



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 07.08.2020
DELIVERED ON : 14.08.2020
CORAM:
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN
WP(MD).No.4421 of 2013

WEB COPY

V. Muthiah

... Petitioner

Vs.

1.The Principal Chief Engineer,
PWD, Chennai.

2.The Chief Engineer,
PWD (Research and Construction),
Chennai -5.

3.The Executive Engineer,
Mechanical Division (PWD),
Trichy - 20.

4.The Executive Engineer,
Water and Resource and Mechanical,
Sub Division No.3, Thirunagar,
Madurai - 6.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus to call for the records of impugned order No. ~~141/2002~~ 141/2002. 1787 dated 08.01.2003 of the third respondent and quash the same and direct the respondents to refund the amount sum of Rs.66,112/- wrongly deducted from the retirement benefits of the petitioner and compute the pension from the date of appointment of petitioner.

For petitioner	: Mr. C.S. Ravichandran
For Respondents	: Mr. D. Muruganandham Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the third respondent dated 08.01.2003 in proceeding No. ~~141/2002~~ 141/2002 and to direct the respondents to refund the amount of Rs.66,112/- wrongly deducted from the retirement benefits of the petitioner and compute the pension from the date of appointment of petitioner.

2. The service matrix of the petitioner required for this writ petition are as follows:

<https://hcservices.ecourts.gov.in/hcservices/> (1) The petitioner was temporarily appointed as cleaner on



01.06.1970 in the Public Works Department. His service was brought under regular establishment with effect from 01.01.1977. Based on the direction issued by the first respondent, dated 18.11.1980, he was temporarily promoted as Driver (Heavy Duty) on 09.02.1981 in the office of the Superintending Engineer, PWD., Periyar Improvement Circle III, Madurai. He has not possessed the required qualification prescribed for the post of Driver (Heavy Duty) as per the Adhoc rules framed by the Government in G.O.Ms.No.461 PWD, dated 15.03.1980. Hence, for regularizing his service in the post of Driver (Heavy Duty) necessary proposal along with 14 others were sent to the Government for relaxation of rules. The Government relaxed the adhoc rules and regularized the petitioner and 14 others in G.O.Ms.No.2394 PWD, dated 29.11.1989 with effect from 29.11.1989 i.e., the date of issue of the Government Order.

(ii) The claim made by the petitioner is that his service was regularized in the post of Driver (Heavy Duty) on 09.02.1981 is wrong. He has voluntarily retired from service on 30.09.2002.

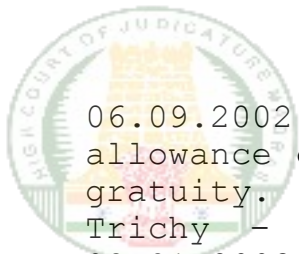
3. On an objection raised by the audit while considering the pension proposal it was found that the Selection Grade and Special Grade were wrongly fixed at 1991 - 2001 to the petitioner and accordingly, recovery has been ordered after giving notice and recovery also effected from pension.

4. The contesting fourth respondent has filed counter.

5. Based on the counter, the learned Additional Government Pleader submitted that the petitioner's service was regularized only on 29.11.1989 and not on 09.02.1981 and he has also relied upon the G.O.No.2934 / PWD, Dated 29.11.1989.

6. On perusal of the said order it is seen that the claim made by the petitioner that his service was regularized in the post of Driver (Heavy Duty) on 09.02.1981 is wrong. The Government in its order G.O.Ms.No.2394 PWD, dated 29.11.1989 has specifically regularized the petitioner and 14 others with effect from the issue of Government Order i.e., on 29.11.1989 only. Hence, the Selection Grade for completion of 10 years in the post of Driver (Heavy Duty) should have been 29.11.1999 and Special Grade from 29.11.2009. However, the petitioner has voluntarily retired from service on 30.09.2002 A.N., Hence, the orders issued in the previous station by moving the petitioner to Selection Grade and Special grade on 09.02.1991 and 09.02.2001 respectively is wrong.

7. While Scrutinizing the service of the petitioner for submitting the pension proposal to the Accountant General to get his retirement benefits it was found that the Selection Grade was awarded in the post of Driver (Heavy Duty) on 09.02.1991 instead of 29.11.1999 being the date of completion of 10 years of service in the post of Driver (Heavy Duty). The petitioner in his letter dated



06.09.2002 has given his consent that if any excess pay and allowance drawn by him may be recovered from his retirement service gratuity. Hence, the Executive Engineer, PWD Machinery Division 2, Trichy - 20 in his proceeding No.EA2/F.141/2002 (1787), dated 08.01.2003 issued orders by cancelling the movements of Selection Grade and Special Grade on 09.02.1991 and 09.02.2001 respectively and awarded Selection Grade from 29.11.1999 being the actual date of completion of 10 years of service in the post of Driver (Heavy Duty).

8. Further, it is seen that the petitioner could not be awarded Special Grade since he has retired from service before the completion of 20 years of service in the post of Driver (Heavy Duty). Based on the above orders, the Assistant Executive engineer, PWD., Machinery Sub Division III, Madurai, revised the pay of the petitioner in the the Proceeding No.31/R6/2003, dated 27.01.2003. Due to this revision an amount of Rs.66,112/- were ordered to recover from the petitioner and the same was recovered from the petitioner's service gratuity.

9. On perusal of the records it is seen that there is nothing wrong in fixing the Selection Grade based on the G.O.Ms.No.2394 PWD, dated 29.11.1989. When the service of the petitioner was specifically regularised, the Selection Grade will be awarded only on completion of 10 years i.e., on 29.11.1999 and consequently, the Special Grade only from 29.11.2009. Besides, when the petitioner voluntarily retired from service, in the said voluntary retirement petition dated 06.09.2002, he has clearly mentioned and given his consent that the excess pay and other recovery may be made from his retirement benefits or Gratuity and hence, he was allowed to retire from service on Voluntary Retirement Scheme on 30.09.2002.

10. I find that the order of recovery passed by the third respondent is in order in conformity with the G.O and hence, there is nothing on record to interfere with the order passed by the third respondent. Further, the Government has also taken a lenient view in relaxing the educational qualification and regularized the petitioner in the post of Driver (Heavy Duty) on 29.11.1989.

11. Accordingly, this Writ Petition is dismissed. No costs.

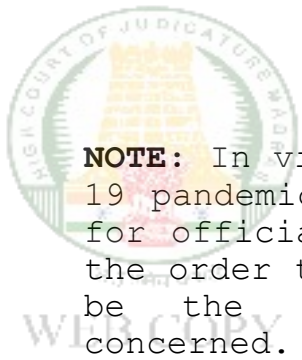
Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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- 2.The Chief Engineer,
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- 3.The Executive Engineer,
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ORDER MADE IN
WP (MD) .No.4421 of 2013
14.08.2020

AP (25/08/2020) 4P 5C