



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

Writ Appeal (MD).No.254 of 2018

and

C.M.P. (MD).No.1516 of 2018

1.The Chief Engineer,
Public Works Department,
Construction and Maintenance Division,
Chepauk,
Chennai-600 005.

2.The Executive Engineer,
Public Works Department,
Construction and Maintenance Division,
Trichy-1.

3.The Assistant Executive Engineer,
Public Works Department,
RC Sub Division,
Trichy-1.

... Appellants/Respondents 2 to 4

Vs.

1.M.Marimuthu,
Retired Fitter (Grade-I)
2/382, 20th Street,
Navalpattu, Burma Colony,
OFT Post,
Trichy District.

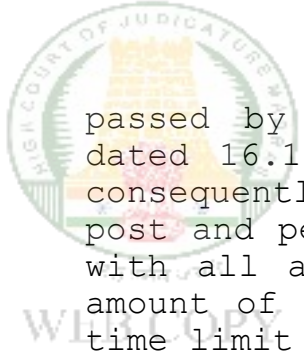
2.The Accountant General (A& E),
(Pension Payment Order Section),
Teynampet,
Chennai.

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 20.10.2016 made in W.P(MD).No.9957 of 2012.

Prayer in WP(MD). 9957/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari and Mandamus, to call for the records on the file of the 4th respondent in connection with the impugned order of recovery



passed by him in his Proceedings in No.222/2009/Vu.Se.Po. (Thi) dated 16.12.2009 and quash the same as illegal and arbitrary and consequently direct the respondents 1 & 4 to revise the Petitioner's post and pension proposal in the cadre of Grade-I (Selection Grade) with all attendant and monetary benefits and return the recovered amount of Rs.1,30,945/- with interest to the Petitioner within the time limit that may be stipulated by this Honourable Court.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader
For Respondent No.1 : Mr.G.Thalaimuthuarasu

JUDGMENT

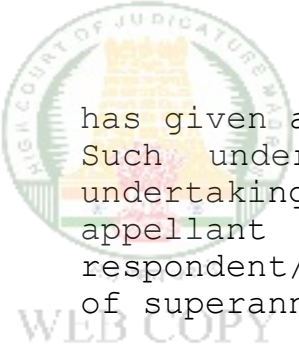
(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.G.Thalaimuthuarasu, learned counsel appearing for the respondents.

2.This appeal is filed by the Public Works Department, which is arrayed as respondents 2 to 4 in the writ petition, against the order passed in W.P.(MD)No.9957 of 2012 dated 20.10.2016. The first respondent/writ petitioner challenged the proceedings of the third appellant, directing the recovery from the writ petitioner's gratuity on the ground that he was wrongly fixed in the Cadre of Fitter (Grade-I) (skilled) instead of Fitter (Grade-II) (unskilled) and consequently, advanced to the promotional post of Selection Grade Fitter was also incorrect and the excess payment made to the writ petitioner for the said post has to be recovered. The Writ Court, took into consideration, the case of similarly placed persons in W.P.(MD)No.100 of 2010 dated 20.08.2010 (*Mayilsamy v. The Accountant General (A&E) and others*) wherein more or less identical case was considered by the Court in respect of Fitter (Grade-I) and similar to the case on hand, the recovery was sought to be made after 18 years, that too, after the retirement of the incumbent and the same was restrained. Considering the same, the writ petition was allowed and the proceedings of the third appellant/fourth respondent was quashed.

3.Admittedly, there is no allegation that the first respondent/writ petitioner had mis-represented and secured higher financial benefit. The financial benefit was extended by applying G.O.Ms.NO.250 Finance (CMP) Department dated 21.03.1994 and the first respondent/writ petitioner was enjoying the financial benefits accordingly, and also had been moved over the Selection Grade Fitter.

4.In such circumstances, we are of the view that the Writ Court was fully justified in allowing the writ petition and quashing the order passed by the fourth appellant. The faint plea which was raised by the appellant is that the first respondent/writ petitioner



has given an undertaking while the scale of pay was extended to him. Such undertakings are obtained from all employees and those undertakings are signed in blank format and in any event, the appellant cannot put such undertaking against the first respondent/writ petitioner after his retirement on attaining the age of superannuation.

5.Thus, no doubt that there are no grounds for interfering with the order passed in the writ petition. Accordingly, the writ appeal stands dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1.The Chief Engineer,
Public Works Department,
Construction and Maintenance Division,
Chepauk,
Chennai-600 005.

2.The Executive Engineer,
Public Works Department,
Construction and Maintenance Division,
Trichy-1.

3.The Assistant Executive Engineer,
Public Works Department,
RC Sub Division,
Trichy-1.

+One cc to Mr.G.Thalaimutharasu, Advocate, SR.No.50648
+One cc to The Special Government Pleader, SR.No.50769

mrn/rmk

RL/6C/3P/KK/SAR4/8/3/2018

Writ Appeal (MD).No.254 of 2018