

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition Nos.25326 and 28225 of 2004 and
W.P.M.P.No.34272 of 2004 and 1519 of 2008 in W.P.No.28225/2004

W.P.No.25326/2004

T.Pichaiya

... Petitioner

Vs.

1. The Director,
Tamil Nadu State Health Transport Department,
Guindy, Chennai-32.

2. The Superintendent,
Regional Workshop (Health),
Tirunelveli, Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in R.No.239/A1/02-39 dated 26.2.2004 and the consequential order of the 2nd respondent in Na.Ka.No.332/A1/2003 dated 11.06.2004 and quash the same and direct the respondents to restore the pay fixation as existed prior to the issue of the impugned orders and grant all consequential benefits to the petitioner.

For petitioner : Mr.P.Manoj Kumar

For respondents : Mr.M.Elumalai,
Government Advocate

C O M M O N O R D E R

Since the issue involved in both these Writ Petitions is one and the same, they were heard together and they are disposed of by this common order.

2. Challenging the impugned orders of the 1st respondent dated 26.2.2004 and 22.01.2004 respectively and the consequential orders of the 2nd respondent dated 11.06.2004 and 23.08.2004 respectively, the petitioners have come forward with these Writ Petitions.

3. The petitioners were initially appointed as Helpers (Mechanical) on 25.6.1983 and 15.07.1983 respectively. The posts of Helper (Mechanical) and the Fitter are one and the same and as per G.O.Ms.No.714, Finance (Pay Cell) Department, dated 23.8.1994, the scale of pay for the existing posts of Fitter and Fitter Grade II is Rs.950-20-1150-25-1500. The posts were merged and designated as Fitter Grade II in the time scale of pay as stated above with effect from 01.06.1988. A problem arose while awarding selection grade. The service rendered in Fitter Grade II alone is taken into consideration for selection grade.

4. The learned Counsel for the petitioners submits that once the posts of Fitter and Fitter Grade II are merged, the past service rendered in the Fitter category has also to be taken into consideration for awarding selection grade. But, without considering the service rendered as Fitter and taking into account the service rendered as Fitter Grade-II alone is not sustainable. Accordingly, the impugned orders of the 1st respondent dated 26.2.2004 and 22.01.2004 respectively and the consequential orders of the 2nd respondent dated 11.06.2004 and 23.08.2004 respectively are erroneous and they are liable to be set aside.

5. To substantiate his stand, the learned Counsel for the petitioners would rely on a decision of this Court in the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, No.1, Pumping Station Road, Chintadripet, Chennai-2 and another vs. M.Umar Farooq Hussain and others reported in 2006 (4) CTC 828. It is useful to refer para 10 of the said decision, in which this Court has held as follows:

'10. But the said submission of the learned Counsel for the appellant does not appeal to us for the following reasons:

(a) By a resolution of the appellant-Board dated 19.5.1986, communicated in the proceedings of the Personnel and Administrative Department, dated 31.7.1986, the posts of 'Demand Servers' and 'Meter Readers' were merged and all persons holding these posts were redesignated as 'Revenue Collectors'. The relevant portion of the communication dated 31.7.1986 reads as follows:

'Based on the above resolution of the Board, the following orders are issued:

1. The post of 'Demand Servers' and 'Meter Readers' are merged and designated as 'Revenue Collectors' and attached to the respective Area Officers with Divisions as furnished in the Annexure-I.'

This would make it clear that what was ordered on 31.7.1986 was a merger of two posts and their re-designation as 'Tax Collector'. Once two posts are merged and re-designated, it virtually means that all the posts are equalised. Therefore, even, if any distinction had been maintained in the past, such distinction between the posts had been wiped out and all the posts had become a common category.

(b) What was ordered on 31.7.1986 was 'merger' and 're-designation' and not 'upgradation'. If it was a case of 'upgradation', it would indicate the intention of the employer to retain the distinction between both the categories. In a case of 'merger' and 'redesignation', the distinction gets wiped out.

© After the merger and re-designation of the posts, the service rendered in the post prior to merger, cannot but be treated as qualifying service, in the re-designated category, for the purpose of Selection Grade.

(d) Even the guidelines issued in the appellant-Board proceedings dated 23.10.1992, make it clear that the service rendered in an equivalent post should be taken into account for advancement to Selection Grade Clause (vi) of para-5 of the said guidelines reads as follows:

''(vi) Service rendered in a lower post on other duty should not be taken into account as qualifying service in the higher post for advancement to Selection/Special Grade. The service rendered in an equivalent or higher post on other duty above should be taken into account for advancement to Selection/Special Grades to the extent he should have acted in the original post in the parent Department, but for his deputation.''

6. Per contra, the learned Government Advocate has filed a counter affidavit and would submit that by the impugned orders passed by the 1st respondent dated 26.2.2004 and 22.01.2004 respectively, the services rendered by the petitioners in Fitter Grade II alone have been taken into account for awarding Selection Grade/Special Grade in the merged post of Fitter Grade-II. The services rendered in the posts of Fitter and Helper prior to 01.06.1988 should not be taken into account for awarding selection grade. Accordingly, the impugned order passed by the 1st respondent dated 26.2.2004 and 22.01.2004 and the consequential order of the 2nd respondent dated 11.06.2004 and 23.08.2004 are perfectly right and did not call for any interference at the hands of this Court.

7. I have considered the submissions made on either side and I have also perused the materials available on record.

8. A perusal of the Counter Affidavit filed by the 2nd respondent would go to show that the Government admitted that as per G.O.Ms.No.714, Finance (Pay Cell) Department, dated 23.8.1994, the post of Fitter and the Fitter Grade-II which are on the same scale of pay and the same posts are merged and designated as Fitter Grade-II. Accordingly, taking into account the services rendered in the posts of Fitter and Fitter Grade-II, after completion of 10 years, the petitioner was initially awarded Selection Grade and subsequently, the same was cancelled on the ground that Fitter Grade-II alone would be considered. That settled position is contrary to the judgment of this Court as stated supra.

9. In this regard, the Division Bench of this Court categorically held that once the posts are merged and after merger and re-designation of the posts, the services rendered in the post prior to merger shall be treated as qualifying service in the re-designated category for the purpose of awarding selection grade. The categorical decision held by this Court is squarely applicable to the present case on hand.

10. In view of all the above, the Writ Petitions are allowed and the impugned orders of the 1st respondent dated 26.2.2004 and 22.01.2004 respectively and the consequential orders of the 2nd respondent dated 11.06.2004 and 23.08.2004 respectively are set aside. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Director,
Tamil Nadu State Health Transport Department,
Guindy, Chennai-32.

2. The Superintendent,
Regional Workshop (Health),
Tirunelveli, Tirunelveli District.

3. The Workshop Superintendent,
Regional Workshop (Health),
Vellore-632 013, Vellore District.

+ 2 cc to M/s.P.Rajendran, Advocate, SR.64782, 64780

+ 1 cc to The Govt.Pleader, SR.65453

W.P.Nos.25326 and 28225/ 2004

MN(CO)
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