

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.3227 of 2014

D.Elumalai

...

Petitioner

Vs.

1.The Pondicherry Road Transport Corporation Limited,
Rep. by its Managing Director,
Puducherry.

2.The General Manager,
Pondicherry Road Transport Corporation Limited,
Puducherry. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus, directing the respondents to revise the pay fixation in the post of Peon with effect from 01.01.2006 at Rs.3,600/- and grant of mobilization scheme and scale of pay and modified assured carrier progression benefits without delay and consequently, pay all arrears of pay retiral benefits, pension with arrears at 12% per annum from the date of which, the amount became due till disbursement.

For Petitioner

Ms.Gopika Nambiar

For Mr.Kamal Kumar

For Respondents

Mr.A.R.Nixon

Standing Counsel

O R D E R

The short facts of the case are as follows:-

The petitioner joined as a Driver in the respondent-Corporation on 13.09.1981 and was doing his work without any blemish. While so, during the year 2004, his health condition

was deteriorated, he could not perform his duty as a driver and hence, he requested the respondents to appoint him in the lower post of Peon. Accepting the request of the petitioner, the first respondent vide letter dated 26.08.2006, appointed the petitioner as Peon in the scale of pay of Rs.2550-55-2660-60-300 and his basic pay as on 28.08.2006 was fixed at Rs.2,840/-and the petitioner was superannuated on 30.12.2012. Based on such fixation of the first respondent, dated 26.08.2006, further increments, retiral benefits and other benefits have been granted to the petitioner. Though the petitioner sent representation on 25.04.2007, requesting for higher posting as Junior Assistant as his health condition became better, the same was not considered by the respondents. Further, the petitioner made a representation to the respondent-Corporation on 13.08.2013, seeking re-fixation of pay. However, there was no response from the respondent-Corporation till date. Hence, the present Writ Petition.

2. According to the learned counsel for the petitioner, the petitioner was posted as Peon due to his health condition, based on his written request. It is brought to the notice of this Court that as per Clarification in 15(a) of the Fundamental Rules and Supplementary Rules, dated 21.10.2009, when a person transferred to the lower post, the basic pay of the Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. It is submitted that since the petitioner's last drawn pay was Rs.3,425/- as a driver, the petitioner is entitled for basic pay of Rs.3,425/- on his appointment to the post of Peon i.e., on 28.08.2006 as per clarification in 15(a) of the Fundamental Rules and Supplementary Rules. It is further submitted that petitioner has filed the Writ Petition in the year 2014, and sought arrears and other pensionary benefits prior to three years of filing of the Writ Petition. Therefore, the petitioner is entitled for payment of basic pay on par with the higher post of driver, as on 28.08.2006 and the relief can be granted in the present Writ Petition.

3. The learned Standing Counsel appearing for the Corporation would submit as per Rule 15A of the Fundamental and Supplementary Rules the Authority has rightly fixed the basic pay. It is further submitted that the petitioner himself voluntarily made a written request and accepting the said request, the petitioner was appointed as Peon in the Transport Corporation and therefore, there is no need to consider the request of the petitioner.

4. Heard the rival submissions on either side and perused the materials available on record.

5. The crux of the issue in the present Writ petition is that whether the petitioner is entitled for basic pay on par with the last drawn pay i.e., driver, as per Rule Clarification in Rule 15(a) of the Fundamental and Supplementary Rules. At this juncture, it would be useful to extract the Clarification in 15(a) of the Fundamental Rules and Supplementary Rules, dated 21.10.2009:-

"Fixation of pay in case of employees who seek transfer to a lower post under FR 15(a) - Clarification - It is directed to refer to instructions issued vide this department's O.M.No.16/6/2001-Estt. (Pay-I), dated 14.02.2006, on the above subject. It was clarified therein that on transfer to the lower post / scale under FR 15(a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum FR 22(a) (a) (3).

2. Consequent upon implementation of the revised pay structure comprising grade pays and running Pay Bands, with effect from 01.01.2006 in cases of appointment of Government servants to the posts carrying lower Grade Pay under FR 15(a) on their own request, the pay in the pay band of the Government servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post. Further, in all cases, he will continue to draw his increment based on his pay in the pay band plus grade pay."

On a reading of the above provision, it is clear that when an employee is appointed to a lower post on his own request, his basic pay fixed in the lower post, shall be equal to his last drawn pay in the previous higher post. In this case, admittedly, the petitioner made a written request due to his health conditions and based on his request on medical ground, the respondent-Corporation appointed the petitioner to the lower

post on 28.08.2006 as a Peon and subsequently, the petitioner superannuated on 30.12.2012 and the respondent-Corporation has also granted retiral benefits by counting the service of the petitioner was driver as well as peon. The dispute raised by the petitioner is that on 28.08.2006, basic pay was fixed by the respondent-Corporation only to the lower post. According to the petitioner, the aforesaid Clarification protected the petitioner's right for fixation of basic pay on par with the higher post / driver. However, the respondent-Corporation, without considering the said clarification, has fixed the basic pay on par with the lower post from 28.08.2006. Hence, I find some force in the contention of the learned counsel for the petitioner.

6. Further, although, it is specifically stated in the affidavit that as per the clarification in 15(a) of the Fundamental Rules and Supplementary Rules, the respondent-Corporation has to fix the pay in the pay band of the Government servant at a pay equal to the petitioner prior to his appointment, however, for the said clarification, the respondents have not answered in the counter affidavit.

7. Therefore, in view of the above, this Court is inclined to direct the respondents to consider the petitioner's representation dated 13.08.2013 by taking note of the Clarification in 15(a) of the Fundamental Rules and Supplementary Rules, dated 21.10.2009, and pass appropriate orders as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition is disposed of. There is no order as to costs.

सत्यमेव जयते

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1.The Managing Director,
Pondicherry Road Transport
Corporation Limited,
Puducherry.

2.The General Manager,
Pondicherry Road Transport Corporation Limited,
Puducherry.

- 1 cc to Mr.A.R.Nixon, Standing Counsel Sr.No.38495
- 1 cc to Mr.R.Saravanan, Advocate Sr.No. 38773

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RK(CO)

RRI 08/06/2019



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