

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANANARAYANAN

Writ Petition No.33440 of 2015
and
M.P.Nos.1 & 2 of 2015

R.Senthil Kumar

.. Petitioner

Vs.

1. The Government of Tamilnadu,
Rep. Secretary, Public Works Department,
Fort St. George, Chennai - 9.

2. The Engineer-in-Chief (WRO) &
Chief Engineer (GI),
Public Works Department,
Chepauk, Chennai - 5.

3. The Director of Boilers,
Public Works Department,
Chepauk, Chennai - 5.

4. The Personnel and Administrative
Reforms Department,
Rep. by its Principal Secretary,
Government of Tamilnadu,
Secretariat, Chennai - 600 009.

.. Respondents

[R-4 is suomotu impleaded as per Order dated: 16.12.2016
M.S.N.J in W.P.No.33440 of 2015]

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying for a writ of certiorarified
mandamus, calling for the records relating to the impugned
orders, viz., Letter No.10577/D2/2012-20 dated 19.03.2014 issued
by the Secretary to first respondent and proceedings of the
third respondent in Proc.No.A/2703/2012 (Na.Pa3) dated
05.01.2015 and quash the same and further to direct the
respondents to reimburse the cost of these proceedings incurred
by the petitioner.

For Petitioner : Mr.N.Subramaniyan
For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

By consent, the Writ Petition is taken up for final disposal.

2. The petitioner would state that he joined the services as Senior Assistant Director of Boilers in Tamil Nadu Public Works Department on 14.06.2010. Even prior to the said appointment, he acquired M.E. Degree and as per the existing policy of the first respondent, he is entitled to get two advance increments for possessing M.E. Degree and the same was taken note of by the third respondent, who vide proceedings dated 16.05.2012, sanctioned two advance increments for M.E. Degree from the date of joining the service and his pay was fixed accordingly. He was receiving advance increments till date. However, to the shock and surprise of the petitioner, on 05.01.2015, the third respondent issued the impugned proceedings, cancelling the sanction of advance increment proceedings with retrospective effect from the date of joining the service i.e., from 14.06.2010, with a further direction to recover the amount already paid to him. Challenging the liability of the same, the petitioner has come forward to file the writ petition.

3. Mr.N.Subramaniyan, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed-set of papers and to G.O.Ms.1159, P & AR (F.R.II) Department dated 21.11.1984, and would submit that the scheme of sanction of advance increments for acquisition of higher qualification was replaced by the scheme of sanction of lump sum grant. It was considered and taking into consideration several representations received from the Employees' Association, the scheme of sanction of advance increments for acquisition of higher qualification in vogue prior to 05.09.1983 was revived with immediate effect and those officers who have already obtained the benefit of lump sum grant under G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.II) Department dated 05.09.1983, are permitted to retain the benefit and if a person who has already drawn the lump sum grant, wishes to avail themselves of the scheme of sanction of advance increment, they shall refund the lump sum grant in one installment and then apply to the concerned authority for sanction of advance increment and it has also been specifically stated in the said order that it will apply to all the Government servants including teachers.

4. It is the further submission of the learned counsel appearing for the petitioner is that since the Clarification letter No.34124/(Pay Cell)/2009-1, dated 26.06.2009 was issued by the Finance (PC) Department in the form of Administrative instructions, the amendment of the said Government Order, was put to challenge in W.P.6390 of 2007 and it was disposed of by this Court vide order dated 22.02.2007. In compliance of the same, the fourth respondent passed amendment in the form of Government Order in G.O.(Ms.) No.97, Personnel and Administrative Reforms (FR.IV) Department dated 05.07.2010 and even as per terms of the amendment, the sanction of advance increments for acquiring PG qualification was extended to all the Government servants including the teachers and it was extended to all Government servants upto the second level officers of the department. Since the scheme is also applicable to officers up to including the II level officers below the Heads of Department and that the petitioner is also a Government servant, the stand of the first respondent, that it is applicable only to Assistant Engineers, Assistant Executive Engineer and Executive Engineer in Public works Department for acquiring PG qualification, is per se unsustainable.

5. Further he has invited the attention of this Court to the order dated 23.11.2016 made in W.P.No.39313 of 2016 [Dr.V.Singaravelu Vs. State of Tamil Nadu rep. the Principal Secretary, Public Works Department, Fort St. George, Chennai-9] and would submit that this Court in the said order has passed a positive order by taking note of the clarification letter dated 26.06.2009, issued by the Finance Department, directing the respondents to pass appropriate orders in the light of the clarification letter cited above and therefore, prays for quashment of the impugned order with a further direction to confer sanction of advance increments to the petitioner.

6. Per contra, the learned Special Government Pleader has drawn the attention of this Court to the counter filed by the respondents 1 and 4 and would submit that it is the stand of the administrative department to confer the benefit of sanctioning advance increments for having acquired higher qualification only to the Assistant Engineers, Assistant Executive Engineers and Executive Engineers working in Public Works Department and the department had not issued any orders to confer the same to the Deputy Director of Boilers, Senior Assistant Director of Boilers and Junior Assistant of Boilers in Tamil Nadu Boiler Service and therefore, the petitioner is not entitled for the said benefit and prays for dismissal of this petition.

7. This Court anxiously considered and also carefully scrutinized the entire averments made.

8. As per G.O.Ms.1159, P & AR Department of the fourth respondent dated 21.11.1984, payment of advance increment for acquiring higher qualification was revived and it is applicable to all the Government servants including the teachers. Subsequently, Finance Department through its clarification letter dated 26.11.2009, has clarified that every such higher start/incentive increments/advance increments sanctioned in the pre-revised pay scales and taken into account while fixing the pay in the revised pay scales, shall not be granted again in the revised pay scales and the same has been reiterated in G.O.Ms.97 dated 05.07.2010 and in the light of the order of this Court in W.P.No.39313 of 2016 dated 23.11.2016, G.O.Ms.1159, P & AR dated 21.11.1984 is amended and as per the said amendment, the scheme of sanction upto inclusive of II level officers below the Heads of Departments.

9. It is not in serious dispute that the petitioner is in service of the first respondent Department and he is also a Government servant and the above cited Government order as well as clarification letter, do not distinguish the Government servant and however, the first respondent took a stand that the benefit of advance increment for acquiring higher qualification is applicable only to the Assistant Engineers, Assistant Executive Engineers and Executive Engineers working in Public Works Department, in the considered opinion of this Court, the stand taken by the first respondent in the counter affidavit is wholly untenable.

10. A perusal of the Service rules relating to Tamil Nadu Boilers Service would also indicate that the method of appointment is by promotion and also by recruitment or transfer by any other service or high way service clarification is amended possession of mechanical degree.

11. Admittedly, the petitioner at the time of joining the service had possessed higher qualification in the form of Mechanical Engineering. In the light of the said fact also, the impugned order is per se unsustainable. Apart from the above, that the Department passing of the order of recovery is concerned, the petitioner is not at all put on notice.

12. Therefore, the writ petition is partly allowed and the impugned order of the first respondent dated 19.03.2014 is hereby set aside. The matter is remanded back to the third respondent, who in turn shall take into consideration the letter of the Finance Department bearing Clarification letter No.34124/

(Pay Cell)/2009-1, dated 26.06.2009 as well as the G.O.Ms.97 dated 05.07.2010 and pass appropriate orders on merits in accordance with law, as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of the order and communicate the decision taken to the petitioner. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1. The Secretary,
Government of Tamilnadu,
Public Works Department,
Fort St. George, Chennai - 9.

2. The Engineer-in-Chief (WRO) &
Chief Engineer (GI),
Public Works Department,
Chepauk, Chennai - 5.

3. The Director of Boilers,
Public Works Department,
Chepauk, Chennai - 5.

4. The Principal Secretary,
Personnel and Administrative
Reforms Department,
Government of Tamilnadu,
Secretariat, Chennai - 600 009.

+1cc to Mr.Subramaniam, Advocate, S.R.No.5630
+1cc to the Government Pleader, S.R.No.5976

NR(CO)
RS(16/02/2017)

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and
M.P.Nos.1 & 2 of 2015