

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.19291 of 2011

V.N.Dhanapal

... Petitioner

Vs

1.The Chief Engineer
(Agricultural Engineering)
Chennai 600 035.

2.The Assitant Executive Engineer
(Agricultural Engineering),
Government Tractor Workshop,
Coimbatore 641 003.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in A/1613/10 dated 02.09.2010 and quash the same and direct the respondents to restore the pay fixation which was in vogue prior to the issue of the impugned order and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Manoj Kumar for
Mr.P.Rajendran

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

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O R D E R

Heard Mr.P.Manoj Kumar, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of

the second respondent in A/1613/10 dated 02.09.2010 and quash the same and direct the respondents to restore the pay fixation which was in vogue prior to the issue of the impugned order and grant all consequential benefits to the petitioner."

3. The case of the petitioner is as follows:-

The petitioner was originally appointed as Welder Grade III on 24.07.1985 in the pay scale of Rs.280-450. After recommendation of the Fourth Tamil Nadu Pay Commission, the post of Welder Grade III and Welder Grade II were placed in the same scale of pay of Rs.505-845. Accordingly, the pay of the petitioner came to be fixed. In 1992, on the basis of recommendation of the committee appointed by the Government, the Government recommended revision of pay scale of certain categories of post and the result of the recommendation was merger of the post of Welder Grade III with Welder Grade II with effect from 01.06.1988 and were placed in the pay scale of Rs.950-1500.

4. The petitioner was granted Selection Grade in the post Welder Grade II with effect from 26.07.1995, on completion of 10 years of service and also Special Grade in the post of Welder Grade II with effect from 29.07.2005. This was on the basis that the post of Welder Grade III and Welder Grade II were granted same pay scale in 1984-85.

5. While matter stood thus, the second respondent issued an order on 02.09.2010, holding that the petitioner was entitled to Selection Grade only in 1998 and the Special Grade in 2008, on the ground that the merger of Welder Grade III and Grade II was put into effect only from 01.06.1988. The said order is impugned in the present writ petition. Following the order, the pay of the petitioner came to be revised by cancelling the earlier Selection and Special Grade granted to him with effect from 1995 and 2005 respectively. The grant of Selection and Special Grades therefore was put into effect as far as the petitioner was concerned, from 1998 and 2008 and his pay also re-fixed accordingly.

6. Against the order of the second respondent, re-fixing the pay scale of the petitioner to his detriment, an appeal was filed by the petitioner on 17.09.2010. However, the appeal has not been disposed of and according to the petitioner, he continued to draw revised pay scale. In the said circumstances, the petitioner is before this Court challenging the proceedings of the second respondent dated 02.09.2010.

7. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a counter affidavit.

8. According to the learned Special Government Pleader, the fact of the matter was that the merger took place only with effect from 1998 and therefore, the petitioner was entitled to Selection and Special Grades in Welder Grade II only with effect from 1998 and 2008 respectively and not earlier as granted to him. Therefore, the impugned action by the second respondent, cannot be faulted as the same was done on the basis of the instructions issued by the Government.

9. Per contra, learned counsel for the petitioner would submit that once the merger is effected, it does not open to the authority to fall back in the past and hold that only from the date of merger the petitioner is entitled to have this Selection and Special Grades fixed. He would rely on the decision of the learned Division Bench of this Court in the case of The Managing Director Vs. M.Umar Farooq Hussain and others, reported in 2006 (4) CTC 828. The learned Division Bench has dealt with identical issue and held in favour of the petitioner's claim in that writ petition. He would draw the attention of this Court to paragraph No.10 of the order, which is extracted below:-

"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 re-designated 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 Offices 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 're-designation', the distinction gets wiped out.

(c) 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."

Therefore, the appellant-Board is bound by its own orders of merger and re-designation dated 31.7.1986 and its own guidelines dated 23.10.1992 regarding the grant of Selection Grade.

(e) It is only as a result of proper understanding of its own resolution dated 19.5.1986 and the guidelines dated 23.10.1992, that the appellant-Board thought it fit to grant Selection Grade to the respondents with effect from 1992 by taking into account the service rendered by them prior to merger. Therefore, the appellant-Board is not entitled to resile from its own orders and guidelines."

10. Particularly, the learned counsel would draw the attention of this Court to sub-paragraph (c), in which, it states that after the merger and redesignation, the services rendered in the post to be treated as qualifying services in the redesignated category. The ratio laid down in the order passed by the learned Division Bench squarely covers the case of the petitioner herein.

11. This Court after considering the decision cited by the learned counsel for the petitioner, is of the view that as rightly contended by the learned counsel that the issue is squarely covered by the ratio laid down by the learned Division Bench of this Court. Once the merger had taken place between two Grades and formed as single Grade from 01.06.1988, the authority cannot count the past service as one of the different service in the lower grade for the purpose of grant of Selection as well as Special Grades. Therefore, the learned Division Bench has rightly discountenanced such objections and held in favour of the employee.

12. Therefore, this Court does not see any justification for denying the same benefit on the legal principle as held by the learned Division Bench. Therefore, the impugned order in A/1613/10 dated 02.09.2010, passed by the second respondent is hereby set aside and the authorities are directed to pass orders

in restoring the Selection and Special Grades granted to him originally in 1995 and 2005 and pay all other monetary benefits on such re-fixation. The order shall be passed by the authorities concerned, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

gsk

To

1.The Chief Engineer (Agricultural Engineering),
Chennai 600 035.

2.The Assitant Executive Engineer
(Agricultural Engineering),
Government Tractor Workshop,
Coimbatore 641 003.

+lcc to Mr.P.Rajendran, Advocate SR.No.12272
+lcc to Government Pleader SR.No.12877

W.P.No.19291 of 2011

GN(20/03/2018)

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