

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.No.2018 of 2010

and

M.P.No.1 of 2010

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai - 9.

2. The Commissioner and
Director of Fisheries,
Teynampet, Chennai - 6.

.. Appellants

versus

G.Shanmugasundaram

.. Respondent

Writ Appeal filed against the order dated 07.09.2009 in W.P.No.8378 of 2007.this writ petition case to be numbered u/s 226 of the constitution of India by way of transfer of D.a.No.5313 of 2002 from the file of Tamil Nadu Administrative Tribunal with a prayer to call for the records pertaining to the impugned order of the first respondent passed in letter No.16067/FS.II/99 dated 11.6.2002 and to set aside the same and consequently directing the respondents to fix the pay of the applicant on par with marine foreman, who got promotion in the year 1974, which is equivalent post to the post of senior Mechanic with all monetary and attendant benefits with effect from 1974.

For Appellants : Mr.V.Ananthamoorthi
Special Government Pleader
For Respondent : Ms.T.P.Kuilmozhi

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Material on record discloses that the sole respondent has filed O.A. No.5313 of 2002, on the file of the Tamilnadu Administrative Tribunal, to call for the records pertaining to the order of the Secretary to the Government, Animal Husbandry and Fisheries Secretariat, Chennai, the 1st appellant herein, in letter No.16067/FS.II/99 dated 11.06.2002 and to quash the same and consequently, to direct the appellants herein, to fix the pay of the respondent on par with Marine Foreman, who got promotion in the year 1974, which is the equivalent post to that of Senior Mechanic, with all monetary and attendant benefits with effect from 1974.

2. Letter reads as follows:

Animal Husbandry and Fisheries Department,
Secretariat,
Chennai - 9.

Letter No.46067/FS-II/09 dated 11.6.2002

From
Thiru.D.Rajendran, I.A.S.,
Secretary to Government.

To
The Commissioner and Director of Fisheries,
Chennai - 600 006.

Sir,

Sub: Fisheries - Tamil Nadu Fisheries
Subordinate Service -

Thiru.G.Shanmugasundaram, Junior Engineer /
Foreman

(Marine) protecting of pay in the post of
Foreman

(Marine) Appeal preferred - Regarding.

Ref: 1. Appeal petition of
Thiru.S.Shanmugasundaram, Junior
Engineer dated 7.1.99.

2. Your letter No.4029.M4.99 dated 26.11.99

3. Govt. Lr. 16067/FS-II/99-3 AH&F dated
20.3.2000

4. Your Lr.4029/M4/99 dated 12.5.2000

5. Govt. Lr. 16067/FS-II/99-5 AH&F dated
13.6.2000

6. Your Lr.4929/M4/99 dated 19.9.2000 and

5.2.01

7. Govt. Lr.No.16067/FS-II/99-18 AH&F
dated 21.12.2001

8. Your Letter No.4029/M4/99 dated 15.04.2002.

I am directed to invite your attention to the correspondence cited.

2. In this connection, I am to state that as Thiru.G.Shanmugasundaram, Junior Mechanic (Trawler) deputed to Tamil Nadu Fisheries Development Corporation was reverted to his parent department on closure of the corporation, the Protection of pay last drawn in the Corporation does not arise.

3. I am also directed to state that Thiru.G.Shanmugasundaram, on reversion to his parent department on 10.4.88, was placed under suspension on 6.5.88 for certain lapses said to have been committed by him while he was on foreign service. Subsequently his suspension was revoked and he was posted as Electrician. But, he did not accept the appointment and filed W.P.No.1450/89 & 1451/09 in the High Court, Madras contending that he is Corporation employees and that the should not have been reverted to the department. As the said writ petitions were dismissed. Thiru.G.Shanmugasundaram joined in the post of Electrician on 15.7.91. Subsequently orders were issued in G.O.Ms.No.223 AH&F Dept. dated 23.7.93 for appointment of Thiru.G.Shanmugasundaram as Foreman (Marine) by relaxation of rules.

3. Hence in the circumstances stated above the pay of the individual can be fixed after regulation of increment under F.R.26(c) in the post in which he was reverted.

4. I am therefore directed to state that the appeal of Thiru.G.Shanmugasundaram for refixation of pay in the post of Foreman (Marine) in the Fisheries Department by protecting the pay last drawn by him in the post of S.G.Senior Mechanic (trawler) in the Tamil Nadu Fisheries Development Corporation with effect from the date of his joining as Foreman (Marine) in the Fisheries Department cannot be accepted by the Government.

5. I am to return herewith the service Register (3 Volumes) of Thiru.G.Shanmugasundaram, Junior Engineer and your office file No.D.Dis.53277/M4.91 (CF pages 386 + NF pages 58) and to request that the receipt of the

said documents may be acknowledged early.

Yours faithfully

Sd./-

For Secretary to Government

3. In the said letter, Secretary to the Government, Animal Husbandry and Fisheries Department, Secretariat, Chennai, the 1st appellant herein has turned down the appeal of the respondent, for refixation of pay in the post of Foreman (Marine) in Fisheries department, by protecting the pay last drawn by him in the post of Selection Grade Senior Mechanic (Trawler) in Tamil Nadu Fisheries Development Corporation, with effect from the date of his joining as Foreman (Marine) in the Fisheries Department.

4. On transmission to this Court, O.A.No.5313 of 2002 has been numbered as W.P.No.8378 of 2007. Though, the prayer sought for has been opposed, after hearing the learned counsel appearing for both parties, the Writ Court vide order dated 07.09.2009 in W.P.No.8378 of 2007, set aside the order dated 11.06.2002 of the Secretary to the Government, Animal Husbandry and Fisheries Department, Secretariat, Chennai, the 1st appellant and directed the respondents therein, to fix the pay of the writ petitioner on par with that of Foreman (Marine) from the date on which, he was promoted as Senior Mechanic in 1974, with all monetary benefits. The respondents therein were further directed to complete the said exercise within a period of four weeks from the date of receipt of a copy of the order made in the writ petition.

5. Being aggrieved, the Secretary to the Government, Animal Husbandry and Fisheries Department, Chennai and the Commissioner and Director of Fisheries Department, Chennai, have filed W.A.No.2018 of 2010. On 10.11.2010 in M.P.No.1 of 2010, in W.A.No.2018 of 2010, while permitting Mr.Veerakathiravan, learned counsel for the respondent herein, to take notice, a Hon'ble Division Bench has directed, the appellants to pay the benefits to the respondent from 1989 onwards.

6. Alleging disobedience of the order made in W.P.No.8378 of 2007 dated 07.09.2009, contempt petition No.1313 of 2010 has been filed. When the matter came up for hearing on 11.02.2011, on the basis of an order dated 09.02.2011, passed by the Commissioner and Director of Fisheries, Chennai, submission has been made by the learned Government Advocate that order made in W.P.No.8378 of 2007 has been complied with and recording the same, a learned Single Judge has closed Contempt Petition No.1313 of 2010.

7. On this day, when the matter came up for hearing, Ms.T.P.Kuilmozhi, learned counsel appearing for the respondent submitted that though, the writ Court in W.P.No.8378 of 2007 dated 07.09.2009, has granted a larger relief, directing the appellants to fix the pay of the writ petitioner on par with that of Foreman (Marine) from the date on which, he was promoted as Senior Mechanic in 1974, with all monetary benefits, subsequently, directions granted in M.P.No.1 of 2010 in W.A.No.2018 of 2010 dated 10.11.2010, directing the appellants herein to pay the benefits to the respondent from 1989, have been complied with and that the respondent is satisfied with the payment made. The respondent would not make any claim from 1974. Submission is placed on record.

8. Responding to the above, Mr.V.Ananthamoorthy, learned Additional Government Pleader submitted that in as much as the respondent has come forward to accept payment made from 1989, no further adjudication is required as to the correctness of the order made in W.P.No.8378 of 2007 dated 07.09.2009.

9. Recording the submission of the learned counsel appearing for both parties, no further adjudication is required and accordingly, writ appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai - 9.

2. The Commissioner and
Director of Fisheries,
Teynampet, Chennai - 6.

+lcc to Mr.S.T.P. Kuilmozhi, Advocate, S.R.No.1953
+lcc to the Government Pleader, S.R.No.2241

sk(CO)
md(23/01/2017)

W.A.No.2018 of 2010