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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.22191 of 2013

D.Lourduraj

... Petitioner

Vs

1.Government of Tamil Nadu,
Represented by the Principal Secretary
to Government,
Micro, Small and medium Enterprises,
[E.I.2] Department,
Secretariat, Chennai - 600 009.

2.The Commissioner and Director
of Industries and Commerce,
Chemical wing,
Canal Road, Mandaveli,
Chennai 600 028.

3.The Joint Director(Chemicals)
Department of Industries & Commerce,
Chemical Testing & Analysis Laboratory,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 600 032.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to (1) Government letter (Ms)No.17 dated 11.07.2011 of the first Respondent, to the limited extent of grant of monetary benefits from 2.6.2010, instead of from 12.05.1987, (2) Pro.No.3817/BC3/2006 dated 02.11.2011 of the second Respondent, to the limited extent of fixation of the petitioner's eligibility for monetary benefit with effect from 02.06.2010 and (3)Pro.Rc.No.3817/BC3/2006 dated 04.06.2011 of the second Respondent and to quash the same and to consequently direct the respondents herein to grant all monetary benefits that flow from retrospective regularisation of his services from 12.5.1987, instead of from 02.06.2010 and to grant consequential promotion to the petitioner to the higher posts



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such as skilled Assistant Grade II, Grade I and Instructor with retrospective effect on par with his immediate juniors to the said posts with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents: Ms.A.Shrijayanthi,
Special Government Pleader

O R D E R

The instant writ petition is for a Writ of Certiorarified Mandamus calling for the records relating to:- (1) Government letter (Ms)No.17 dated 11.07.2011 of the first Respondent, to the limited extent of grant of monetary benefits from 02.06.2010, instead of 12.05.1987, (2) Pro.No.3817/BC3/2006 dated 02.11.2011 of the second Respondent, to the limited extent of fixation of the petitioner's eligibility for monetary benefit with effect from 02.06.2010 and (3)Pro.Rc.No.3817/BC3/2006 dated 04.06.2011 of the second Respondent and to quash the same and to consequently direct the respondents herein to grant all monetary benefits that flow from retrospective regularization of his services from 12.05.1987, instead of from 02.06.2010 and to grant consequential promotion to the petitioner to the higher posts such as skilled Assistant Grade II, Grade I and Instructor with retrospective effect on par with his immediate juniors to the said posts with all consequential benefits.

2.The petitioner was appointed as an unskilled worker in Scientific Glass Training Center on a daily wage basis. He was later appointed on a regular basis on 12.05.1982 and he continued to work in the said post. The petitioner thereafter filed O.A.No.2346 of 1996 seeking for regular scale of pay with effect from 04.03.1981. The Tribunal by an order dated 30.07.1998 directed the respondents to fix the time scale of pay on the basis of service rendered with effect from 12.05.1982. The respondents filed a review application challenging the order dated 30.07.1998 and the same was dismissed on 24.11.1999.

3.The petitioner states that instead of complying with the orders dated 30.07.1998 and 24.11.1999, the first respondent passed G.O[4D].No.17, Small Industries Department dated 4.4.2000, regularizing the services of the petitioner from 31.07.1997. Challenging the same, the petitioner filed O.A.No.5306 of 2001. O.A.No.5306 of 2001 was later transferred to this Court and renumbered as W.P.No.32186 of 2005. This Court placed reliance on G.O.MS.107 P&AR Department, dated 12.03.1987,



to hold that the petitioner was entitled to be brought into time scale of pay with effect from 12.05.1982. This Court observed that though the Tribunal has ordered to fix the pay of the petitioner in the time scale of pay with effect from 12.05.1982, the petitioner would be entitled to be brought into regular time scale of pay with effect 12.05.1987, ie., after five years of service from 12.05.1982, the date of original appointment.

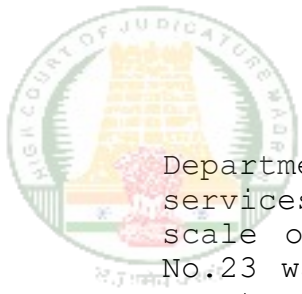
4.The order dated 06.02.2006 in W.P.No.32186 of 2005 was carried in appeal by the respondents before a Division Bench in W.A.No.48 of 2007. The Division Bench by an order dated 30.04.2008 dismissed the appeal.

5.In compliance with the order of the Division Bench, the respondents brought in G.O.(4D).No.23, Micro, Small and Medium Enterprises(EI.2) Department, dated 02.06.2010. The operative portion of the order reads as under:

"After careful consideration, the Government have decided to accept the proposal of the Industries Commissioner and Director of Industries and Commerce at para-3 above to regularize the services of Thiru D.Lourduraj, unskilled worker now working at Government Production centre for scientific Glass apparatus, Coimbatore, retrospectively with effect from 12.5.1987 in the time Scale of pay of Rs.450-10-570-15.720/- taking into consideration of the continuous services rendered with effect form 12.5.1982 instead of 31.7.1997 as ordered in G.O.(4D).No.17 Small Industries Department dated 4.4.2000.

5.The Industries Commissioner and Director of Industries and Commerce has also been instructed that it is considered only as a special case and it should not open the flood gate of similar cases."

6.A perusal of the said order would reveal that the Government had decided to regularize the services of the petitioner/unskilled worker retrospectively with effect from 12.05.1987 in the time scale of pay of Rs.450-10-570-15.720/-taking into account the continuous services rendered with effect from 12.05.1982 instead of 31.07.1997 as ordered in G.O.(4D).No.17 Small Industries Department dated 04.04.2000. The Government passed G.O.(4D).No.17, Small Industries Department, dated 04.04.2000, wherein the petitioner services was regularized from 31.07.1997, ie., the date from which the services of his immediate junior was regularized. The effect of G.O.(4D).No.23, dated 02.06.2010, is that the Government had factually withdrawn the G.O.(4D).No.17, Small Industries



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Department dated, 04.04.2000 and decided to regularize the services of petitioner with effect from 12.05.1987 in the time scale of pay of Rs.450-10-570-15.720/-. The result of G.O.(4D) No.23 was therefore that the petitioner was entitled to get the monetary benefits from 12.05.1987.

7.The Government thereafter passed the impugned Letter(Ms) No.17, MSME(EI.2) Department, dated 11.07.2011. In the said letter the Government decided to give monetary benefits to the petitioner only from the date of the G.O.(4D) No.23, M.S.M.E [EI.2], Department ie., 02.06.2010 instead of 12.05.1987 as stated in G.O.(4D) No.23, M.S.M.E[EI.2]. On the issue as to whether the petitioner was entitled to get promotional benefits after being regularized with effect from 12.05.1987, the Government by proceedings in Rc.No.3817/BC.3/2006, dated 04.06.2011 stated that at present there is no panel for promotion to the post of Skilled Worker, Grade-II and as and when the necessity arises, the panel will be drawn as per rules in force and the individual will duly be informed of it. The letter dated 11.07.2011 and the order dated 04.06.2011 are subject matter of challenge in the instant writ petition.

8.Heard, the learned counsel for both parties.

9.The learned counsel for the petitioner would contend that after passing of the Government order dated 02.06.2010, wherein the Government had decided to regularize the services of the petitioner/unskilled worker retrospectively with effect from 12.05.1987 in the time scale of pay of Rs.450-10-570-15.720/-, the Government could not have gone back on this Government Order and restricted the monetary benefits from 02.06.2010 ie., the date of the Government Order. He would also state that once the petitioner services has been regularized retrospectively with effect from 12.05.1987, he would be entitled to consequential benefits like promotion forthwith.

10.The respondents have filed a counter. The respondents have stated that the petitioner is been given monetary benefits only from 02.06.2010 because of his conduct in the Department. The respondents have also stated that the period of service from 12.05.1987 cannot be counted towards monetary and other benefits. The learned counsel for the respondent would rely on paragraph nos.6 and 10 of the counter affidavit which reads as under:

"6.With reference to the averments made in paragraph 6 of the affidavit, it is submitted that the orders of the Division Bench of this Hon'ble Court in W.A.No.48/2007, dated 30.04.2008 is obeyed by the 1st



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respondent and the Government have issued orders in G.O.(4D) No.23, Micro, Small Medium Enterprises Department, dated 02.06.2010 regularizing the services of the petitioner from 12.05.1987. It is also submitted that the contention of the petitioner that he was assured for all benefits is false. In fact in the counter affidavit filed in C.A.No.987/2011, it was submitted to this Hon'ble Court about his service details such as irregular in attending office, disciplinary action taken by the department against the petitioner etc. At the time of hearing, the Division Bench of this Hon'ble Court made a serious note on the habitual absence of the petitioner from the duty. On the next hearing date the petitioner has withdrawn the case on the fear of any serious order would be passed by the Division Bench of this Hon'ble High Court against the petitioner. It is being the fact, the petitioner's contention that he has withdrawn the contempt application on the assurance that all the benefits would follow is totally false.

10. With reference to the averments made in paragraph 11 of the affidavit, it is submitted that the petitioner had served only as daily wage worker continuously with effect from 12.05.1982. Subsequently, in G.O(4D) No.17, Small Industries EI(2) Department, dated 04.04.2000, he was appointed as unskilled worker with effect from 31.01.1997 in the time scale of pay by relaxing rule 10 A(a) of General Rules for the Tamil Nadu State and Subordinate Services relating to consulting the Employment Exchange in favour of the petitioner. Since, the appointment of the petitioner involved retrospective regularization duly relaxing the relevant rule relating to the Method of Appointment, the claim made by the petitioner for monetary benefits with effect from the date of his retrospective regularization is not sustainable under law. However, notional pay fixation was ordered to him so as to get the retirement benefits for the services rendered by him from the date of his retrospective regularization. The petitioner even after appointment as unskilled worker from 31.07.1997 has not attended office regularly. The petitioner is a habitual absentee from duty. The petitioner has availed 761 days of leave in 66 spells from 01.07.2000 to 06.07.2010. Further the petitioner is on unauthorized absence from duty from 01.08.2010 to 02.10.2011 for 14 months. During the year 2011 to 2012 also he has not attended office regularly. Now



13.The writ petition is allowed. The impugned orders are set aside. The monetary benefits are directed to be released within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsg

To

- 1.Government of Tamil Nadu,
Represented by the Principal Secretary
to Government,
Micro, Small and medium Enterprises,
[E.I.2] Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner and Director
of Industries and Commerce,
Chemical wing,
Canal Road, Mandaveli,
Chennai 600 028.
- 3.The Joint Director(Chemicals)
Department of Industries & Commerce,
Chemical Testing & Analysis Laboratory,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 600 032.

+lcc to Mr.M.Ravi, Advocate sr.87838
+lcc to Government Pleader SR.NO. 87390

W.P.No.22191 of 2013

ca(co)
nr 23/01/2020