



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.11219 of 2015

WEB COPY

K.Kannan

... Petitioner

Vs

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat, Chennai-600 009.

2.The Superintendent of Police,
Virudhunagar District, Virudhunagar.

3.The Principal Accountant General,
(Accounts and Entitlements),
No.361, Anna Salai,
Chennai-600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to re-fix the petitioner's pay on the cadre of Junior Assistant by taking into account the Selection Grade in the first and then Special Grade in the second and pay him the arrears in the revised scale of pay and to make entries in the petitioner's Service Register as to the amount recovered from him and consequently sent the same to the third respondent for granting the full pension to the petitioner.

For Petitioner : Mr.M.Veilkaniraju

For R1 & R2 : Mr.M.Jeyakumar
Additional Government Pleader

For R3 : Mr.P.Gunasekaran

ORDER

The relief sought for in the present writ petition is for a direction to direct the second respondent to re-fix the petitioner's pay in the cadre of Junior Assistant by taking into account the Selection Grade in the first and then Special Grade in the second and pay him the arrears in the revised scale of pay and to make entries in the petitioner's Service Register, as to the amount recovered from him and consequently sent the same to the third respondent for granting the full pension to the petitioner.

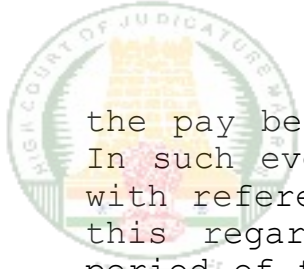


2.The writ petitioner was appointed as a Record Clerk in the Police Department in the year 1982. Thereafter, he was promoted to the post of Junior Assistant and retired from service on 30.08.2014. The grievance of the writ petitioner is that the benefit of Selection Grade pay in the post of Junior Assistant has not been granted. There was no proper service entry in Service Register in this regard is available in the office records. Under these circumstances, the petitioner is constrained to file the present writ petition for a direction to re-fix the petitioner's pay in the Junior Assistant by taking into account the Selection Grade in the first and then Special Grade in the second.

3.The learned counsel appearing on behalf of the third respondent/Accountant General states that the petitioner has exercised his option while serving in the Selection Grade Junior Assistant. While exercising the option, he has availed the benefit in the selection grade post. Accordingly, his pay was fixed and all the benefits were disbursed. While so, the writ petitioner cannot seek for second option to opt for special grade scale of pay. The employee at the time of exercising the option is choosing better benefits and thereafter cannot turn around and ask for other benefits. It is further contended that in respect of the repayment of the benefits availed by the writ petitioner, there is no entry in the Service Register. Under these circumstances, the second option cannot be provided to the writ petitioner at all. The said facts is clearly stated in the Authorisation Letter sent by the Principal Accountant General, (A & E), Tamil Nadu, Chennai in proceeding, dated 12.06.2014 and the said portion of the endorsement is extracted hereunder:-

"As he re-opted for pay fixation on the date of movement to Special Grade i.e., on 1.11.2008, the pay and arrears drawn should have been adjusted in the pay arrears drawn on reoption. As there is no such details are available in Service Register or proposal pending reply Grade pay is restricted to Rs.2,800/-. The particulars of reoption details may be furnished and entered in the SR and forwarded for revision of Grade Pay of Rs.4,800/- if necessary."

4. In view of the objections raised by the Principal Accountant General for providing second option for the writ petitioner and in view of the fact that there is no entry available in his Service Register in respect of the cancellation of first option exercised by him in the cadre of selection grade, the revised option benefits cannot be granted. In this regard, the writ petitioner is at liberty to establish, if at all any cancellation order has been passed in respect of the first option exercised by him in the post of selection grade junior assistant, then the same can be submitted before the competent authority for the purpose of considering his case for grant of revised benefits in the cadre of special grade. The petitioner has to submit the relevant records to show that he has cancelled/withdrawn the first option exercised by him to avail



the pay benefits in the cadre of selection grade Junior Assistant. In such event, the case of the writ petitioner shall be considered with reference to the rules in force. Thus, the writ petitioner in this regard is entitled to submit the same within a reasonable period of time and in the event of non availability of any records establishing that the writ petitioner has not cancelled the first option, the benefits based on the first option has been paid then he may not be entitled for the benefit for second option as well as the revision of scale of pay in the cadre of special grade Junior Assistant.

5. With these clarifications, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD-I)

/ True Copy /

Sub Assistant Registrar (CS-)

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To

1. The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat, Chennai-600 009.
2. The Superintendent of Police,
Virudhunagar District, Virudhunagar.
3. The Principal Accountant General,
(Accounts and Entitlements),
No.361, Anna Salai, Chennai-600 018.

- +1 CC to M/s.SPL GP (SR-72817[F] dated 02/07/2019)
 +1 CC to M/s.M.VEILKANI RAJU, Advocate (SR-72827[F] dated 02/07/2019)
 +1 CC to M/s.P.GUNASEKARAN, Advocate (SR-73165[F] dated 03/07/2019)

W.P(MD)No.11219 of 2015
01.07.2019

ES/12.07.2019/3P/7C