

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.29115 OF 2012

AND M.P.NO.1 OF 2012

1.G.Muralidoss
2.J.Rajendran
3.S.Aynamohammed

... Petitioners

Vs.

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

2.The Chief Engineer
Highways
Chepauk, Chennai - 600 005.

3.The Divisional Engineer (Highways)
Cuddalore - 607 001.

4.The Accountant General
Accountant General's Office
Chennai - 600 018.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to refix the pension and superannuation benefits of the petitioners after granting Special Grade with effect from the petitioners became entitled and refixing the pay of the petitioner in the Special Grade of Pay as indicated in Schedule II of the Tamil Nadu Revised Scales of Pay Rules, 1998 with effect from 01.01.1996 as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 and consequently pay the arrears of pension and superannuation benefits together with interest on the said sums.

For Petitioner : ***Sundar Narayan for**

***M/s.R.Sunil Kumar**

For Respondents: Ms.R.Janaki

1 to 3

Additional Government Pleader

For Respondent 4: Mr.S.Balaji

O R D E R

The petitioners were employed as Cleaners in a work charged establishment with effect from 27.01.1971, 07.08.1974 and 20.09.1974 respectively. Thereafter, they were promoted as Drivers with effect from 08.06.1978, 16.02.1983 and 03.09.1981 respectively. After completion of ten years of service, they were granted Selection Grade with effect from 10.06.1988, 17.02.1993 and 03.09.1991 respectively. After that, they attained the age of superannuation and were permitted to retire from service on 30.09.2009, 31.10.2011 and 28.02.2009 respectively.

2. The grievance of the petitioners is that after completion of ten years of service and after getting Selection Grade of pay, they were not given Special Grade of Pay. Special Grade of Pay was due to them with effect from 10.06.1998, 16.01.2003 and 03.09.2001 respectively. Aggrieved over the same, they have filed the present writ petition in the year 2012.

3. The respondents denied all the allegations by filing counter affidavit.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 has stuck to the stand taken by the respondents 1 to 3 in the counter affidavit and argued that the promotion of the first and third petitioners were ratified only with effect from 23.02.1987 and in so far as the service of the second petitioner is concerned, it was not at all ratified. Therefore, the petitioners 1 and 3 are entitled to Selection Grade with effect from 23.02.1997 and Special Grade with effect from 23.02.2007. Since the services of the second petitioner was not ratified, he is not entitled to any benefit. The first petitioner was temporarily promoted as Tractor Driver by proceedings No.34/78.B.3 dated 12.06.1978 of the third respondent and he was posted to drive Tractor No.MSY 7571 and he was brought into regular establishment vide Proceedings No.2742/77/A8 dated 18.02.1980 of the Superintending Engineer (H&RW) with effect from 01.01.1977. The Selection Grade of the first petitioner was granted with effect from 10.06.1988 by proceedings of the third respondent in Se.Mu.Ka.No.307/89/A7 dated 18.08.1989. The ordinary scale of pay was fixed at Rs.610 - 1075/- and the Selection Grade of pay was fixed at Rs.705 - 1230/-. Likewise, the second petitioner was appointed as Cleaner and was posted to Villupuram Sub - Division Tractor MSY-5467. He was brought into regular establishment by the Divisional Engineer (H&RW) Villupuram, vide Proceedings No.3322/77/B3 dated 08.12.1982, with effect from 01.01.1980 and Selection Grade pay was granted to him vide Proceedings No.287/95/B3 dated 08.05.1995 of the Divisional Engineer (H & RW) Villupuram. The

Selection Grade of pay was fixed at Rs.1200 - 2040/- on completion of ten years of service on 17.02.1993. Likewise, the third petitioner was also brought into regular establishment and the Selection Grade of pay was fixed at Rs.1200 - 2040/- vide Proceedings No.11180/91/A7 dated 25.09.1991 of the third respondent, with effect from 03.09.1991. Therefore, it is clear that all the three petitioners were brought into regular establishment and were given Selection Grade of Pay on the dates mentioned above.

5. In paragraph no.10 of the counter affidavit filed by the respondent nos.1 to 3, it is stated as follows:

"10.It is submitted that as per the Tamil Nadu Revised Scales of Pay Rules, 1998, notified vide G.O.Ms.No.162, dated 13.04.1998, the said scale of pay was revised from Rs.975/- to 1,660 to Rs.3,200 - 4,900 for Ordinary Grade; from Rs.1,200 - 2040 to 4,000 - 6,000 for Selection Grade and from Rs.1,320 - 2,040 to Rs.4,300 - 6,000 for Special Grade. Thus, as on 01.01.1996, the scale of pay for

Ordinary Grade was Rs.3,200 - 4,900 ;

Selection Grade was Rs.4,000 - 6,000 &

Special Grade was Rs.4,300 - 6,000

The Petitioners are not entitled to claim any pay over and above the above said scale of pay and they have no locus standi to make such claim. The Government had directed that the excess pay be recovered, if any payments had been made over and above the said scales of pay by any Head (s) of Department."

6. The Drivers, who were drawing the salary of Rs.1200 - 2040/- were fixed at Rs.4000 - 6000/- for Selection Grade and from Rs.1320 - 2040/- to Rs.4300 - 6000/- for Special Grade. In the case of the petitioners, Special Grade of pay was not at all sanctioned till they attained the age of superannuation and the pension was also not revised. The stand taken by the Government in the counter affidavit is that the services of the first and third petitioners were ratified by G.O.Ms.No.390, Highways (HM 2) Department, dated 12.09.1997 with effect from 23.02.1987 and therefore, they will be entitled to Selection Grade with effect from 23.02.1997 and Special Grade with effect from 23.02.2007 and whereas the promotion of the second petitioner was not at all ratified and therefore, he is not entitled to any revision in the pay either in Selection or Special grades. Such a stand taken by the Government is contrary to the orders passed by the respondents. Admittedly, the petitioners were brought into regular establishment and were given Selection Grade of pay by the third respondent, at early dates mentioned supra, which is

borne out by records. At this distance point of time, the respondents cannot take a stand that they are not entitled to Selection Grade and Special Grade of pay.

7. In similar circumstances, where the Drivers were fighting for their Selection and Special Grade of pay @ Rs.5000 - 8000 /- and Rs.5500 - 9000/-, a Division Bench of this Court in a batch of writ petitions in W.A.No.1398 of 2013 etc., and batch, vide order dated 08.07.2015, has granted Selection Grade and Special Grades of pay of Rs.4000 - 6000/- and Rs.4300 - 6000/- respectively, and also directed the Government to grant such scales of pay to the employees, who were not even granted the admissible Selection Grade and Special Grade Scales of pay. Paras 42 and 43 of the said order of the Division Bench reads as under:

"42. Therefore, in the result, all the writ petitions filed by the individual employees claiming Selection Grade scale of pay of Rs.5000 - 8000 and Special Grade pay scale of Rs.5500 - 9000 are liable to be dismissed. However, there are a few writ petitions such as W.P.No.23550 of 2010, 5498 of 2012 and 30616 of 2012, where the employees claim that they are not even granted the admissible Selection Grade and Special Grade Scales of pay of Rs.4000 - 6000 and Rs.4300 - 6000 respectively.

43. Therefore, with a clarification that all the petitioners in the writ petitions and the respondents in the writ appeals are entitled only to a Selection Grade scale of pay Rs.4000 - 100 - 6000 and a Special Grade scale of pay of Rs.4300 - 100 - 6000, but not more than that, all the writ petitions filed by the employees are dismissed. All the writ appeals filed either by the State Government or by various Heads of Departments or by various officers of the Government or by various Local Bodies or Boards or Corporations, shall stand allowed....."

8. It is also relevant to state that the Hon'ble Supreme Court in the case of HABIB KHAN VS. STATE OF UTTARAKHAND AND OTHERS in Civil Appeal No.(S) 10806 of 2017 dated 23.08.2017 has held that the service rendered on work charge basis should also be counted for the purpose of computation of service for grant of pension. Therefore, the respondents while fixing the revised pension shall also take into account the service rendered by the petitioners on work charge basis.

9. In view of the material evidence that the petitioners were brought into regular establishment and were given Selection Grade scale of pay with effect from the dates mentioned above in the previous portion of the order, I am inclined to allow the writ petition. Accordingly, a direction is issued to the respondents 1 to 3 to fix the the Special Grade of pay of the petitioners at Rs.4300 - 6000/- from the dates on which it fell due viz., 10.06.1998, 16.01.2003 and 03.09.2001 and accordingly, revise the pension and make payment within a period of twelve weeks from the date of receipt of a copy of this order.

10. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)
Dated : 21/01/2020

***Including the name of Mr.Sundar Narayan
along with Mr.R.Sunil Kumar order dated 30/01/2020**

***Sd/-
Assistant Registrar(CS-III)
Dated : 31/01/2020**

True Copy

Sub-Assistant Registrar

TKTK
To

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

- 2.The Chief Engineer
Highways
Chepauk, Chennai - 600 005.

- 3.The Divisional Engineer (Highways)
Cuddalore - 607 001.

- 4.The Accountant General
Accountant General's Office
Chennai - 600 018.

**To be substituted to the
order already despatched
on 28/01/2020**

+1 CC to Mr. Sundar Narayanan, Advocate sr 105604

+1 CC to Mr.S.Balaji, Advocate sr 105616.

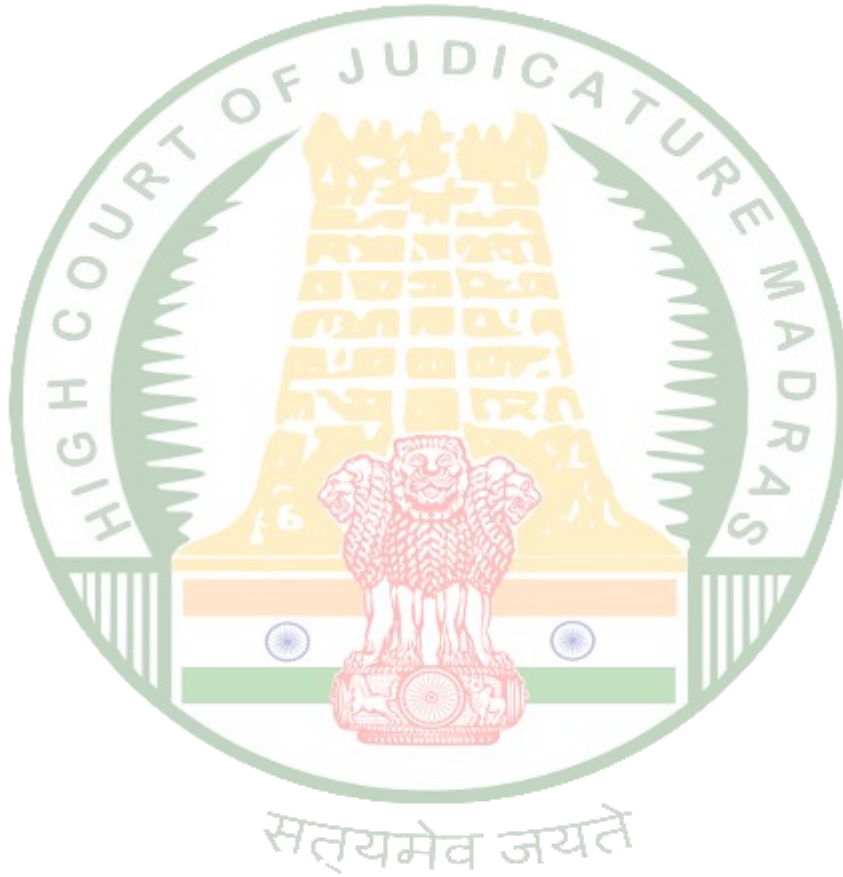
+1 CC to The Govt. Pleader sr 106251.

W.P.NO.29115 OF 2012

NMI (CO)

SP (22/01/2020)

GMV (31/01/2020)



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