

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 26.02.2020
Order Pronounced on : 03.06.2020

CORAM:

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 25102 of 2016

K.M.Venkatakrishnan

..Petitioner

Vs

1.The State of Tamilnadu
rep.by its Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Fort St. George,
Chennai-600009.

2.The State of Tamilnadu,
Rep.by its Principal Secretary to Government,
Finance Department,
Fort St.George, Secretariat,
Chennai-600009.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to pay fixation arrears for the post of Under Secretary and Deputy Secretary to Government for the period from 12.03.2004 A.N to 17.05.2006 and 18.05.2006 to 31.10.2007 respectively to the petitioner within the time limit fixed by this Court.

For Petitioner : M/s.M.Vijayakumar

For Respondents : Mr.S.Thangavel, Spl.GP

O R D E R

The prayer sought for in the Writ Petition is to direct the respondents to pay fixation arrears for the post of Under Secretary and Deputy Secretary to Government for the period from 12.03.2004 A.N to 17.05.2006 and 18.05.2006 to 31.10.2007 respectively to the petitioner within the time limit fixed by this Court.

2.1 The writ petitioner joined as ASO-Typist in the services of the 2nd respondent in the year 1971. The 2nd respondent, by Government order in G.O.[2D] No.18, Finance

[OP-I] Department dated 24.10.1998 placed the petitioner under suspension for the alleged shortfall in the Cash account for the reason that the petitioner in the capacity as Bill Drawing Officer and one A.Ramadoss, Under Secretary to Government, Bill Disbursing Officer are jointly and severally responsible for the shortfall in the cash account.

2.2. The charges were framed against the petitioner as early as on 01.11.1999 by the 1st respondent and the charge framed against the petitioner by alleging that one A.Ramadoss, formerly Under Secretary to the Government, P&AR Department, caused a shortfall in the Cash account. The petitioner challenged the charge memo dated 01.11.1999 before the Tamil Nadu Administrative Tribunal in OA.No.7141/1999 and the Tribunal as per its order dated 09.11.2001, directed the 1st respondent therein to complete the enquiry within a period of six months. The 1st respondent appointed an Enquiry Officer and the Enquiry Officer submitted his report on 30.06.2003. The final report filed by the Enquiry Officer on 30.06.2003 is not a conclusive one and accordingly, the Government has not accepted the said report and appointed fresh Enquiry Officer once again on 16.09.2004. The 2nd Enquiry Officer has expressed his inability to conduct enquiry in the absence of the file. The 1st respondent without considering the reason given by the 2nd Enquiry Officer, again mechanically appointed the 3rd Enquiry Officer on 18.10.2004. The 3rd Enquiry Officer has also expressed his inability to proceed with the enquiry.

2.3. The co-delinquent of the petitioner, viz., A.Ramadoss, filed a writ petition in WP.No.6749/2005 challenging the charge memo dated 01.11.1999 issued against him. The 1st respondent produced a letter in the above writ petition stating that the respondents could not proceed with the enquiry and the file relating to the case has not been returned back from CBCID, Chennai. The Government in G.O.[2D] No.21, P&AR [Q] Department dated 29.07.2005 has dropped all further action in the criminal case initiated against both the petitioner and the said Ramadoss. The writ petition filed by the said Ramadoss in WP.No.6749/2005 was allowed by this court by the order dated 30.08.2005 and the impugned charge memo in respect of the said Ramadoss was quashed.

2.4. After quashing of the impugned charge memo of the co-delinquent, viz., Ramadoss, charges were framed against the petitioner and as the petitioner did not file any writ petition, the 1st respondent has passed the impugned order dated 30.11.2009 proposing the punishment of

cut in his pension at the rate of Rs.500/- per month for a period of 24 months without conducting enquiry and invited the petitioner to reply within 15 days. The 1st respondent again sent another impugned order dated 12.01.2010 extending the time limit for the reply of the petitioner for a period of ten days in respect of the proposed punishment for a period of 12 months and thereby, it is stated that if no reply is forthcoming from the petitioner, the respondents would presume that the petitioner has not accepted the proposed punishment.

2.5 Being aggrieved by the impugned orders, the writ petitioner has filed a writ petition in W.P.No.7284 of 2010 and this Court by order dated 12.07.2007 has directed the respondents to grant all the attendant and retirement benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of the order. Accordingly, the Government have issued orders in G.O.(Rt) No. 179 dated 19.03.2015 and G.O.(Rt)No. 180 dated 19.03.2015 and Letter No.PAO (SECTT)/BAS-II/U-III/338/2015 dated 05.08.2015 granting pension and retirement benefits by creating Supernumerary post for the period from 12.03.2004 A.N to 17.05.2006 in the post of Under Secretary to Government and for the period from 18.05.2006 A.N to 31.10.2007 in the post of Deputy Secretary to Government. In the Government order, the respondent has not granted arrears of rent. Hence filed the present Writ Petition.

3. Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondents and perused the documents available on record.

4. The learned counsel for the petitioner submitted that in view of the order passed by this Court in W.P.No. 7284 of 2010 dated 12.07.2011, the Government have included the petitioner's name in the panel for the post of Under Secretary to Government for the year 2003-2004 in the appropriate seniority and also included in the revised panel for the post of Deputy Secretary to Government for the year 2006-2007 in the appropriate seniority. Consequent on the inclusion in the panel, the Government also accorded sanction for creation of Supernumerary post for the period from 12.03.2004 A.N to 17.05.2006 in the post of Under Secretary to Government and for the period from 18.05.2006 A.N to 31.10.2007 in the post of Deputy Secretary to Government. Accordingly, the petitioner's pay was fixed in the post of Under Secretary and Deputy Secretary to the Government in G.O.(Rt)No. 179 dated 19.03.2015 and G.O.(Rt)No. 180 dated 19.03.2015.

5. The learned counsel for the petitioner further submitted that the petitioner's name was not included in the panel to the post of Under Secretary and Deputy Secretary. Therefore, the petitioner is legally entitled to the pay arrears by fixing scale of pay to the said posts for the period from 12.03.2004 to 17.05.2006 and 18.05.2006 to 31.10.2007 respectively. Whereas, the respondent has fixed his pay notionally by wrongly interpreting the order of this Court passed in W.P. No. 7284 of 2010 dated 12.07.2011 and rejected the pay arrears to the writ petitioner. The said action of the respondents is against the spirit of the order passed by this Court, hence prayed to direct the respondents to pay the arrears amount of pay fixation for the supernumery post created by the Government.

6. Per contra, the learned Special Government Pleader appearing for the respondents submitted that this Court has passed an order in W.P.No. 7284 of 2010 filed by the writ petitioner herein on 12.07.2011. Based on the direction, the attendant and retirement benefits were granted to the writ petitioner. But there is no specific direction in the aforesaid order to grant monetary benefits to the petitioner from the date of his promotion to the higher posts.

7. The learned Special Government Pleader appearing for the respondents further submitted that as per ruling (17) under FR Rule 27 "in case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior, provided he has drawn the same rate of pay as his junior in the lower post from time to time". But the petitioner herein has neither assumed charge in the category of Under Secretary to Government and Deputy Secretary to Government nor acted in the above said posts. However, as per ruling (17) under FR Rule 27, his pay was re-fixed on par with his junior namely M.Vedachalam, both in the category of Under Secretary to Government and Deputy Secretary to Government notionally and retirement pensionary benefits in the cadre of Deputy Secretary to Government were granted monetarily based on the orders of this Court passed in W.P. No. 7284 of 2010 dated 12.07.2011. Hence, the orders of this Court were not misinterepted nor violated as contended by the learned counsel appearing for the petitioner and therefore the present writ petition is liable to be dismissed.

8. It reveals from the records that based on the orders in the writ petition filed by the petitioner herein in W.P. No.7284/2010 dated 12.07.2011, the Government issued orders regulating the period of suspension of the petitioner as duty from 26.10.1998 to 16.03.2004 under FR 54-B-1 (3) & (4) in G.O. Ms.No. 96, Finance (OP.1) Department, dated 29.03.2012. Consequently, the petitioner's pay was fixed in the category of Selection Grade Section Officer as per the Tamil Nadu Revised Pay Scale Rules 2009 and issued orders in G.O.(Rt) No. 315 Finance (OP.1) Dept., dated 03.04.2013.

9. As directed by this Court, the Government have issued order in G.O. (Ms) 236, Finance (OP-1) Dept., dated 22.07.2013, by including the name of the petitioner in the panel for the post of Under Secretary to Government for the year 2003-2004 issued already in G.O. (Ms) No. 90, Finance (OP-I) Department dated 11.03.2004 as Sl.No. 3(A) i.e below the name of M.Shanthi (Sl.No. 3) and above the name of M.Vedachalam (Sl.No.4). Consequently, the petitioner's name was included in the panel for the post of Deputy Secretary to Government for the year 2006-2007 already issued in G.O.(Ms) No. 204, Finance (OP-1) Department dated 28.05.2007 as Sl.No.6(A) i.e below the name Shanthi (Sl.No.6) and above the name of M.Vedachalam (Sl.No.7).

10. Consequent to the said inclusion, the Government has fixed the pay notionally and issued orders in G.O.(Rt) No. 179 dated 19.03.2015 and G.O.(Rt)No. 180 dated 19.03.2015 and Letter No. PAO (SECTT)/BAS-III/U-III/338/2015 dated 05.08.2015 granting pension and retirement benefits by creating Supernumerary post for the period from 12.03.2004 A.N to 17.05.2006 in the post of Under Secretary to Government and for the period from 18.05.2006 A.N to 31.10.2007 in the post of Deputy Secretary to Government.

11.The point for consideration in this writ petition is that whether the writ petitioner is eligible to claim pay fixation arrears for the aforesaid periods i.e from 12.03.2004 to 17.05.2006 and from 18.05.2006 to 31.10.2007 or not.

12. In this connection, it is useful to rely upon the judgments of Hon'ble Supreme Court and High Court of Andhra Pradesh, wherein the decision has been taken on the similar claim made by petitioners therein. The relevant decision are extracted as follows;

(i) Case of V.V.G.Reddy Vs. Andhra Pradesh State Road Transport Corporation, Nizamabad Region and Another, reported in (2009) 2 SCC 668. The relevant paragraphs are extracted below;

"12. The appellant, as noticed hereinbefore, had not only foregone back wages but also attendant benefits. The word "attendant benefits" ;should be given its natural meaning. The "attendant benefits" were in regard to a period for which he had been denied back wages. A person may be denied back wages which otherwise can be interpreted to mean that he would be entitled to claim the benefit of increments notionally.

13. We may, however, notice that in A.P.SRTC Vs. Abdul Kareem this Court held : (SCCp.40, parall)

"11.... the Labour Court specifically directed that the reinstatement would be without backwages. There is no specific direction that the employee would be entitled to all consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without backwages, he cannot claim a benefit of increments notionally earned during the period when he was not on duty during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absense."

(ii) In the case of G.Srinivas VS. APSRTC & another, Dated: 2nd May 2003. The relevant paragraphs 9,10 & 15 are extracted below;

"9. It may not be out of place to mention that in a given case, the Labour Court may pass ward as under:

- (1) reinstatement with continuity of service and with back wages;
- (2) reinstatement with continuity of service, but without back wages;
- (3) reinstatement without continuity of service and without back wages;
- (4) reinstatement with continuity of service and with attendant benefits, but without back wages;

(5) reinstatement with continuity of service, but without back wages and without any attendant benefits;

(6) reinstatement without continuity of service, without back wages and without any attendant benefits; and

(7) stoppage of four increments with cumulative effect on reinstatement.

10. These are all the various types of awards passed by the Labour Court in the circumstances of each case. Thus, a general interpretation cannot be made to come to the conclusion that whether in the teeth of the award passed by the Labour Court, the workman is entitled for any other benefits, which are not specifically mentioned in the Award of the Labour Court. Unless there is a specific mention as to a particular benefit, the workman is not entitled for the same. The mere reinstatement or continuity of service itself will not make the workman entitled for claiming notional increments for the period he was out of service, unless the same is categorically and specifically mentioned in the Award passed by the Labour Court. Here, it may be necessary to note the very purpose of the legislation inserting Section 11-A by Act 48 of 1950.

...
...

15. An order of reinstatement with continuity of service, but without back wages and an order of reinstatement with continuity of service, but without back wages and without any attendant benefits cannot be differentiated. What all needs to be seen in an Award, is whether any benefit other than the reinstatement and continuity of service is awarded at all, and whether it was without back wages and/or without attendant benefits will not have any bearing. The words 'on such terms and conditions, if any, as it thinks fit have to be understood in their plain language. It must be deemed that the conclusions arrived at by the Labour Court are, reinstatement on such terms and conditions as it thought fit. Thus, the Award cannot be interpreted in either way."

13. On considering the facts of the present case on

hand, the petitioner did not have work experience in his earlier post and had not undergone compulsory district training in the categories of Section Officer and Under Secretary to Government. The petitioner did not possess the requisite qualification for promotion to the post of Under Secretary to Government/Deputy Secretary to Government. The Government had issued orders relaxing the said experience/training. Based on the relaxation of qualification, his name was included at the appropriate place and promoted notionally to the said posts and issued orders in G.O.(Rt)No. 179 dated 19.03.2015 and G.O.(Rt)No. 180 dated 19.03.2015 by granting pension and retirement benefits as per rule 17 of Fundamental Rules 27 and complied the final order passed by this Court. Now, seeking further relief to grant payment of arrears cannot be granted in this writ petition.

14. According to the learned counsel for the petitioner, the respondents have passed order granting only pensionary benefits in the aforesaid G.Os, on the other hand, the writ petitioner received the benefits granted in the said Government Order, without challenging the said Government Order. Thus, the writ petitioner has come with the present writ petition seeking mandamus, is not maintainable either on law or on facts. Even if it is challenged, in view of the above discussions, it would not give much weightage to the contentions raised by the petitioner, seeking monetary benefits. Hence, this Court is of the considered view that the Government have rightly complied with the orders issued in W.P. No. 7284 of 2010 dated 12.07.2007 in granting all attendant and retirement benefits to the writ petitioner, which he is actually entitled to.

15. In view of the submissions made by the learned counsel appearing for the parties concerned and the judgments cited supra, this Court finds no merits in the writ present writ petition. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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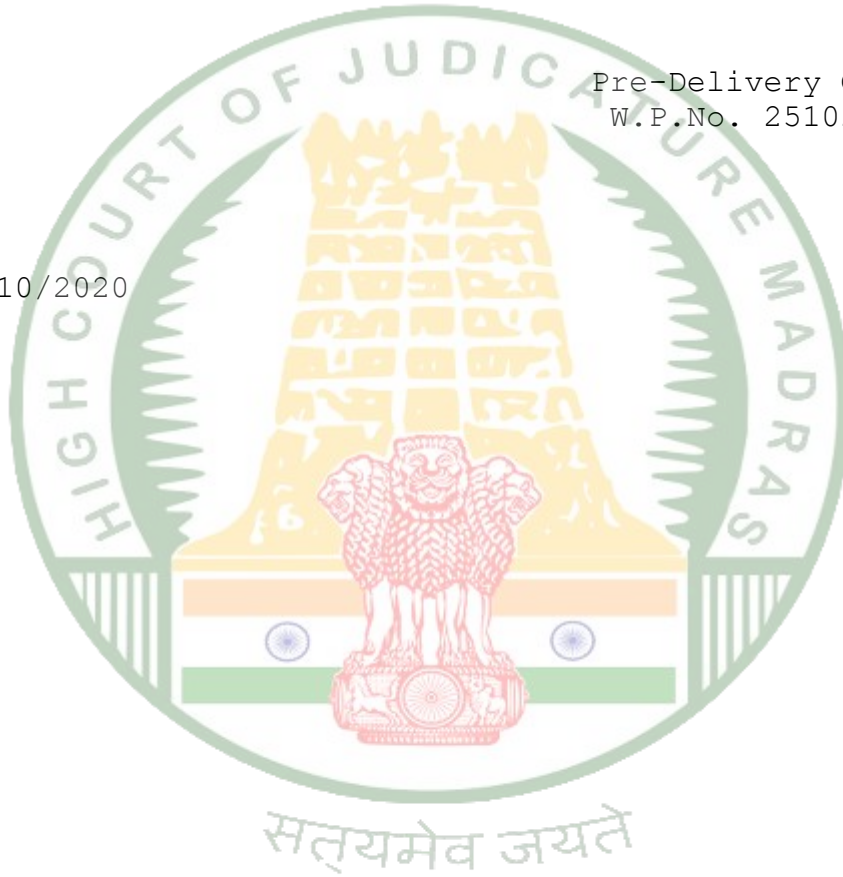
To

1.The Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Fort St. George,
Chennai-600009.

2.The Principal Secretary to Government,
Finance Department,
Fort St.George, Secretariat,
Chennai-600009.

Pre-Delivery Order in
W.P.No. 25102 of 2016

SSD(CO)
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