

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.22956 of 2004
and
WP.MP.Nos.27766 of 2004 & 21586 of 2005
and
WV.MP.No.1540 of 2005

N.Franklin David ...Petitioner

Vs

- 1.The Government of Tamil Nadu
Rep. by The Secretary to Govt.,
Health and Family Welfare Dept.,
Fort St.George, Chennai-600 009.
- 2.The Director,
Tamil Nadu State Health
Transport Dept.,
Guindy, Chennai-600 032.
- 3.The Automobile Engineer,
Regional Workshop (Health),
Guindy, Chennai-600 032. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in R.No.239/A1/02-22 dated 22.12.2003 and the consequential order of the third respondent in Se.Mu.Na.Ka.No.2052/A2/2004 dated 11.06.2004 and quash the same and direct the second respondent to restore the pay fixation as existed prior to the issue of the impugned order and grant all consequential benefits to the Petitioner.

For Petitioner : Mr.K.P.Magesh Kumar
for Mr.P.Rajendran

For Respondents: Mr.S.Suresh Kumar, GA

O R D E R

The petitioner who was initially appointed as a Helper (Mechanical) on 04.12.1985, was reclassified as Fitter Grade - II on 23.11.1992. The post of Fitter and Fitter Grade - II came to be merged and designated as Fitter Grade - II in the scale of 950-1500, with effect from 01.06.1998 notionally for the post on fixation of pay with monetary benefits. Accordingly, the petitioner's pay was fixed in the selection grade scale of Fitter Grade - II, with effect from 04.12.1995.

2. By the impugned order dated 22.12.2003, the petitioner's scale of pay was revised for the period from 04.12.1995 to 01.06.1998 and consequently, his pay came to be re-fixed at a lower stage. In the impugned order dated 22.12.2003, the 3rd respondent herein had also issued an order of recovery of the excess pay alone. The consequent order of recovery dated 11.06.2004 as well as the earlier order dated 22.12.2003 are impugned in the present writ petition.

3. The learned counsel for the petitioner, by relying upon the decision of this Court dated 05.09.2017 passed in WP.Nos.25326 and 28225 of 2004 submitted that, once the post is merged and re-designated, the services rendered in the post prior to the merger shall be treated as qualifying service in the re-designated category for the purpose of awarding selection grade and therefore, the impugned order re-fixing the date of selection grade at a lower stage, is impermissible.

4. The learned Government Advocate submitted that as per the Government instructions dated 25.08.1994, the services rendered in the post of Fitter Grade - II alone should be taken into account for awarding selection grade in the merged post of Fitter Grade - II and prior to 01.06.1998 should not be taken into account for awarding selection grade in the merged post of Fitter Grade - II. As per the Government instructions, the petitioner is not entitled to get the selection grade by counting the qualifying service from the date of appointment of Helper i.e., 04.12.1985. As such, the Government Advocate submitted that the petitioner is liable to get selection grade with effect from 01.06.1998, on which date, the post of Fitter and Fitter Grade - II came to be merged and re-designated as Fitter Grade - II.

5. The order impugned as well as the submissions of the learned Government Advocate, cannot be sustained, in view of the decision of the Division Bench of this Court

in the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, No.1, Pumping Station Road, Chintadripet, Chennai-2 and another vs. M.Umar Farooq Hussain and others reported in 2006 (4) CTC 828, wherein it was held that once the posts are merged and re-designated, the services rendered in the post prior to the merger shall be treated as qualifying services in the re-designated category for the purpose of awarding selection grade.

6. The decision of the Hon'ble Division Bench of this Court is also followed by the learned Judge of this Court in the order passed in WP.Nos.25326 and 28225 of 2004 dated 05.09.2017. The said order also arose from the same department of the respondent herein. The aforesaid order dated 05.09.2017 reads as follows:

"5. To substantiate his stand, the learned Counsel for the petitioners would rely on a decision of this Court in the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, No.1, Pumping Station Road, Chintadripet, Chennai-2 and another vs. M.Umar Farooq Hussain and others reported in 2006 (4) CTC 828. It is useful to refer para 10 of the said decision, in which this Court has held as follows:

"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 redesignated 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 Officers 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 'redesignation', 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.''

6. Per contra, the learned Government Advocate has filed a counter affidavit and would submit that by the impugned orders passed by the 1st respondent dated 26.2.2004 and 22.01.2004 respectively, the services rendered by the petitioners in Fitter Grade II alone have been taken into account for awarding Selection Grade/Special Grade in the merged post of Fitter Grade-II. The services rendered in the posts of Fitter and Helper prior to 01.06.1988 should not be taken into account for awarding selection grade. Accordingly, the impugned order passed by the 1st respondent dated 26.2.2004 and 22.01.2004 and the consequential order of the 2nd respondent dated 11.06.2004 and 23.08.2004 are perfectly right

and did not call for any interference at the hands of this Court.

7. I have considered the submissions made on either side and I have also perused the materials available on record.

8. A perusal of the Counter Affidavit filed by the 2nd respondent would go to show that the Government admitted that as per G.O.Ms.No.714, Finance (Pay Cell) Department, dated 23.8.1994, the post of Fitter and the Fitter Grade-II which are on the same scale of pay and the same posts are merged and designated as Fitter Grade-II. Accordingly, taking into account the services rendered in the posts of Fitter and Fitter Grade-II, after completion of 10 years, the petitioner was initially awarded Selection Grade and subsequently, the same was cancelled on the ground that Fitter Grade-II alone would be considered. That settled position is contrary to the judgment of this Court as stated supra.

9. In this regard, the Division Bench of this Court categorically held that once the posts are merged and after merger and re-designation of the posts, the services rendered in the post prior to merger shall be treated as qualifying service in the re-designated category for the purpose of awarding selection grade. The categorical decision held by this Court is squarely applicable to the present case on hand."

7. The above orders are self explanatory. As such, the respondents may not be justified in stating that the petitioner is liable to get selection grade from the date of merger and not from the date of initial appointment. Consequently, the impugned recovery order also is liable to be set aside.

8. In view of the aforesaid discussions, the order of the third respondent in Se.Mu.Na.Ka.No.2052/A2/2004 dated 11.06.2004, is quashed, insofar as the petitioner herein is concerned. Consequently, the 2nd respondent is directed to restore the pay fixation of the petitioner herein as it existed prior to the impugned order dated 22.12.2003.

9. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

hvk
To

1.The Secretary to Govt.,
Health and Family Welfare Dept.,
Fort St.George, Chennai-600 009.

2.The Director,
Tamil Nadu State Health
Transport Dept.,
Guindy, Chennai-600 032.

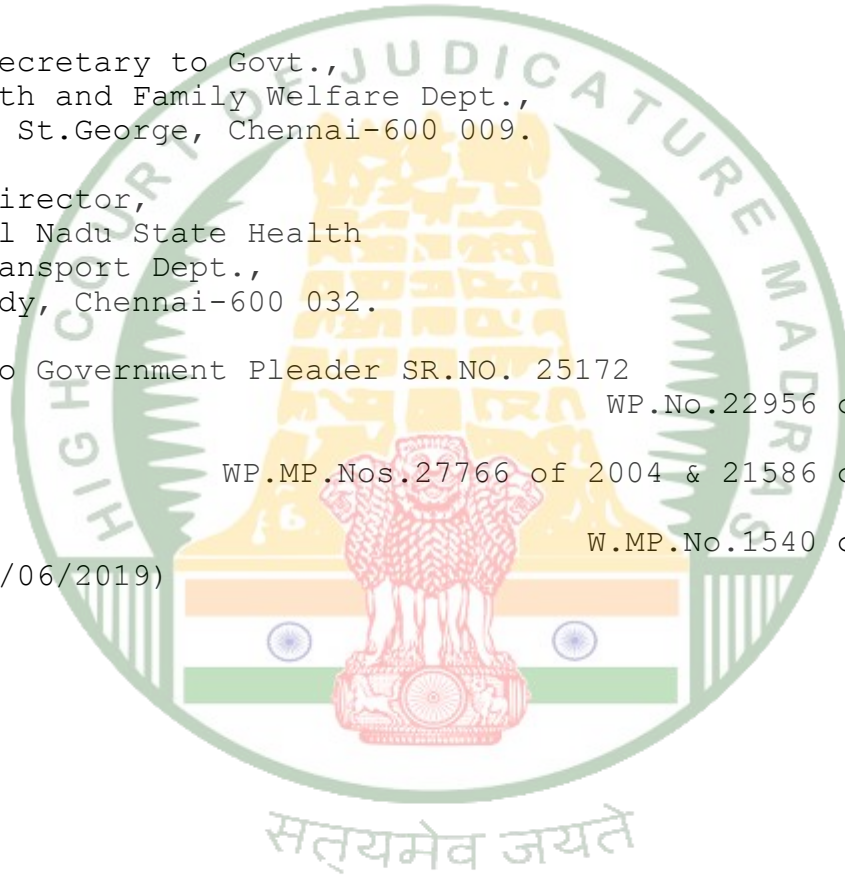
+1 cc to Government Pleader SR.NO. 25172

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A.SK (13/06/2019)



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