



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.03.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.25174 of 2008

N.J.Tharaknath

...Petitioner

Vs.

The Chairman,
Chennai Port Trust,
Rajaji Salai,
Madras - 600 001.

...Respondent

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to refix the petitioner's pensionary and superannuation benefits after granting the notional promotions the petitioner was entitled to in terms of the orders of the Division Bench of this Court dated 13.06.2007 in W.A.No.1359 of 1998 and to disburse the interest on delayed payment of terminal benefits at the rate of 12% per annum.

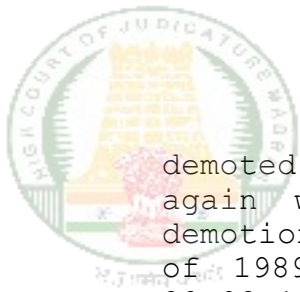
For Petitioners : Mr.Sundar Narayan

For Respondent : Mr.M.R.Dharani Chander

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents to refix the petitioner's pensionary and superannuation benefits after granting the notional promotions the petitioner was entitled to in terms of the orders of the Division Bench of this Court dated 13.06.2007 in W.A.No.1359 of 1998 and to disburse the interest on delayed payment of terminal benefits at the rate of 12% per annum.

2.The petitioner was initially appointed or engaged in the year 1984 as Office Superintendent, thereafter, he was promoted as Assistant Accounts Officer on 31.07.1986. Thereafter, there had been a merger of employees between the Madras Port Clearing and Forwarding Agents Pool and Madras Dock Labour Board and accordingly, he was absorbed as a permanent employee to that effect, however, subsequent to that merger, though the petitioner already been promoted and was working as Assistant Accounts Officer with effect from 31.07.1986, he has been



demoted or de-promoted to the post of Office Superintendent once again with effect from 12.10.1989. Aggrieved over the said demotion, the petitioner had filed writ petition in W.P.No.15079 of 1989. The said writ petition was allowed by order dated 20.08.1998 whereby the respondent Port Trust was directed to treat the petitioner as Assistant Accounts Officer as on 01.08.1988 and also consequently direction was given with regard to pay arrears etc.

3.Felt aggrieved over the said order passed by the writ Court, the respondent Port Trust preferred an intra-Court appeal in W.A.No.1359 of 1998. The said writ appeal was heard and decided by the order of a Division Bench dated 13.06.2007 wherein, inter alia, the Division Bench has passed the following:

"18.Consequently, the order of the learned single judge made in the writ petition is confirmed. The writ appeal is dismissed. No costs.

19.The appellant Board is directed to treat the writ petitioner for absorption as 'Assistant Accounts Officer' as on 1.8.88 and consider his case for giving promotions for which he is entitled to as per the scheme.

20.At the end of the arguments, the learned counsel for the appellant stated that he was appointed as 'Office Superintendent'. He was promoted as 'Assistant Accounts Officer' in Madras Dock Labour Board on 1.4.98 and thereafter, he was regularised on 20.9.93. Further, he was promoted as 'Assistant Secretary' in the scale of pay Rs.4350-175-7500 by order dated 2.7.98. Thereafter, the writ petitioner was promoted on 28.5.2005 as 'Secretary' in 2006 and 'Labour Welfare Officer'. Therefore, if he is appointed as 'Assistant Accounts Officer' in 1988 he should have got this promotion prior to this date. Therefore, the appellant Board is directed to reconsider the same.

21.We direct the appellant Board to treat the writ petitioner as was appointed as Assistant Accounts Officer as on 1.8.88 and pay all the arrears of pay within a period of eight weeks from the date of receipt of a copy of this order."

4.Though the said order was passed by the Division Bench as early as in the year 2007, the respondent had not fully complied with the said order, which means the respondent has not given



promotion from the correct date by considering the petitioner as Assistant Accounts Officer as on 01.08.1988 and therefore, in order to have the full compliance of the orders of the Division Bench referred to above, especially, in paragraph 19 and 20 referred in the said order, and for getting the consequential service and pay as well as attendant benefits, the petitioner has filed the present writ petition with the aforesaid prayer.

5. Heard Mr. Sundar Narayan, learned counsel appearing for the petitioner, who has reiterated the aforesaid facts and has submitted that, the issue pertaining to the present prayer sought for had already been concluded by two successive orders passed by this Court, as referred to both by the Writ Court as well as the Division Bench of this Court, despite the same, the respondent has not come forward to give promotion to the petitioner. Infact, he has already crossed the pay payable to the Labour Welfare Officer and Assistant Secretary and by virtue of that, the consequential pay as well as attendant benefits had also not been paid. Therefore, he seeks indulgence to issue a direction to that effect by way of mandamus.

6. Per contra, Mr. M. R. Dharani Chander, learned Standing Counsel appearing for the respondent Port Trust would submit that, initially the petitioner was appointed in the year 1972 only in the Madras Port Clearing and Forwarding Labour (Regulation of Employment) Scheme and in this regard, he relied upon the order passed by the Government under the said Scheme dated 11.11.1974, where, it has been stated that the Administrative Committee was pleased to confirm the appointment of the petitioner as Clerk only with effect from 01.11.1972.

7. Therefore, what are all the service rendered by the petitioner prior to the merger of the Madras Port Clearing and Forwarding Agents as well as Madras Dock Labour Board having been considered by the respondent Port Trust, though the petitioner was promoted as Assistant Accounts Officer, he was fit in correct position as Office Superintendent with effect from 12.10.1989 and subsequently, when the writ petition as well as the writ appeal, referred to above, had been ordered in favour of the petitioner, pursuant to the said directives issued by this Court concurrently, especially under para 19 and 20 of the Division Bench order, referred to above, all such promotions had already been given to the petitioner and based on which, his pay arrears also have been calculated and was paid to the petitioner. Therefore, absolutely there is no merit in the claim now made by the petitioner, hence, he seeks dismissal of this writ petition.

8. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the



materials placed before this Court.

9.As has been rightly pointed out by the learned counsel appearing for the petitioner, the entitlement of the petitioner to get hierarchy of promotions from the post of Assistant Accounts Officer till his superannuation to various posts like Assistant Secretary, Administrative Officer Class I and Labour Welfare Officer Class I, since were not in dispute, those promotions should have been given correctly to the petitioner based on his seniority in every stage, had he been Assistant Accounts Officer as on 01.08.1988.

10.It is to be noted that, at para 20 of the Division Bench order, the stand of the respondent Port Trust had, in fact, been recorded by the learned Judges stating that, the petitioner was promoted as Assistant Accounts Officer in Madras Dock Labour Board on 01.04.1993 and thereafter, he was regularised on 20.09.1993.

11.However, the fact remains that, as per the orders of the Writ Court, as confirmed by the Division Bench, the petitioner should have been treated as Assistant Accounts Officer as on 01.08.1988 and not either on 01.04.1993 and 20.09.1993, as has been stated by the respondent Port Trust, which has been in fact recorded at para 20 of the Division Bench order.

12.Only after recording these developments where series of promotions were given to the petitioner, the Division Bench had given a categorical direction that, if he was appointed (the petitioner) as Assistant Accounts Officer in 1988, he should have got these promotions prior to this date, therefore, the appellant Board was directed to consider the same.

13.The import of the said Division Bench order is that, even though subsequently promotions have been given to the petitioner, taking into account the date of promotion to the petitioner as Assistant Accounts Officer as either on 01.04.1993 or 20.09.1993 for giving further promotions, may not be justifiable in view of the conclusion reached by the Writ Court, which has been confirmed by the Division Bench, instead, for such promotion given to the petitioner, the petitioner should have been treated as Assistant Accounts Officer as on 01.08.1988.

14.Had he been considered as Assistant Accounts Officer as on 01.08.1988, certainly, all the subsequent promotions would have been earned by the petitioner just prior to or well prior to the actual dates of promotion which had been given by the respondent Port Trust, as recorded at para 20 of the Division Bench order.



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15. Therefore, the present stand taken by the respondent Port Trust that, promotions had subsequently been given to the petitioner thereby the orders of the Division Bench has been fully followed and complied with cannot be accepted or countenanced.

16. In that view of the matter, this Court feels that, the petitioner is entitled to succeed in the writ petition and therefore, this Court is inclined to pass the following orders in this writ petition.

(i) There shall be a direction to the respondent Port Trust to treat the petitioner as Assistant Accounts Officer as on 01.08.1988, instead of 01.04.1993 or 20.09.1993 or any other subsequent date and accordingly confer the subsequent promotions as Assistant Secretary, Administrative Officer Class I, Labour Welfare Officer Class I and those promotions accordingly be conferred on him on the correct date of promotion by taking into account the inter se seniority of the petitioner among various other people in the same category strictly taking into account the seniority of the petitioner as Assistant Accounts Officer as on 01.08.1988 and accordingly, confer those promotion to the petitioner on the actual date of due and consequently confer the pay and other attendant benefits which includes the arrears of pay and pensionable benefits, if any, which shall also be calculated and be disbursed to the petitioner.

(ii) It is needless to mention that, the petitioner shall be entitled to get 6% interest for the belated payment of arrears of pay and benefits. The aforesaid needful shall be undertaken by the respondent within a period of twelve weeks from the date of receipt of a copy of this order.

17. With these directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl



To

The Chairman,
Chennai Port Trust,
Rajaji Salai,
Madras - 600 001.

+1cc to M/s.R.Sunilkumar, Advocate, S.R.No.19445

+1cc to Mr.M.R.Dharanichander, Advocate, S.R.No.19451

W.P.No.25174 of 2008

PL (CO)
RGA (20/07/2021)