IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.35769 of 2004
and
WPMP.37 of 2007 & WPMP.53 of 2015

1.M.R.Prasad (now deceased)

2.Kanaka

3.Poongothai

4.Parimala

5.Thirupurasundari

(Petitioners 2 to 5 are substituted as Lrs' in the place of deceased petitioner as per order dated 29.03.2012 by SNJ in WPMP.49/2012 in W.P.35769/2004) ...Petitioners

Vs.

1.The State of Tamil Nadu
rep. by the Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner and Director of
Survey and Settlements,
Chepauk, Chennai-600 005.

3.The Assistant Director of Survey &
Land Records,
Kancheepuram. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the Government Letter (D) No.120, Revenue Department, dated 10.02.2004 on the file of the first respondent and to quash the same and consequently (i)to direct the respondents to fix the petitioner's pay in the promoted posts of (a)Deputy Inspector from 08.11.1989 to 26.01.1994 and (b) Inspector from 29.01.1994 to 31.10.1996 as per the provisions under the Fundamental Rules on par with his junior, Thiru N.Rajendran on 31.10.1996 at Rs.7,300/- and (ii) to sanction revised retiral benefits from 01.11.1996.

For Petitioners : Mr.T.N.Sugesh

For Respondents : Mrs.K.Bhuvaneswari, AGP

O R D E R

Heard Mr.T.N.Sugesh, learned counsel for the petitioner and Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing on behalf of the respondents.

2. The brief facts of the case is as follows:

a) The petitioner herein was initially appointed as a Field Surveyor in the year 1963 and was promoted as Sub Inspector of Survey in the year 1973. After completion of 10 years of service, he was awarded with the Selection Grade post of Sub Inspector of Survey with effect from 01.10.1984 and on completion of 20 years, he was awarded with the post of Special Grade Sub Inspector of Survey.

b) A criminal case came to be filed against the petitioner by the Directorate of Vigilance and Anti-corruption, Chengalpet, which ended in conviction. On appeal, the petitioner came to be acquitted from the criminal case through a judgment and order dated 06.11.1996. In the meantime, the petitioner had reached the age of superannuation on 31.10.1996 and in view of the pendency of the criminal appeal, the petitioner's services were ordered to be retained. After the acquittal, the petitioner was permitted to retire from service with effect from 31.10.1996 through G.O.(2D) Ms.326, Revenue Department, dated 24.12.1997 with further directions to regularize the services of the petitioner as per the rules and settle his terminal benefits. The petitioner's request for settlement of retirement benefits came to be rejected on the ground that his pay cannot be fixed notionally on the basis of G.O.Ms.203, Personnel and Administrative Reforms Department, dated 30.10.2000, since his case was already decided by G.O.Ms.2D No.326, Revenue Department, dated 24.12.1997 and the benefit of pay which was due to the petitioner by promotion was received by him in the post of Special Grade Sub Inspector and he had also received the retiral benefits based on the last pay drawn in the post of Special Grade Sub Inspector. The said order of rejection dated 10.02.2004 is under challenge in the present Writ Petition.

3. It is the submission of the learned counsel for the petitioner that the Additional Director in his proceedings dated 20.08.1989 had ordered promotion to the petitioner as Deputy Inspector with effect from 08.11.1989 and as Inspector from 27.01.1994. In order to enable the petitioner to derive monetary benefits in these promotional posts, sanction for such supernumerary posts of Deputy Inspector and Inspector from 08.11.1989 and to the post of Inspector from 27.01.1994 to 31.10.1996 respectively was sought for in accordance with the guidelines in G.O.Ms.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993. According to the learned counsel, the second respondent's reliance on G.O.Ms.203, Personnel and Administrative Reforms Department, dated 30.10.2000 is not applicable, since the said G.O. relates to departmental disciplinary cases and notional promotion to Government servants, whose names were not originally included in the promotional panel and subsequently, ordered to be included in the appropriate place, pursuant to the order passed on appeal or revision. He would submit that since two of the juniors to the petitioner were regularized as Deputy Surveyors from 04.12.1971, the petitioner is also entitled to be regularized from the same date. The learned counsel further submitted that the pay fixation ought to have been done in the posts of Deputy Inspector from 08.11.1989 and in the post of Inspector from 27.01.1994 in the then existing scale of pay, on par with the petitioner's juniors and since G.O.Ms.203, Personnel and Administrative Reforms Department, dated 30.10.2000 is not applicable to the case of the petitioner, the impugned order is liable to be rejected.

4. The learned Additional Government Pleader, reiterated the grounds raised in the counter affidavit and submitted that the petitioner's pay cannot be fixed notionally since his case was already decided by G.O.Ms.326, Revenue Department dated 24.12.1997 and the benefit of pay, which was due to the petitioner by promotion was received by him in the post of Special Grade Sub Inspector and he has also received the retirement benefits based on the pay drawn in the post of Special Grade Sub Inspector. Hence, the learned Additional Government Pleader submitted that the petitioner was not deemed fit to get advancement in the category of Sub Inspector of Survey on par with his juniors.

5. I have given careful consideration to the submissions made by the respective counsels.

6. This is not a case where the petitioner had been levied with a penalty or imposed with a punishment of any proved charge. When the petitioner was implicated in a criminal proceeding, he came to be suspended from his service and

subsequently, when he was acquitted from the criminal charges through a judgment dated 06.11.1996 passed in Crl.A.No.684 of 1995, he was permitted to retire on 31.10.1996 and was also given the promotions as Deputy Inspector and Inspector. In normal circumstances, when an employee is not imposed with a penalty or punishment, he requires to be extended with all the benefits, which he would have normally been entitled to, if had he been promoted. It is not in dispute that apart from the petitioner being implicated in the criminal case, there was no other proved charges against him. Subsequently, when the petitioner was acquitted from the criminal case, his record stands cleared of all the black marks, thereby entitling him for the entire consequential benefits.

7. In the instant case, after the order of acquittal, the first respondent herein had revoked the order of suspension on 24.12.1997 and permitted the petitioner to retire on 31.10.1996. This was also done after a delay of more than 10 months. As per the said order, the petitioner was permitted to retire; his services were ordered to be regularized and the terminal benefits was directed to be settled in accordance with the rules. From the records produced before this Court, it is seen that the second respondent herein through his proceedings dated 29.01.1998, had issued a comprehensive order of regularization for the period of suspension, including other services and monetary benefits. Consequently on 02.12.1998, the second respondent had requested the first respondent to sanction one supernumerary post of Deputy Inspector for the period between 08.11.1989 to 26.01.1994 and one supernumerary post for the post of Inspector from 27.01.1994 to 31.10.1996. Thereafter, there was a considerable delay for almost 2 years, after the first respondent had returned all the service records of the petitioner for re-examination in the light of the order issued in G.O.Ms.203, Personnel and Administrative Reforms Department, dated 30.10.2000. After consistent persuasion from the petitioner, the first respondent had issued the impugned order dated 10.02.2004, after nearly 3 years, rejecting the petitioner's request on the ground that the pay could not be fixed notionally on the basis of G.O.Ms.203, Personnel and Administrative Reforms Department, dated 30.10.2000, as his case was already decided by G.O.(2D) Ms.326, Revenue Department, dated 24.12.1997. The further reason for the rejection is that the benefit of pay which was given to the petitioner by promotion was received by him in the post of Special Grade Sub Inspector and he has also been paid the retiral benefits based on the pay drawn in the post of Special Grade Sub Inspector.

8. Before addressing as to the correctness of the impugned order rejecting the petitioner's request for notional fixation on the basis of G.O.Ms.203, Personnel and Administrative Reforms

Department, dated 30.10.2000, the careless manner in which the respondents had considered the petitioner's request with an inordinate delay, requires to be taken note of. The impugned order dated 10.02.2004 came to be passed after more than 8 ½ years from the date of his acquittal. In the cases of Government Servants, instructions have been issued in G.O.Ms.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993 to the effect that when promotions and other benefits have been deferred, the head of the department is required to take Suo Moto action, within 15 days from the date of issue of final orders in the criminal cases. When the petitioner was acquitted on 06.11.1996, the G.O.Ms.(2D) 326, Revenue Department, dated 24.12.1997 came to be passed after more than one year, permitting the petitioner to retire by revoking the order of suspension. There is absolutely no explanation for this inordinate delay to an employee, who had reached his age of superannuation on 31.10.1996. Even after this, when the petitioner had been insisting for his rightful settlement of the monetary benefits by duly recognizing his services along with his entitled promotions, the rejection order came to be passed after almost 8 ½ years. As a matter of fact, the second respondent had also recommended through his letter dated 02.12.1998, for sanctioning of one supernumerary posts of Deputy Inspector and Inspector from 08.11.1989 and 27.01.1994 respectively to facilitate the services and monetary benefits of the petitioner, which has been disregarded in the impugned order by the first respondent. This delay is not only unexplained but is also unjustifiable. The Hon'ble Apex Court in the case of S.S. Rathore V. State of Madhya Pradesh reported in 1989 (4) SCC 532 has deprecated the inordinate delay on the part of the authorities to redress the request of the employees and held that such matters should be disposed of within a period of three to six months. Likewise, the decision in the case of The State of Bihar & others V. Subhash Singh reported in AIR 1997 SC 1390, the Hon'ble Apex Court had held that the bureaucracy is also accountable to the Courts as to whether procedural part of administrative action has been performed by them in accordance with the rules and orders on the subject. The inordinate delay in considering the petitioner's rightful claims, particularly, when more than 8 years have passed since his date of retirement, would have caused serious prejudice to an employee, who has been acquitted of the criminal charge. On this ground of careless manner in which the respondents had dealt with the case of the petitioner also, the Writ Petition deserves to be allowed.

9. Insofar as the reasoning of the first respondent in rejecting the petitioner's rightful claim is concerned, it is brought to the notice of this Court that two of the juniors of the petitioner namely, N.Rajendran and J.Harikrishnan, who had served as Deputy Surveyors, were regularized with effect from

04.12.1971. As observed earlier in this order, G.O.Ms.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993, provides that when an employee is acquitted from the criminal charges and if found otherwise suitable, he shall be given promotion with retrospective effect from the date on which his junior was promoted. Accordingly, the pay fixation of the petitioner ought to have been done in the post of Deputy Inspector from 08.11.1989 and in the post of Inspector from 27.01.1984, by taking into account the then existing scales of pay and the pay as Inspector as on 31.10.1996, ought to have taken into account for retiral benefits. Accordingly, the petitioner's pay as Inspector ought to have been on par with his junior N.Rajendran as per the proceedings of the Assistant Director dated 06.07.2002. Consequently, his retiral benefits is also revise from 01.11.1996. While that being so, there is absolutely no justification on the part of the first respondent to hold that the petitioner's pay cannot be notionally fixed on the basis of G.O.Ms.203, Personnel and Administrative Reforms Department, dated 30.10.2000, since his case was already decided by G.O.(2D) Ms.326, Revenue Department, dated 24.12.1997. As a consequence of that, it can only be held that the petitioner's pay requires to be re-fixed in the promoted post of Deputy Inspector from 08.11.1989 and to the post of Inspector from 27.01.1994.

10. For all the foregoing reasons, I do not find any justification in the impugned order passed by the first respondent herein dated 10.02.2004. Accordingly, the Government letter (D) No.120, Revenue Department, dated 10.02.2004, is hereby quashed. Consequently, the first respondent herein is directed to fix the petitioner's pay in the posts of Deputy Inspector of Survey and Land Records and Inspector with effect from 08.11.1989 and 27.01.1994 respectively and thereby, sanction the entire revised retirement benefits with effect from 01.11.1996 to the legal heirs of Late M.R. Prasad, (retired Selection Grade Sub Inspector of Survey) namely, the petitioners 2 to 5 herein. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above observations and directions, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Secretary to Government,
State of Tamil Nadu
Revenue Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner and Director of
Survey and Settlements,
Chepauk, Chennai-600 005.

3.The Assistant Director of Survey &
Land Records,
Kancheepuram.

+1cc to Mr. T.N.Sugesh, Advocate, S.R.No. 42969
+1cc to the Government Pleader, S.R.No. 43302

W.P.No.35769 of 2004
and
WPMP.37 of 2007 &
WPMP.53 of 2015

VP(CO)
GN(22/08/2019)