoning which formed the basis of rejection, are preposterous, mala-fide, unjust, unreasonable and cannot stand the test of judicial scrutiny. The observation made by the Division Bench has been completely taken out of context for not granting benefits to the petitioner, as otherwise he is entitled for grant of periodical increments with effect from 1992 and the fixation of pay in pursuance of implementation of successive Pay Commissions and also the grant of other service benefits like selection grade etc and with all consequential and attendant benefits.

5. In the above circumstances, this Court has no hesitation to set aside the impugned order dated 17.10.2013 passed by the third respondent. Accordingly, the impugned order dated 17.10.2013 passed by the third respondent is set aside and the respondents are directed to grant all the benefits to the petitioner as prayed for in the writ petition, within period of three months from the date of receipt of a copy of this order.

6. The writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Ariyalur.
2. The Assistant Director of Town
Panchayats,
Tiruchirapalli Zone,
Tiruchirappalli.
3. The Executive Officer,
Udaiyarpalayam Town Panchayat,
Udaiyarpalayam.

+1cc to Ms.T.Aananthi, Advocate, S.R.No.65944
+1cc to the Government Pleader, S.R.No.67590

W.P.No.1487 of 2014

CS/23/10/17