

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 4119 of 2014

S.Sikkandar

... Petitioner

Vs

1. The Engineer-in-Chief (Buildings) &
The Chief Engineer (General),
Public Works Department,
Cheppakkam,
Chennai-600 005.

2. The Executive Engineer,
Public Works Department,
Manimuthar Basin Division,
Devakottai.

3. The Principal Accountant General
(A & E) of TN & Puducherry,
No.361, Anna Salai,
Teynampet,
Chennai-600 018.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 13.06.2012 in letter No.S4(3)/46127/2010 and Proceedings of 2nd respondent in 847/E2/2011 dated 10.08.2012 and in 847/E2/2010 dated 19.03.2013 and quash the same and consequently direct the 2nd respondent to implement its own order dated 31.05.2011 passed in proceedings No.847/2010/E2 thereby revised the pay and pension proposals of the petitioner within a time frame as fixed by this Hon'ble Court.

For Petitioner

:Mr.G.Krishna Kumar

For Respondents

:Mr.D.Raja,

Addl. Govt. Pleader for R1 & R2

Mr.V.Murali for R3

O R D E R

This Writ Petition has been filed challenging the order dated 13.06.2012 and the consequential order passed by the 2nd respondent dated 10.08.2012 refusing to regularise the service of the petitioner, who was employed as Work Inspector Grade I in the respondents department.

2. According to the petitioner, he was appointed as Maistry in the year 1960 under the work-charged establishment of the 1st respondent, and his services was regularised on 24.11.1970. Subsequently, the 2nd respondent, in and by its proceedings dated 18.08.1971 passed an order redesignating the post as Work Inspector Grade I, bringing him under the State Subordinate service with effect from 24.01.1970. Even though the petitioner service was regularised with effect from 24.11.1970, he was not paid with the scale of pay applicable to the post of Work Inspector Grade I. Hence, the petitioner was constrained to file an application before the Tamil Nadu Administrative Tribunal in O.A.No.5498 of 1996, and the above Original Application was transferred to this court, and this Court by an order dated 03.08.2009 passed an order directing the respondents to consider the petitioner's request and to decide whether he is entitled to be regularised and to fix the scale of pay based on the appropriate Government Order.

3. Subsequently, the 2nd respondent, the appointing authority in and by its proceedings dated 31.05.2011, was pleased to place the petitioner as Work Inspector Grade I, with effect from 24.11.1970, and also revised his pay proposal. Thereafter, the petitioner's pension proposals sent to the 3rd respondent Principal Accountant General of Tamil Nadu, but it was returned with a direction to send the proposal after his retirement of service. Thereafter, once again the proposal was sent to the 1st respondent and the 1st respondent referring the Government Order passed in G.O.Ms.No.250 rejected the petitioner's claim on 21.03.1994, consequently the 2nd respondent passed the impugned order rejecting the petitioner's request. Now, challenging the same, the present Writ Petition has been filed by the petitioner.

4. The respondents filed counter affidavit stating that, originally, the petitioner was appointed as Maistry on 22.02.1960, under the work-charged establishment and he has continued his service. In the meanwhile, the Government of Tamil Nadu vide G.O.Ms.No.95 dated 09.01.1971 issued an order in respect of the services of members of non-provincialised work-charged establishment of the Public works department with over five years service on 24.11.1970, with effect from the said date. Subsequently, the Government of Tamil Nadu issued an official memorandum dated 20th January 1971, changing the nomenclature of Maistry as Work Inspector Grade I, thereafter, the petitioner was given a redesignation as Work Inspector Grade I. In the said circumstances, the 2nd respondent issued an order regularising the petitioner in the post of Work Inspector Grade I, with effect from 24.11.1970. The Chief Engineer, Public Works Department has received a clarification on the fixation of grades, in which it is explained that the workers, who were put in service upto 20 years should be fixed in Grade II and workers

with 20 years and above should be fixed as Grade I. It is further clarified that the work inspectors, who do not have 20 years of service from 24.11.1970 should be fitted only in Grade I and not in Grade II. Though they were in Grade I prior to the date of their provincialisation on 24.11.1970. The petitioner has completed only 10 years 11 months of service as on 24.11.1970 and he was not eligible for the post of Work Inspector Grade I.

5. The learned counsel appearing for the petitioner would contend that the petitioner's service has been regularising as per G.O.Ms.No.95, and the 2nd respondent has also passed an order in and by its proceedings dated 03.03.1971 regularised the petitioner's service from 24.11.1970, which was also confirmed by the 1st respondent by the subsequent order dated 18.08.1971. Now, all of a sudden, the respondents are relying upon the Government Order in G.O.Ms.No. 250, dated 21.03.1994, which is only relating to awarding of Special Grade and Selection Grade for the post of Work Inspector Grade I and II. Now, it is pertinent to note that the petitioner has completed 20 years of service, and hence, they cannot reject the petitioner's claim.

6. Per contra, the learned counsel appearing for the respondents submitted that even though the petitioner was regularised in the post of Work Inspector Grade I, subsequently, it was found out that the petitioner was not qualified based on the total years of service and the order has been passed rejecting the petitioner's claim. Apart from that, the petitioner also not possessing necessary qualification as on the date of regularisation in the post of Work Inspector Grade I i.e. on 24.11.1970.

7. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Government pleader appearing for the respondents 1 and 2 and perused the relevant records carefully.

8. Admittedly, the petitioner's service was regularised by the 2nd respondent by an order dated 03.03.1971, wherein G.O.Ms.No.95 was issued by the Public works Department on 09.01.1971. As per the above said Government Order, for the post of Work Inspector Grade I, the qualification was fixed as S.S.L.C. with bifurcated Engineering Course and having practical experience in buildings or design works for a period of not less than two years. According to the petitioner, he is possessing both the qualification as he has completed S.S.L.C., and he has been working in the respondents department from the year 1960, and having 10 years experience. Considering the above circumstances, the petitioner's service was regularised. Thereafter, on the eve of his retirement, a proposal has been sent to the 3rd respondent for giving pensionary benefits,

wherein the 3rd respondent Accountant General has returned the proposal on the ground that necessary order should be obtained from the Chief Engineer, the 1st respondent for Grade change and pay fixation after his retirement, as Work Inspector Grade I with effect from 24.11.1970. Based on the above communication, the impugned order has been passed on the ground that the petitioner did not possess the qualification for the post of Work Inspector Grade I, and experience certificate has been issued only belated, and that cannot be accepted. Based on that order, the 2nd respondent also passed an order rejecting the petitioner's claim.

9. Even though in the counter affidavit, it is contended that as per the G.O.Ms.No.250, dated 21.03.1994, the petitioner is not eligible to appoint as Work Inspector Grade I. The only reason stated by the 1st respondent for rejecting the petitioner's claim is that, the petitioner did not possess the required qualification for appointment in the post of Work Inspector Grade I, and he is not possessing the necessary practical experience for two years. But, on perusal of records, it could be seen that, admittedly, the petitioner is working in the same department from the year 1960, and at the time of regularisation, he has possessed 10 years of experience. He has also produced the experience certificate, but the said certificate was not accepted. As the petitioner is possessing necessary qualification, and after regularising the petitioner's service, now it is not open to the respondents to revise the order and rejecting his claim after 40 years. Considering the above circumstances, I am inclined to set aside the order passed by the respondents 1 and 2.

10. Now, it is submitted that, the petitioner's service has been regularised as Work Inspector Grade I, with effect from 01.06.1988. The difference of scale of pay from 24.11.1970 to 01.06.1988 approximately comes to Rs.75,000/-. Now, the petitioner also retired from service. Considering the above circumstances, the respondents are directed to pay the difference of scale of pay from 24.11.1970 to 01.06.1988, and also consequential pensionary benefits eligible to him within a period of twelve weeks from the date of receipt of the copy of this order. In the result, the present Writ Petition stands disposed of with the above direction. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rpp

To

1. The Engineer-in-Chief (Buildings) &
The Chief Engineer (General),
Public Works Department,
Cheppakkam,
Chennai-600 005.

2. The Executive Engineer,
Public Works Department,
Manimuthar Basin Division,
Devakottai.

3. The Principal Accountant General
(A & E) of TN & Puducherry,
No.361, Anna Salai,
Teynampet,
Chennai-600 018.

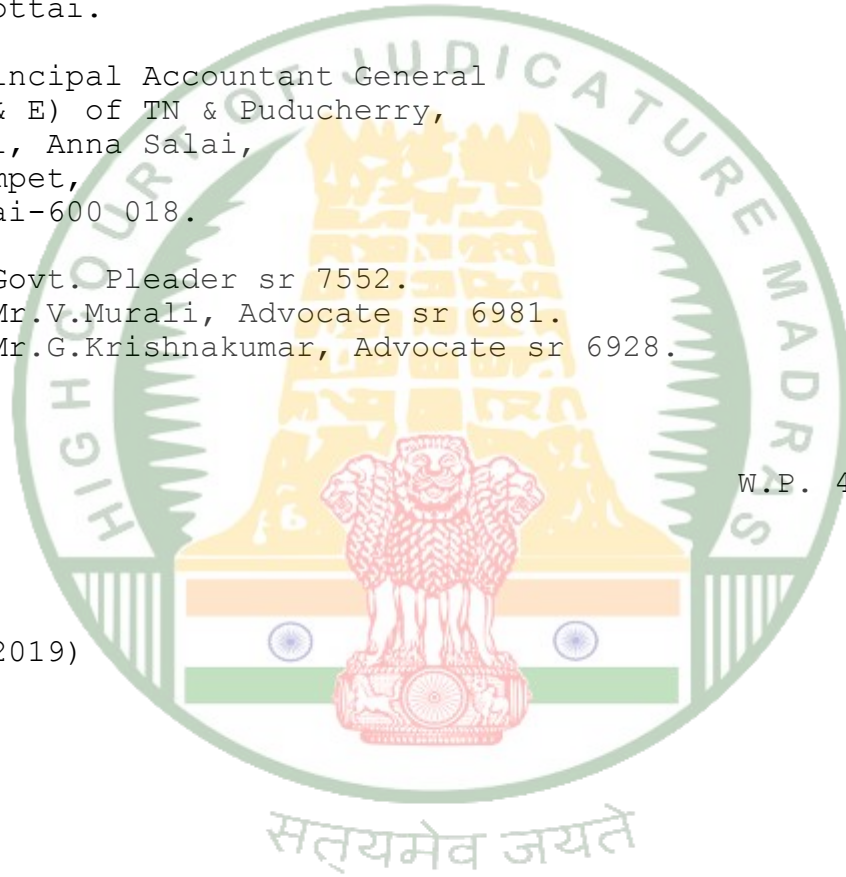
+1 CC to Govt. Pleader sr 7552.

+1 CC to Mr.V.Murali, Advocate sr 6981.

+1 CC to Mr.G.Krishnakumar, Advocate sr 6928.

W.P. 4119 of 2014

SJ(CO)
SP(07/03/2019)



WEB COPY