

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.09.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.22051 OF 2013

A.Sheik Ibrahim

.. Petitioner

- Vs -

The Chief Engineer (General)
Highways Department
Chepauk, Chennai 600 005.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondent to grant the petitioner the benefits of selection grade ordered by the respondent with effect from 12.5.1992 by his proceedings in No.30793/Ni3-3 (4)/2003 dated 8.8.03 and grant him all consequential benefits including sanction of special grade on completion of total of 20 years in the post of Junior Engineer and revised pay and pension fixation.

For Petitioner : Mr.Ma.Pa.Thangavel

For Respondents : Mr.P.Chinnadurai, AGP

ORDER

It is the case of the petitioner that he joined the respondent as Junior Draughtsman Grade-III and after obtaining a series of promotion while in service, was finally promoted as Junior Engineer on 25.8.1980, which post he held till his retirement from service on 30.4.2001. Though promotion was granted to the petitioner on 25.8.1980 as Junior Engineer, however, his services were regularized only vide proceedings dated 7.9.1992 w.e.f. 25.8.1980, after successful completion of Accounts Test. The petitioner was granted with selection grade scale of pay in the post of Junior Engineer w.e.f. 12.5.92. The said selection grade scale of pay was granted only after retirement of the petitioner and vide the very same order, recovery of annual increments already paid from 1.7.82 to 11.5.92, was also ordered. Against the said proceedings of the respondent, the petitioner preferred W.P. No.24492 of 2004, which was allowed vide order dated 7.6.12 insofar as recovery

alone is concerned. It was further ordered that in the event of any revision of pay, the petitioner should be afforded an opportunity before passing any order. It is the further averment of the petitioner that though the order was quashed in the earlier writ petition only insofar as recovery is concerned, the selection grade pay ordered to the petitioner stood intact. The dispute pertained only to annual increments and not to selection grade scale of pay and, therefore, the act of the respondent in not paying the selection grade scale of pay is wholly unsustainable. Though a representation was submitted by the petitioner highlighting the said aspect and requesting the respondent to pay the selection grade scale of pay however, the representation has not been considered till date, which has resulted in the filing of the present writ petition.

2. Learned counsel appearing for the petitioner, while reiterated the grounds raised by the petitioner, submitted that recovery alone having been quashed in the earlier round of litigation, non-grant of selection grade scale of pay to the petitioner, which was earlier granted, is unsustainable. However, it is fairly submitted by the learned counsel that during the pendency of the matter, the writ petitioner passed away. Therefore, it is submitted that the respondents may be directed to consider the representation submitted by the petitioner and pass appropriate orders, so as to enable the legal heirs of the petitioner to derive the benefit.

3. On the above contention, this Court heard the learned Addl. Government Pleader appearing for the respondent and perused the materials available on record.

4. The facts in issue are not in dispute. Representation has been submitted by the petitioner for grant of selection grade scale of pay to the petitioner, however, pending consideration of the said representation, the petitioner died and, therefore, the legal heirs cannot pursue the remedy as any service benefits, which has accrued to the petitioner along would be available to the legal heirs and any benefit, on which there is a dispute, in the absence of the petitioner, the legal heirs would not be entitled to contest the matter. The petitioner alone would be the person to speak about his service and not the legal heirs of the petitioner. In such view of the matter, this Court is of the considered view that the directing the respondent to pass orders on the representation would be wholly against the service jurisprudence.

5. In such view of the matter, this Court is not inclined to accede to the request made by the learned counsel for the petitioner. However, this Court directs that if any benefit, that stands accrued to the credit of the petitioner, which has

not been settled till date and which is not in dispute, the legal heirs of the petitioner are entitled to receive the same and such benefit, if not paid, shall be paid to the legal heirs of the petitioner, in accordance with law, within a period of three months from the date of receipt of a copy of the order.

6. The writ petition is disposed of with the aforesaid observation and direction. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

The Chief Engineer (General)
Highways Department
Chepauk, Chennai 600 005.

+1cc to the Government Pleader, S.R.No. 31950

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AJS (CO)
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