



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.06.2021

CORAM

THE HONOURABLE Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.24962 of 2011

G. Dheenadayalan

...Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Public Works Department,
Fort St. George,
Chennai 600 009.

2. The Pay and Accounts Officer,
(Treasuries and Accounts Department),
Pay and Accounts Office - East,
Egmore, Chennai 600 008.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent herein in letter No.19656/A2/2011-1, dated 04.10.2011, and quash the same and consequently direct the respondents herein to forthwith pay the arrears of pay and allowances to the petitioner for the post of Executive Engineer and Superintending Engineer together with interest from 31.07.1999 and interest to the delayed payments already made except gratuity to till the date of payment and other retirement benefits.

For Petitioner : M/s.A.L.Ganthimathi
For Respondents : Mr.C.Harsha Raj

ORDER

The writ petition is filed to challenge the order dated 04.10.2011, whereby the petitioner's representation dated 19.07.2011 was rejected by citing ruling 17 of Fundamental Rule (FR) 27.

2. The petitioner was employed in the Public Works Department of the Government of Tamil Nadu. While serving as Assistant Executive Engineer, he was placed under suspension in connection with a criminal prosecution. Consequently, he was not



permitted to retire on the date of superannuation. The said criminal proceedings were pending for more than 20 years. Eventually, by an order dated 20.01.2007, the criminal case was closed. Pursuant to G.O.(D) No.440 dated 10.08.2007, Public Works (E1) Department, the suspension of the petitioner was revoked, and he was permitted to retire with effect from 31.07.1999 on account of having attained the age of superannuation. In such circumstances, the petitioner made a request to the Government for such promotional benefits as would have ordinarily accrued to the petitioner but for the suspension and the criminal proceedings. Based on such request, the Government issued G.O.(D.) No.286, Public Works (A1) Department, dated 17.06.2008. In terms of G.O.(D).No.286, the petitioner's name was included in the panel of Assistant Executive Engineers fit for promotion as Executive Engineer for the year 1995-96 and in the panel of Executive Engineers fit for promotion as Superintendent Engineer for the year 1998-1999. Pursuant to such inclusion, G.O.(D)No.286 also records that the pay of the petitioner be fixed notionally on a par with his juniors in the category of Executive Engineer and Superintending Engineer, respectively, as per ruling 17 of FR 27, by taking into account the date on which his junior was promoted as it would enable the petitioner to get all the pensionary benefits as per G.O.MS.No.203, Personnel and Administration Department, dated 30.10.2000. It appears that the petitioner received such benefits only sometime in the year 2011. Pursuant thereto, by a representation dated 19.07.2011, the petitioner also requested for arrears of pay and allowances in the post of Executive Engineer and Superintending Engineer. Such request was rejected by the impugned order dated 04.10.2011, and the present writ petition challenges such rejection.

3. The learned counsel for the petitioner contends that the criminal prosecution was the only reason for the suspension of the petitioner. The said criminal prosecution was closed after more than 20 years. As a consequence of the prolonged suspension, the petitioner was denied the benefit of promotion to the posts of Executive Engineer with effect from 1995-96 and Superintending Engineer with effect from 1998-99. Since such suspension was not on account of any default by the petitioner, the learned counsel contends that the petitioner is entitled both to the monetary and non-monetary benefits that an Executive Engineer and Superintending Engineer, as the case may be, would be entitled to with effect from the date on which the petitioner was held to be notionally entitled to such promotion. The learned counsel further contends that ruling 17 of FR 27 does not prevent extension of such benefits to persons such as the petitioner.



4. On the contrary, learned counsel for the State refers to G.O.(D).No.286 and points out that the promotion of the petitioner to the posts of Executive Engineer and Superintending Engineer were notional and solely for the purpose of extending pension and other terminal benefits to the petitioner. Learned counsel for the State points out that the admitted position is that the petitioner did not discharge duties as Executive Engineer or Superintending Engineer and, therefore, the salary and other allowances, which were applicable to such posts, cannot be claimed by the petitioner. In addition, learned counsel points out that the G.O.(D) No.286 was issued on 17.06.2008, whereas the petitioner submitted the representation more than three years thereafter on 19.07.2011. As such, he contends that the representation of the writ petitioner was liable to be rejected on account of the inordinate delay.

5. Upon considering the rival contentions, the question that arises for consideration is whether the petitioner is entitled to the salary and other allowances, which were payable to an Executive Engineer and Superintending Engineer, with effect from the date of notional promotion to the respective posts. Given the fact that the impugned order relies on ruling 17 of FR 27, the relevant part thereof is set out below:

"(17) 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. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above post.

Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included to the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the



stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other terminal benefit;"(emphasis added)

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6. Upon perusal of ruling 17, it is clear that the main ruling refers to Government Servants whose seniority was subsequently restored while they remained in service. In such event, it provides that the arrears of pay and allowances would be admissible with effect from the date of assumption of charge in the higher post. In the present case, until retirement, the petitioner did not actually assume charge in the higher posts. The proviso to ruling 17 refers to Government servants whose names were not considered for promotion on account of pending charges until retirement, but who were exonerated of such charges after they attained the age of superannuation. As regards such persons, it provides that the pay would be fixed notionally on the date of retirement on a par with their junior, but that such fixation is only for purposes of pension and other terminal monetary benefits. Thus, the proviso to Ruling 17 of FR 27 squarely applies to the petitioner. Moreover, it is clear from Ruling 17 of FR 27 that the petitioner would be entitled to pension and other terminal monetary benefits based on the notional fixation of pay in the higher posts, but not to salary and other allowances that would be payable to those who discharged duties and functioned in the promoted post.

7. Although the impugned order of rejection is cryptic and merely cites Ruling 17 of FR 27, the said impugned order should be considered along with Ruling 17 of FR 27 and the material documents that preceded it. In particular, G.O.(D).No.286 is abundantly clear and the said document categorically records that the petitioner's pay is fixed notionally on a par with that of his junior in the categories of Executive Engineer and Superintending Engineer. It further records that this is for the purpose of enabling the petitioner to get all the pension benefits. When G.O.(D)No.286 is considered along with the impugned order rejecting the petitioner's representation, it is evident that such rejection is in conformity with ruling 17 of FR 27. As such, the petitioner has failed to make out a case to interfere with the impugned order.

8. In the result, W.P.No.24692 of 2011 is dismissed without any order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar



pvs
To

1. The Secretary to Government,
The Government of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai 600 009.

2. The Pay and Accounts Officer,
(Treasuries and Accounts Department),
Pay and Accounts Office - East,
Egmore, Chennai 600 008.

+1 CC to Mr.A.L. Gandhimathi, Advocate, Sr. 29542.
+1 CC to The Government Pleader, Sr 29726.

W.P.No.24962 of 2011

PCH(CO)
LS(23/07/2021)