



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 36512 of 2007

G.Balakrishnan
S/o.T.P.Govindasamy,
Superintendent (Retired)
Agriculture Department,
No.48, Kamalai Lakshmi Colony,
Dharmapuri - 636 701.

... Petitioner

-vs-

1. The Secretary to Government of Tamil Nadu,
Agricultural Department,
Fort St.George,
Chennai - 9.

2. The Director,
Agricultural Department,
Chepauk, Chennai - 600 005.

3. Joint Director,
Agricultural Department,
Collector Office Compound,
Dharmapuri - 636 705.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for records relating to the proceedings of the second respondent proceedings No.A.P.P.4/65959/2005, dated 18.07.2007, quash the same and consequently direct the second respondent to pay all the petitioner's arrears of scale of pay for which the petitioner is entitled to within a stipulated time.

For Petitioner : Mr.M.Balamuralikrishan
for V.R.Anna Gandhi

For Respondents: Mr.K.Magesh
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for records relating to the second respondent proceedings No.A.P.P.4/65959/2005, dated



18.07.2007, quash the same and consequently direct the second respondent to pay all the petitioner's arrears of pay, for which the petitioner is entitled to, within a stipulated time.

2. The short facts which are required to be noticed for the disposal of this Writ Petition are as follows:

(i) That the petitioner was working at the respondent department i.e., Agricultural Department, by joining in the post of Typist and in that category, he worked up to 1972. Thereafter, he was promoted as Assistant on 16.11.1972 and in that post, he worked till 15.11.1982. Since, he completed ten years service as Assistant, he become eligible to be considered for financial upgradation, i.e., conferment of Selection Grade, accordingly, such status was conferred on him from 16.11.1982 and in that capacity, i.e., Assistant (Selection Grade), he worked till 15.11.1992. Thereafter, he had become eligible to be considered for conferment of Special Grade and in that category, he was placed from 16.11.1992 up to 25.03.1993 and he worked in that capacity. Subsequently, from 26.03.1993, he had been promoted as Superintendent and in that capacity, he worked till his superannuation i.e., on 31.10.2001 and retired from service accordingly.

(ii) After his retirement, based on the pay scale, that was fixed and drawn till his superannuation, retirement and pensionable benefits were calculated and paid to the petitioner and the petitioner is continuously receiving the pension accordingly.

(iii) However, in this context, it is the grievance of the petitioner that, as per the relevant rule as imposed by the Government through the Government Order dated 23.01.1986 in G.O.Ms.No.68, Personnel and Administrative Reforms Department, the petitioner is eligible and entitled to claim Selection Grade in the promoted category i.e., Superintendent cadre. Though he had not completed ten years in that category, by taking into account, the period, he rendered service as Assistant (Selection Grade), i.e., feeder category and if that period is taken into account, certainly, the petitioner would be fulfilling ten years service to become eligible to claim Selection Grade in Superintendent category.

(iv) In this context, it seems that, the petitioner had given a request to the respondents to treat the said period for the purpose of conferring the status of Selection Grade to the petitioner in Superintendent category. However, the said request of the petitioner has been rejected by the second respondent through the impugned order dated 18.07.2007. That is how, this Writ Petition was filed with the aforesaid prayer.

3. Heard Mr.M.Balamuralikrishnan, learned counsel appearing for the petitioner who has given the aforesaid dates on the service of the petitioner. According to the learned



counsel for the petitioner, from 1972 to 1982, since he worked as Assistant in ordinary scale or ordinary grade and having completed ten years of service in the year 1982, he was given the financial upgradation by conferment of Selection Grade. In that capacity, he worked till 1993 and on 26.03.1993, he was given promotion on regular basis to the post of Superintendent.

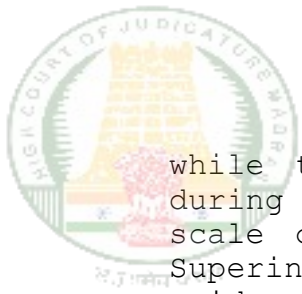
4. He would further submit that, in that capacity of Superintendent, he worked till 31.10.2001. Therefore, in between, from 26.03.1993 and 31.10.2001, the required number of service of ten years since has not been completed by the petitioner, he wanted to extend the benefit conferred in G.O.Ms.No. 68 and thereby, if the certain period, he worked as Assistant (Selection Grade) is also taken into account for the purpose of fulfilling the ten years requirements, certainly, the petitioner would be eligible to be considered for Selection Grade in Superintendent category and accordingly, his pay could have been revised and thereby, his pension also consequently could have been revised.

5. In support of this contention, the learned counsel has relied upon the import of G.O.Ms.No.68 dated 23.01.1986. In order to appreciate the import of the said G.O., the relevant portion of the G.O., is extracted hereunder:

"2.The Government after careful examination accept the recommendation of the one Man Committee and direct that the service in the Selection Grade of the lower post shall be counted for the Selection Grade in the promoted post provided that the selection grade scale of the lower post is identical to the ordinary grade of the higher post, and that the concession be allowed only at the first promotion level. Government also direct that in the case of posts with different grades one who has put in ten years or more of service in the lower post (eg.Grade-II) shall be advanced to the next higher post (i.e., Grade-I) under the scheme or Flexible Complementing and one with a service of twenty years or more be advanced to Selection Grade of the higher post (i.e., Grade-I) wherever it has already been provided."

6. By relying upon the aforesaid import of the G.O.Ms.No.68 dated 23.01.1986, the learned counsel would submit that, the service in the Selection Grade of the lower post shall be counted for the Selection Grade in the promoted post provided that, the Selection Grade scale of the lower post is identical to the ordinary grade of the higher post and that concession be allowed only at the first promotion level.

7. By relying upon this exact import of the G.O., the learned counsel appearing for the respondents stating that,



while the petitioner worked as Assistant (Selection Grade) during the period between 01.10.1984 to 31.05.1988, the pay scale of Assistant (Selection Grade) and the pay scale of Superintendent - Ordinary Scale was one and the same and the said pay scale of the Superintendent was revised, of course, on the Finance Commission recommendation only with effect from 01.06.1998. Therefore, the learned counsel would contend that, if the said period of three years, where the scale of pay of Assistant Selection Grade and Superintendent Ordinary Grade since were one and the same, the learned counsel would contend that, the import of the G.O.Ms.No.68 can very well be applied to the petitioner's case. Accordingly, he can be conferred with the Selection Grade status with the Superintendent category, from where he retired from the service on superannuation and accordingly, he would be entitled to get the revised pay and correspondingly, the revised pension.

8. Per contra, Mr.K.Magesh, learned Special Government Pleader appearing for the respondents would submit that, the period, which, the petitioner claimed to be added for the purpose of conferment of Selection Grade in Superintendent, i.e., between 01.10.1984 to 31.05.1988 was in fact calculated, as the eligible service for the purpose of conferment of Special Grade in the original post i.e., Assistant Post and that the period has already been taken into account, for which, the benefit has already been conferred on the petitioner. By thus, he was put under financial upgradation by way of Special Grade in Assistant cadre. The very period between 01.10.1984 to 31.05.1988 cannot be once again expected to be taken into account for the computation of the total ten years period of service of the petitioner in the category of Superintendent and accordingly, he cannot seek for conferment of Selection Grade in Superintendent post.

9. This has been exactly stated in the impugned order, of course, after getting clarification from the Government. Therefore, the said reason stated in the impugned order would be fully sustained. Hence it does not require any interference, the learned Special Government Pleader contended.

10. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. With regard to the aforesaid dates, where the petitioner has moved from the date of appointment till his superannuation, there has been not much dispute between 1972 and 1982. The petitioner was worked in Ordinary Grade of Assistant and from 1982 onwards, he was conferred with the Selection Grade. In the year 1993, on regular basis, he was promoted as Superintendent with effect from 26.03.1993. However, he retired from service on superannuation on 31.10.2001. Therefore, ten years of service has not been



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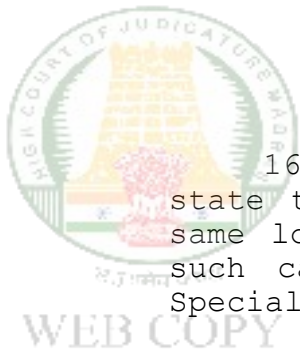
completed by the petitioner in the category of Superintendent. Therefore, he would not be eligible to consider for the conferment of financial upgradation of Selection Grade Superintendent and this is the exact stand of the learned Special Government Pleader for the respondents.

12. However, the petitioner expected to extend the benefits of G.O.Ms.No.68, whereby as has been quoted above, the Government had given a concession to those who worked in the lower cadre in the Selection Grade and that pay if was equivalent to the Ordinary Grade of the promoted post, that kind of period where the incumbent was working in the Selection Grade in lower post, can also be treated as eligible service for the purpose of calculating the required service for conferment of Selection Grade in the promoted post.

13. In the present case, between 1982 and 1992, when the petitioner was working as Assistant (Selection Grade) during the particular period between 01.10.1984 to 31.05.1988, what was the pay scale fixed in that cadre is equal to that of the pay scale on Superintendent Ordinary Scale.

14. The said pay scale was revised or modified only with effect from 01.06.1998, of course, after Pay Commission recommendation. Therefore, it is a fact that, at least for the period of more than three years, the petitioner was working in the lower post of Selection Grade cadre with the same pay scale of Ordinary Grade of the promoted post of Superintendent.

15. Exactly, this kind of situation has been confronted in the aforesaid G.O., where the language used is that, "the service in the Selection Grade of the lower post (which means in the present case, is Selection Grade Assistant post), shall be counted for the Selection Grade in the promoted post, (which means the said period of the lower post in Special Grade shall be counted for the purpose of conferring Selection Grade in the promoted post, i.e., Superintendent post), provided that the Selection Grade scale of the lower post is identical to the Ordinary Grade of the higher post (that is equal in this case atleast for three years or more i.e., between 01.10.1984 to 31.05.1988). The other sentence used in the said G.O., is that, the concession be allowed only at the first promotion level, here from Assistant post it is a first promotion level to the post of Superintendent. Therefore, the very G.O., itself had given this concession to these kind of employees only in order to get the financial upgradation in the first level promotion post, i.e., what the petitioner exactly seeks for and the same has been rejected through the impugned order, by stating that, the said period of three years and more between 01.10.1984 to 31.05.1988 had already been calculated for the purpose of conferring Special Grade to the petitioner.



16. There is no exemption given in the said G.O., to state that, if consequent Special Grade is conferred in the same lower post, this kind of concession cannot be given to such candidate who had been conferred with the consequent Special Grade in the lower post.

17. In the absence of any such language used in G.O.Ms.No.68, such kind of interpretation cannot be imported and supplied by the Government and therefore, whatever the clarification that has been obtained from the Government as has been reflected in the impugned order would go against the spirit of G.O.Ms.No.68. Therefore, this Court feels that, the said reasons cited in the impugned order cannot be sustained.

18. In that view of the matter, the impugned order is liable to be interfered with and also to be quashed.

19. Resultantly, the following orders are passed in this Writ Petition:

"That the impugned order is quashed, consequently, a direction is hereby given to the respondents to treat the service period of the petitioner between 01.10.1984 to 31.05.1988 as eligible service period for conferment of financial upgradation i.e., Selection Grade in Superintendent post and accordingly, such benefits shall be conferred on him, consequently the pay and the pensionable benefits shall also be revised accordingly and be calculated and paid to the petitioner within a period of three months from the date of receipt of a copy of this order."

20. With the above directions, this Writ Petition is allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Secretary to Government of Tamil Nadu,
Agricultural Department,
Fort St.George,
Chennai - 9.



2. The Director,
Agricultural Department,
Chepauk, Chennai - 600 005.

3. Joint Director,
Agricultural Department,
Collector Office Compound,
Dharmapuri - 636 705.

+lcc to Mr.V.R.Anna Gandhi, Advocate, S.R.No. 10131
+lcc to the Government Pleader, S.R.No. 10306

W.P. No. 36512 of 2007

SR II(CO)
GN(15/07/2021)