



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.20930 of 2008

P.Nataraj

... Petitioner

Vs.

1. The State of Tamilnadu,  
rep. by its Secretary, Agriculture  
Department, Fort St. George,  
Chennai - 9

2. The Commissioner of Agriculture  
Chepauk, Chennai - 600 005.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records of the 2nd respondent made in No.Ve.Aa.Pa.2/106189/2006 dated 03.04.2007 and that of the first respondent made in No.Ve.Aa.Pa.2/214200/2004 dated 24.01.2006 and to quash the same and consequently, direct the respondents to grant Selection Grade and Special Grade on completion of 10/20 years of services during 1985 and 1995 respectively and to revise the pension and pensionary benefits thereto forthwith.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mrs.Thangavadhana Balakrishnan  
Additional Government Pleader

O R D E R

This Writ Petition has been filed to call for the records of the 2nd respondent in No.Ve.Aa.Pa.2/106189/2006 dated 03.04.2007 and that of the first respondent made in No.Ve.Aa.Pa.2/214200/2004 dated 24.01.2006 and to quash the same and consequently, to direct the respondents to grant Selection Grade and Special Grade on completion of 10/20 years of services during 1985 and 1995 respectively and to revise the pension and pensionary benefits thereto forthwith.



2. The petitioner herein, was appointed as an Agriculture Officer on 03.09.1975 and retired from service on 31.01.2004. He would contend that as per the policy, the Government promulgated selection grade and special grade to its employees, those who had completed 10/20 years of services and thereby, pay of the employees were being revised on an enhanced scale of pay. In the year 1991, the petitioner was issued with a charge memo for an alleged occurrence, which had been taken place during the period between 1987 and 1988, and thereafter, based on the enquiry commenced in the same year i.e. 1991, the said charges had attained finality. However, the petitioner was placed under suspension on 29.01.2004 by retaining his services beyond superannuation and subsequently, by proceedings of the 2nd respondent dated nil.08.2004, he was allowed to retire without prejudice to the disciplinary proceedings. Further, the respondent, by invoking Rule 9 of the pension rule, has directed the petitioner to submit his final representation on a proposed punishment of cut in pension of Rs.50/- per month for a period of six months through G.O.3(D).No.105 Agriculture Department dated 25.04.2005.

3. The petitioner would further contend that in order to achieve peace, he accepted the said punishment i.e. cut in pension of Rs.50 per month for a period of six months, without prejudice to the other remedies available with him and finally, he filed a review, which was treated as appeal, and the penalty cut in pension of Rs.50/- for 6 months, came to be confirmed vide G.O.3(D) No.160 dated 08.07.2008. Hence, the petitioner prays that while passing the orders, the authorities miserably failed to consider that there was no whisper whatsoever as to the grant of selection grade and special grade on and after completion of 10 and 20 years respectively of services rendered by him during 1985-1995.

4. The petitioner would also contend that he sent his representation, seeking extension of selection grade and special grade on completion of the respective 10 and 20 years of services, but, it was rejected by the respondent on the ground that G.O.Ms.No.368 P & AR dated 18.10.1993 would prescribe promotion only on completion of finality of the disciplinary proceedings and further there is no provision in the order to extend retrospective benefits of selection grade and special grade. The regulation of the 2nd respondent's order dated 24.01.2006 was confirmed by the 1st respondent dated 03.04.2007. Hence, the petitioner, with no other alternative, has filed this Writ Petition, to quash the order of the 2nd respondent in No.Ve.Aa.Pa.2/106189/2006 dated 03.04.2007 and that of the first respondent made in No.Ve.Aa.Pa.2/214200/2004 dated 24.01.2006 and consequently, to direct the respondents to grant Selection Grade and Special Grade on completion of 10/20 years of services



during 1985 and 1995 respectively and to revise the pension and pensionary benefits thereto forthwith.

5. Denying the above allegations of the petitioner, the 2nd respondent herein filed a counter affidavit, wherein, it has been contended that the petitioner had joined duty and his service had been regularized on 03.09.1975 FN. As per the Government Orders, the petitioner was awarded selection grade as on 03.09.1985, and his eligible date of special grade was 03.09.1995 FN. During his eligible period, disciplinary action had been taken against the petitioner under 17(b) for certain misappropriation and a charge memo had been issued to him on 01.03.1991. Later, it was concluded with a punishment of stoppage of increment for 3 months without cumulative effect vide Proceedings No.DCS2/2468276/96 dated 16.12.1999.

6. The respondent would further contend that Joint Director of Agriculture, had framed charges on the petitioner under Rule 17(b) vide CCA1/5229/90 dated 07.12.1990, which had been concluded with a punishment of stoppage of increment for 1 year vide Commissioner of Agriculture Proceedings No.DCS2/233522/91 dated 04.02.2000. Thereafter, the petitioner was suspended from Government service vide Commissioner of Agriculture Proceedings No.DCS II(3)/233522/91 dated 29.01.2004, and subsequently, his suspension was revoked and he was permitted to retire from Government service without prejudice to disciplinary action pending against him. Later, final orders were issued by the Government, stating to recover Rs.50/- per month from the pension of the petitioner for a period of 6 months, vide G.O. (3D).No.105 Agriculture (AA7) Department dated 25.04.2005. The said disciplinary case was concluded only after retirement of the petitioner i.e. on 25.04.2005. Hence, the respondent would contend that since charges were pending against the petitioner, during his eligible period of special grade i.e. on 03.09.1995 and till the date of retirement on 31.01.2004, awarding of special grade was not considered by them, as per rules and therefore, sought for dismissal for dismissal of the above Writ Petition.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

8. It is clear from the records that it is not in dispute that the petitioner had joined the service as an Agriculture Officer, which has been regularised on 03.09.1975 FN, and he had been awarded selection grade on 03.09.1985 FN.

9. The learned counsel for the petitioner has argued that the charges levied against the petitioner for the alleged



offence, occurred during the period between 1990 - 1991, which took nearly 15 years to attain finality, and in the meanwhile, the petitioner's service came to be completed on attaining the age of superannuation on 31.01.2004. However, prior his retirement, the petitioner was placed under suspension which is illegal and contrary to the rules.

10. The learned counsel for the petitioner further argued that despite the petitioner has accepted for the penalty of cut in pension of Rs.50 per month for a period of 6 months, while passing the final order, the respondent ought to have considered the long service rendered by the petitioner, as it makes him eligible for to receive selection grade and special grade, and ought to have re-fixed the pension payable to him.

11. Objecting the contentions of the petitioner, the learned counsel for the respondents has stated that during the period when the petitioner was eligible for special grade, the disciplinary action was taken under 17 (b) followed by the issuance of charge memo, which concluded with the punishment of stoppage of increment for 3 months, without cumulative effect vide Proceedings No.DCS2/2468276/96 dated 16.12.1999. Further, based on the conclusion of the proceedings, the petitioner has been placed under suspension on 29.01.2004, and besides, he has accepted the penalty imposed on him. Hence, the petitioner is not entitled for special grade during the eligible period i.e. on 03.09.1995.

12. As per the fundamental rules, if any disciplinary action has been taken against a person or any charges are pending during his service, he will not be entitled for any of the benefits like selection grade or special grade. In the present case, the petitioner, during the eligible period for special grade as on 03.09.1995, disciplinary proceedings initiated against him on account of certain misappropriation under Section 17(b) were pending and the charges framed against him also were not concluded till the date of his retirement on 31.01.2004. Hence, based on the fundamental rules that the petitioner was placed under suspension on 29.01.2004 before his date of retirement and final orders came to be passed by the Government on 25.04.2005 to recover Rs.50 from his pension for a period 6 months, as per rules. The petitioner filed a review which was treated as an appeal which confirmed the penalty.

13. Though the petitioner was placed under suspension, which was subsequently revoked and he was permitted to retire from service pending disciplinary action, and thereafter, he was drawing the pension with such deduction of Rs.50 per month for a period of 6 months. Hence, the petitioner cannot now come and challenge the order of the deduction of penalty imposed and seek



for a prayer for granting Selection Grade and Special Grade on completion of 10/20 years of services during 1985 and 1995 respectively and for revising the pensionary benefits. Moreover, the charges which were pending at the time of his eligible period for special grade, came to be concluded only after his date of retirement on 31.01.2004. Hence, the petitioner is not entitled for claiming special grade, and further, he cannot claim it as a right, when the order of awarding penalty is on the case of misappropriation.

14. Under these circumstances, the petitioner's prayer in this Writ Petition has to be rejected and the same cannot be granted. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Secretary,  
State of Tamilnadu,  
Agriculture Department,  
Fort St. George, Chennai - 9
2. The Commissioner of Agriculture  
Chepauk, Chennai - 600 005.

+1 cc to Mr.L.Chandrakumar, Advocate, S.R.No.89125

+1 cc to the Government Pleader, S.R.No.89929

Order in  
W.P.No.20930 of 2008

SVI (CO)  
SSM(26/02/2019)