

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.21182 OF 2009

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus directing the respondents to restore the Special Grade Promotion Scale in the cadre of Assistant Engineer of the petitioner in terms of Memo dated 7.1.1999 with all arrears along with interest at the rate of 10% per annum by setting aside the impugned Memos dated 5.7.2007; 8.8.2005 and 22.4.2003 including circular memo dated 1.6.1991 of the 1st respondent-Board.

2. Heard Sri B.M. Patro, learned Counsel for the petitioner and Sri N. Siva Reddy, learned Standing Counsel for the respondents.

3. It is the case of the petitioner that he was appointed as Assistant Engineer on 7.7.1989 and his services were regularized with effect from 9.7.1990. Subsequently, he was promoted to the Assistant Divisional Engineer on 20.6.1998. However, he was not relieved till 8.9.1998 from the post of Assistant Engineer and he joined in the promoted post of Assistant Divisional Engineer on 17.9.1998. He was extended Special Grade Promotion Scale in the category of Assistant Engineer with effect from 9.7.1998 vide memo dated 7.1.1999.

Subsequently, the Special Grade Promotion Scale was withdrawn vide order dated 22.4.2003 on the ground that the petitioner had not completed eight years of service in the cadre of Assistant Engineer. Thereafter, the petitioner preferred appeal before the authority concerned. The appellate authority rejected his claim vide order dated 8.8.2005. The petitioner further carried the matter to the next superior authority but his claim was rejected vide proceedings dated 5.7.2007. It is the case of the petitioner that he completed 8 years of service in the cadre of Assistant Engineer and though promotion orders were issued on 20.6.1998 to the next higher post of Assistant Divisional Engineer, but he was relieved from the post of Assistant Engineer after completion of eight years of service i.e., on 8.9.1998. Thus, he is fully eligible to receive Special Grade Promotion Scale. But the claim of the petitioner was rejected in terms of Board Circular dated 1.6.1991. Therefore, the action of the respondents in withdrawing the Special Grade Promotion Scale already extended to the petitioner is illegal and arbitrary.

4. Learned Counsel for the petitioner contended that the Circular dated 1.6.1991, in terms of which the Special Grade Promotion Scale given to the petitioner was cancelled, was withdrawn by another circular dated 11.12.2013, however with prospective effect. He further contended that the petitioner

completed eight years of service in the post of Assistant Engineer and therefore, there is no justification in withdrawing the Special Grade Promotion Scale to the petitioner.

5. Learned Standing Counsel for the respondents has not disputed about the withdrawal of circular dated 1.6.1991 vide circular dated 11.12.2013, however, he contended that since the said circular was withdrawn with prospective effect, the same cannot be given retrospective effect.

6. This Court has considered the submissions made by the parties and the material available on record. Admittedly, in the instant case, the petitioner has completed eight years of service as Assistant Engineer i.e., from 7.7.1989 to 8.9.1998. In view of eight years of service rendered in the cadre of Assistant Engineer, the petitioner is entitled to receive eight years Special Grade Promotion Scale. The respondents have rightly granted the said Special Grade Promotion Scale vide proceedings dated 7.1.1999 with effect from 9.7.1998 and they erroneously withdrew the said orders vide proceedings dated 22.4.2003. Therefore, the said proceedings dated 22.4.2003 are set aside.

7. Accordingly, the Writ Petition is allowed and the respondents are directed to release eight years Special Grade Promotion Scale to the petitioner with all consequential

benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated:4th October, 2018.
Nn.



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4/10/2018

Nn.