

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.29685 of 2008

M.Soosai Michael

.. Petitioner

Vs

1. The Chief Engineer,
Highways (General)
Chepauk, Chennai 600 005.
 2. The Accountant General (A&E),
Annasalai, Chennai 600 018.
 3. The Superintending Engineer,
Highways Circle Office,
Reserve Line Road,
Palayamkottai,
Tirunelveli - 627 002.
 4. The Divisional Engineer,
Highways Division Office,
Nagercoil -629 001
- ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to and connected with the proceedings and order of the 1st respondent herein in his Letter No.19495/N6(1)/2008 dated 04.11.2008 and quashing the same and consequently directing him to re-fix the petitioner's salary in the scale of pay of Rs.5500-175-9000 with effect from 01.01.2002 on the basis that the status of Special Grade in the post of foreman had been accorded to him with effect from 01.01.2002.

For Petitioner : Mr.S.M.Hameed Mohideen

For Respondents : Mrs.R.Janaki

Additional Government Pleader

ORDER

The grievance of the petitioner in this writ petition is non-grant of Special Grade Pay to the petitioner as a operator

which is equivalent to the Selection Grade pay of the post of Foreman, to which the petitioner has been moved even though he has completed 20 years of service as an Operator and also the illegal rejection of his prayer vide Letter No.19495/N6(1)/2008 dated 13.06.2015 with a prayer to quash the same and direct fixing of the salary of the petitioner in the scale of pay of Rs.5500-175-9000 with effect from 01.01.2002.

2. As it appears, the petitioner, a Diploma holder in Mechanical Engineering, was initially appointed as a Operator in the office of the Assistant Engineer, National Highways, Dindigul on 25.02.1976 in the scale of pay of Rs.250-10-400. Subsequently, his service in the said post was regularized with effect from 01.09.1982 by the Divisional Engineer, N.H. Division-I, Madurai vide order dated 07.05.1983 with grant of scale of pay of Rs.400-15-490-20-650-25-700 by the order of the Divisional Engineer (NH), Division-I, Madurai on 08.03.1984. According to the recommendation of Fourth Pay Commission, a person completing 10 years of service in a particular Grade is entitled to the next Grade, i.e., Selection Grade pay in that cadre and on completion of 10 years of service in the Selection Grade he is entitled to the next Grade, i.e., Special Grade vide G.O.Ms. No.281 issued by Finance (Pay Cell) Department dated 02.04.1987. However, subsequently on the presentation of the different employees vide G.O.Ms. No.281 issued by Finance (Pay Cell) Department dated 02.04.1987 it was held that a person on completion of 20 years of service in a post irrespective of date of getting the Selection Grade is entitled to Special Grade of pay. Undisputedly, the petitioner who was working as an Operator in the ordinary Grade on completion of ten years of service was granted the Selection Grade of Pay on 01.01.1992. However, due to non-availability of work in the post the petitioner was holding, his service was utilised in another Institution and he was re-deployed in another Institution as a Foreman without prejudice to his scale of pay in the Selection Grade of Operator. In the year 2002, the petitioner having completed 20 years of service claimed higher Grade of pay, i.e., Special Grade of Pay of Operator which is equivalent to the Selection Grade Pay of Foreman. The same was refused on the ground that the petitioner has not completed 10 years in the entry grade as Foreman and also though, similarly situated employee, namely, G.N. Sathyanarayana working as Foreman has been granted Special Grade with effect from 01.01.2002 fixing his salary in the Special Grade of Operator, i.e., Rs.5500-175-9000. His such prayer, however, being not disposed of, the petitioner filed a writ petition in this Court vide W.P. No.9596 of 2008 which was disposed of on 01.04.2008 with a direction to dispose of the representation which was disposed of / refused vide the impugned order dated 04.11.2008 observing that since he has not completed as a Operator for 20 years, but in view of re-deployment as a

Foreman, prayer for grant of Special Grade is not possible to be allowed. The petitioner has challenged such order to be illegal, arbitrary and contrary to law with a prayer to quash the said order and direct the respondent to fix his salary in the scale of 5500-175-9000 with the status of Special Grade (Foreman).

3. The aforesaid has been countered by the State on the ground that a person only on completion of 20 years of service in a particular Grade is entitled to Special Grade. Since the petitioner was moved to Foreman before completion of 20 years, his prayer to grant Special Grade is without any substance as such, the writ petition is devoid of merit.

4. Before appreciating the contention of the parties, it would be apposite to have a look on the comparative pay structure of different Grade of Operator as well as Foreman at the relevant point of time i.e when the petitioner was posted as Foreman and had completed total 20 years of service in the Grade of Operator as well as Foreman . The pay scale as supplied by the respondents are as follows :-

Grade	Operator	Foreman
Ordinary Grade	4000-100-6000	5000-150-8000
Selection Grade	5000-150-8000	5500-175-9000
Special Grade	5500-175-9000	6500-200-10500

5. There is no dispute that the petitioner had already by the time of his deployment on the account of closure of the Unit where he was working as an Operator and posted as a Foreman in the new establishment was in the Selection Grade of Operator. From the pay structure, it appears that a post of Foreman is a post having higher responsibility, so also carrying a higher scale of pay in comparison to Operator for all the purposes and even though he was re-deployed the petitioner was taken to a higher post protecting his pay in the lower cadre on his deployment in the post of Foreman. If the petitioner at all could have been continuing as an Operator, there is no manner of doubt that he on completion of 20 years of service on 01.01.2002, he would have moved to Special Grade, i.e., Rs.5500-175-9000 which is equivalent to the Selection Grade of Foreman, i.e., next Grade of Foreman. However, the petitioner having re-deployed as Foreman and not completed therein the requisite service, the same has been refused. In this regard, I am reminded of a Circular/GO dated 11.03.1997 of the Government of Tamil Nadu which is quoted below :-

" Government of Tamilnadu

Abstract

Public service - Advancement to Selection Grade / Special Grade in various services - Recommendation of the One Man Committee -

Accepted orders - issued.

Personsal and Adminsitratve Reforms (Per.s) Department.

G.O.Ms.No.210

Dated 11.03.1987

Read:

ORDER :

The Government in their orders read above have issued guidelines for advancement to Selection Grade / Special Grade in various categories based on the recommendation of the Fourth Tamilnadu Pay Commission. The One Man committee has now recommended as follows :

" Services in the Selection Grade of the Lower pose my also be counted for the selection grade in the promoted post provided that the selection grade scale of the lower post is identical to the ordinary grade of the higher post, and that this concession may be allowed only at the first promotion level. This will mainly result in some pensionary benefits to these categories.

In the case of posts with different grades, persons with 10 years or more of service may be advanced to grade-1 and those with 20 years or more may be advanced to selection grade of Grade - I"

2. The Government after careful examination accept the recommendation of the One Man Committee and direct that the service in the Selection Grade of the lower post shall be counted for the Selection grade in the promoted post provided/to the ordinary grade of the higher post, and that the consession be allowed only at the first promotion level. Government also direct that in the cae of posts with different grades one who has put in 10 years or more of service in the lower post (Eg.Grade II) shall be advanced to the next higher post.

That the selection grade scale of the lower post is identical.

(i.e Grade I) under the scheme of Flexible complementing and one with a service of 20 years or more be advanced to selection grade of the higher post. (i.eGrade - I) wherever it has already been provided.

3. These orders shall take notional effect from 01.10.1984 for the purpose of fixation of pay with monetary benefit from 01.04.1986.

(By Order of the Governor)

J.Anjani Dayanand
Special Commissioner and Secretary to Government"

6. The aforesaid Government Order clearly indicates that services in the Selection Grade of the lower post may also be counted for the Selection Grade in the promoted post provided that the Selection Grade scale of lower post is identical to the Ordinary Grade of the higher post and that this concession may be allowed only at the first promotion level. The post of Foreman wherein the petitioner has been redeployed appears to be a post with higher responsibility for all purpose. Though by redeployment, the petitioner can very well be said to have been promoted to the post of Foreman and as such the promotion was accorded to the petitioner. He was in the selection grade of the lower post i.e the post of Operator but the pay scale of the selection grade is equivalent to the pay scale of the ordinary grade of the promotional post of Foreman. The petitioner service therefore rendered in the Selection Grade of lower post should count towards the grant of Selection Grade to him in the promotional post, inasmuch as, he was observed in the ordinary grade of promotional post, in view of the Government Order cited supra. Admittedly the petitioner had entered into the selection grade of the lower post on 01.01.1992, pay of which is equivalent to ordinary grade pay of Foreman. The service render therefore in the Selection grade of the lower post must count towards eligibility of Selection grade of the higher post. Hence on 01.01.2002, his pay should have been fixed in the selection grade of the post of Foreman which is equivalent to the Special grade pay of the post of Operator which the petitioner calims. Now that the petitioner being not there in the Operator Grade, he could not have been granted the Special Grade Pay of the Operator but he is entitled to the Selection Grade pay of the Foreman for the aforesaid reasons and Government Order.

7. Therefore, this writ petition stands allowed. Accordingly, the pay of the petitioner be refixed in the scale of pay of 5500-175-9000 on 01.01.2002 and all monetary and consequential benefit including the benefit of refixation of pension be made to the petitioner within a period of three months from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

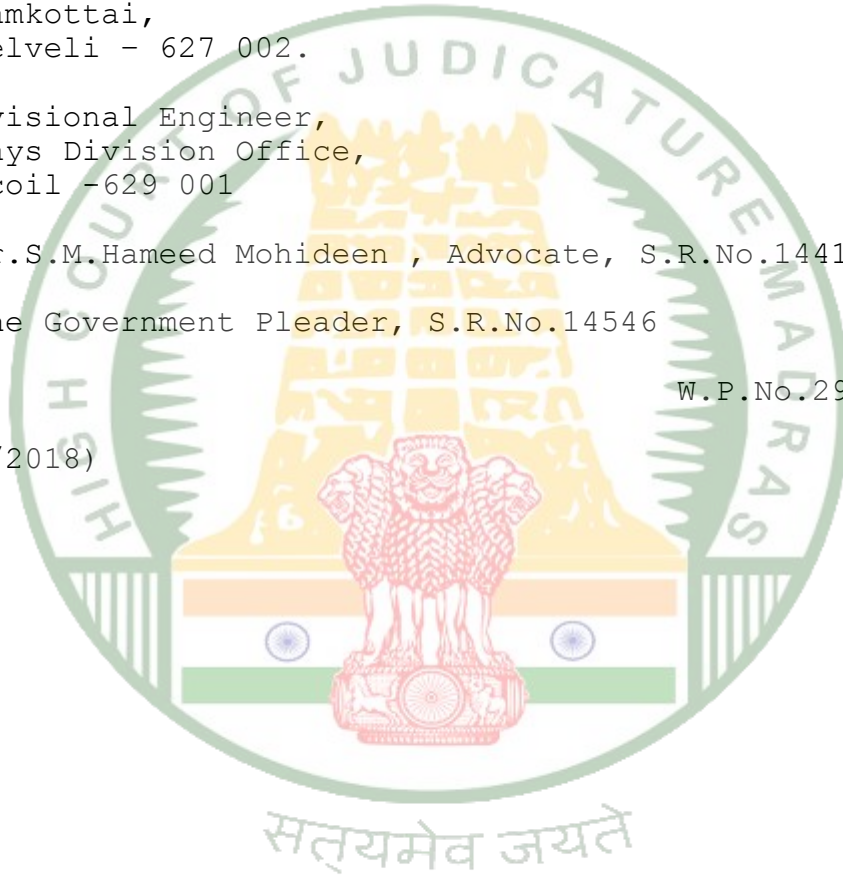
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+1cc to Mr.S.M.Hameed Mohideen , Advocate, S.R.No.14411

+1cc to the Government Pleader, S.R.No.14546

W.P.No.29685 of 2008

RRK(12/04/2018)



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