



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) No. 2304 of 2014
and
M.P (MD) No. 1 of 2014

S.Natarajan

... Petitioner

Vs.

1.The Principal Accountant General (A & E),
Tamil Nadu,
361, Anna Salai,
Chennai-600 018.

2.The Assistant Executive Engineer,
Agricultural Engineering Department,
Dindigul. ... Respondents

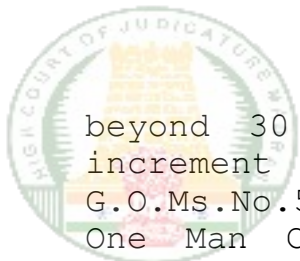
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent in his proceedings in No.E/2066/2010 dated 10.01.2014 and quash the same as illegal.

For Petitioner	: Mr.V.P.Rajan
For R1	: Mr.P.Gunasekaran
For R2	: Mr.S.Dhayalan
	Government Advocate

ORDER

The order of re-fixation of pension, issued by the respondents in proceedings dated 10.01.2014, is under challenge in the present writ petition.

2.The writ petitioner was appointed as Bore Well Foreman on 1.1.1967 and the said post was re-designated as Inspector of Hand Boring Grade III. The writ petitioner attained the age of superannuation and retired from service in the year 2000. The petitioner was granted with bonus increment based on G.O.Ms.No.562 (Financial Department) dated 28.09.1998 for rendering 30 years of service in the same post. The conditions stipulated in the Government Order is that if any employee is stagnated in a post



beyond 30 years, then he is entitled for grant of one bonus increment as incentive. The Government Order was issued in G.O.Ms.No.562, dated 28.09.1998 based on the recommendations of the One Man Commission and for the purpose of granting one bonus increment to employee stagnating in a post beyond 30 years. The petitioner submitted a representation to consider his case for grant of one bonus increment as per G.O.Ms.No.562, dated 28.09.1998. The said bonus increment was sanctioned in favour of the writ petitioner and he was receiving the same for number of years.

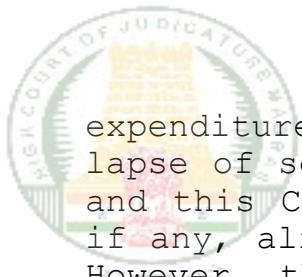
3. Objection was raised on the ground that the writ petitioner was promoted to a higher post and at his own volition he declined the promotion and therefore, he is not entitled for one bonus increment as per G.O.Ms.No.562, dated 28.09.1998. The fact regarding the promotion was not disputed by the petitioner. The learned counsel for the petitioner mainly contended that the revision of pay is now proposed as per the impugned order after a lapse of 10 years from the date of retirement and therefore, the order is highly belated and such a revision cannot be effected denying the right of the writ petitioner for one bonus increment.

4. The learned counsel appearing on behalf of the respondents opposed the contentions by stating that when the writ petitioner is not entitled for one bonus increment as per G.O.Ms.No.562, dated 28.09.1998, the revision order issued by the respondents are very much in accordance with the G.O.Ms.No.562 and there is no infirmity.

5. It is an admitted fact that the writ petitioner was promoted to the higher post, however, he declined to accept the promotional post, thus, the petitioner cannot be said to be stagnated in the same post for beyond 30 years.

6. Stagnation indicates that there must not be any further promotional opportunity at all. In the present case, admittedly, the writ petitioner was promoted and he declined his promotion. This being the factum, the writ petitioner is not entitled to get one bonus increment as per the Government Order issued in G.O.Ms.No.562 (Financial Department), dated 28.09.1998. However, there is a delay in identifying the mistake committed by the establishment, but the said delay is objected by the learned counsel appearing on behalf of the Principal Accountant General (A & E).

7. May that it be, this Court is of the considered opinion that even if the revision of pay has been erroneously granted and one bonus increment was ordered in violation of the Government Orders issued in G.O.Ms.No.562, the excess amount paid to the writ petitioner, if any, cannot be recovered after this length of time. The writ petitioner is now aged about 75 years old and any recovery from his pension would affect his livelihood. During the old age the pensioners may require some additional amount for their medical



expenditure. In the event of imposing any such recovery after a lapse of somany years, the same will affect their normal livelihood and this Court is of the considered opinion that the excess amount if any, already paid to the writ petitioner shall not be recovered. However, the revision of scale of pay done as per rules in force shall be effected. The learned counsel for the respondents states that now the pension is already revised and correct pension is being disbursed to the writ petitioner as per the rules in force.

8. In this view of the matter, the respondents are directed to correct the mistakes by verifying the pension records of the writ petitioner and pay the pension as applicable to him with reference to the pay rules as well as the Government Order in force. However, excess amount of pension paid pursuant to the grant of one incentive increment in accordance with G.O.Ms.No.562, cannot be recovered at all.

9. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

To

The Assistant Executive Engineer,
Agricultural Engineering Department,
Dindigul.

+1 CC to M/s.SPL GP (SR-84201[F] dated 29/08/2019)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-84687[F] dated 30/08/2019)

W.P. (MD)No.2304 of 2014

28.08.2019

am

JM/17.09.2019/3P/4C