

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :28.02.2021

Judgment pronounced on:12-03-2021

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal No. 2374 and 2832 of 2019
and
C.M.P. Nos. 15681 and 18221 of 2019

--

WA No. 2374 of 2019

1. T.G. Subramaniam
2. U. Bagavathy
3. K. Chandra Sekaran
4. R. Elumalai
5. G. Subramani
6. A.M. Palanisamy
7. R. Deenadayalan
8. P.M. Sampath

.. Appellants

Versus

1. The Secretary to Government
Rural Development and Panchayat Raj Department
Fort St. George
Chennai - 600 009
2. The Director
Rural Development and Panchayat Department
Panagal Building, Saidapet
Chennai - 600 015
3. The Principal Accountant General
361, Anna Salai
Chennai - 600 018
4. The District Collector
Thiruvallur
5. C. Jayaraman
6. A.T. Chandran
7. K. Perumal
8. R. Jaya

.. Respondents

WA No. 2832 of 2019

K. Jeevanandam

.. Appellant

Versus

1. The Secretary to Government
Rural Development and Panchayat Raj Department
Fort St. George
Chennai - 600 009

2. The Director
Rural Development and Panchayat Department
Panagal Building
Saidapet
Chennai - 600 015

3. The Principal Accountant General
361, Anna Salai
Chennai - 600 018

4. The District Collector
Vellore District

.. Respondents

WA No. 2374 of 2019: Appeal filed under Clause 15 of Letters Patent against the Order dated 13.03.2019 made in WP No. 3203 of 2017 on the file of this Court.

WA No. 2832 of 2019: Appeal filed under Clause 15 of Letters Patent against the Order dated 13.03.2019 made in WP No. 29520 of 2018 on the file of this Court.

Prayer in WP.3209/2017:

Writ petition filed under Article 226 of the Constitution of India, Praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd Respondent in Proceedings Letter No.24191/16/EE4 dated 08.12.2016, quash the same and further direct the 2nd Respondent to implement G.O.(Ms)No.856, dated 01.06.1977.

Prayer in WP.29520/2018:

Writ petition filed under Article 226 of the Constitution of India, Praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th Respondent in Proceedings of No.Ka.PA4/10185/2010 dated 20.12.2013, quash the same and further direct the 4th Respondent to implement G.O.(Ms)No.856, dated 01.06.1977.

For Appellants : Mr. K. Sukumaran
for Mr. G. Murugendran
in both the Writ Appeals

For Respondents : Mr. N. Srinivasan
Additional Government Pleader
for RR1, 2 and 4 in both the Writ Appeals

Mr. N. Vijay Shankar for R3
in both the Writ Appeals

COMMON JUDGMENT

R. SUBBIAH, J

WA No. 2374 of 2019 is filed as against the order dated 13.03.2019 passed in WP No. 3203 of 2017.

2. WA No. 2832 of 2019 has been filed as against the order dated 13.03.2019 passed in WP No. 29520 of 2018.

3. By two separate orders, both dated 13.03.2019, the learned Single Judge had dismissed the Writ Petitions, namely W.P.Nos.3203 of 2007 and 29520 of 2018 filed by the respective writ petitioners/appellants herein.

4. WP.No.3203 of 2017 was filed by the appellants/petitioners to issue a Writ of Certiorarified Mandamus to quash the proceedings dated 08.12.2016 of the second respondent and to consequently direct the second respondent to implement G.O.Ms.No.856, Public Works Department, dated 01.06.1977 in their favour.

5. WP.No.29520 of 2018 was filed by the appellant/petitioner praying to issue a Writ of Certiorarified Mandamus to quash the Order dated 20.12.2013 of the fourth respondent and consequently direct the fourth respondent to implement G.O. Ms. No. 856, Public Works Department, dated 01.06.1977 in his favour.

6. Since the issues involved in the Writ Appeals are one and the same, we are taking up the appeals for hearing together and dispose of the same by this common judgment.

7. The appellants in W.A.No.2374 of 2019 were originally appointed as Road Inspector Grade-II in the Highways and Rural Development Department on various dates in the year 1973 and their services were also regularised sometime in the year 1979. Thereafter, the appellants were also promoted to the post of Road Inspector Grade-I in the year 1989. While the appellants were working in the Highways and Rural Development Department,

they were absorbed in the Rural Development and Panchayat Department under the administrative control of the second respondent.

8. The appellant in W.A.No.2832 of 2019 was appointed on 03.09.1981 as Road Inspector Grade-II in the Highways and Rural Works Department and his service was regularised on 08.02.1999. When he was working in the Highways and Rural Works Department, in the year 1999, he was absorbed in the Rural Development and Panchayat Department under the administrative control of the second respondent.

9. Thus, from the year 1999, the appellants herein were working in the Rural Development and Panchayat Department under the administrative control of the second respondent.

10. The grievance of the appellants is that even when they were working in the Highways and Rural works Department, the Government issued G.O.Ms.No.856, Public Works Department, dated 01.06.1977, by which, the qualifying service for promotion from the post of Road Inspector Grade II to the post of Road Inspector Grade-I was reduced from 10 years to five years. Similarly, the qualification prescribed for such promotion was also modified from a pass in S.S.L.C. to pass in S.S.L.C. with bifurcated Engineering Course (ITI). Due to this Government Order, there was a change in the mode of recruitment, fixation of seniority and pay structure. Even though the appellants were also working in the Highways and Rural Works Department until 1999, the benefit of G.O.Ms.No.856, Public Works Department, dated 01.06.1977 was not extended to them. However, by a proceedings No.385/2002/B3 dated 10.01.2002, the Divisional Engineer, Highways and Rural Works Department implemented the order passed by the Government in favour of those who were working in the Highways Department. On coming to know about the implementation of the order passed by the Government in favour of those who are working in the Highways Department, the appellants have submitted a representation but there was no response. While so, WP(MD).Nos.1992 to 2004 of 2005 were filed by similarly placed persons like the appellants in which this Court passed an order on 23.11.2006 directing the respondents therein to consider the claim of the writ petitioners therein. However, the respondents therein rejected the request which was challenged by filing WP.(MD).Nos.7738 to 7749 of 2008. The said writ petitions were allowed on 12.12.2012 by quashing the order of rejection with a direction to the respondents therein to implement G.O.Ms.No.856, Public Works Department, dated 01.06.1977. By citing the said order passed in WP.(MD).Nos.7738 to 7749 of 2008, the appellants have submitted a representation to the second respondent to give effect to the benefits of G.O.Ms.No.856, Public Works Department, dated 01.06.1977 in

their favour, but it was rejected by the orders which are impugned in the writ petitions filed before the learned single Judge.

11. The learned Single Judge dismissed the writ petitions filed by the appellants on the ground that Highways Department has not given any clarification with respect to implementation of G.O.Ms.No.856, dated 01.06.1977 stating that, it is applicable to the appellants, who are erstwhile employees of Highways Department. Further, it was reasoned that when the Divisional Engineer, Highways Department implemented G.O. Ms. No.856 dated 01.06.1977 in the year 2002, the appellants were not working in Highways Department and therefore, they are not entitled to the benefits conferred to those who are working in the Highways Department in the year 2002.

12. The learned counsel for the appellants submitted that, originally, the appellants were working in the Highways and Rural Works Department as Road Inspector, Grade-II and were also given promotion to the post of Road Inspector, Grade-I. While they were working in the Highways Department, G.O.Ms.No.856, Public Works Department, dated 01.06.1977 was issued. But the Service Rules of Tamil Nadu Rural Development Engineering Subordinate Service Rules were not framed at the relevant point of time. While so, in the year 1999, about 547 persons belonging to Highways and Rural Development Department were absorbed to Rural Development and Panchayat Raj Department, including the appellants. Merely because the appellants have been absorbed to Rural Development and Panchayat Raj Department, the respondents cannot refuse to extend the benefit of G.O.Ms.No.856, Public Works Department, dated 01.06.1977, especially when the said Government Order was issued when the appellants were working in the Highways and Rural Works Department. Further, after absorption of the appellants to the Rural Development and Panchayat Raj Department, on 04.05.2009, by G.O.Ms.No.163, amendment to the Special Rules of Tamil Nadu Panchayat Development Engineering Subordinate Service, was made. Thereafter, pursuant to the order passed by this Court, the benefits under G.O.Ms.No.856, dated 01.06.1977 were extended to those who are working in Highways and Rural Development Department. Though the Government Order was issued in the year 1977, the delay in framing the Special Rules cannot be put against the appellants on the ground that the appellants were subsequently absorbed to Rural Development and Panchayat Raj Department. The appellants are only seeking the benefits which had accrued to them when they were working in the Highways and Rural Development Department. When such benefits were extended to similarly placed persons, refusing to extend the same to the appellants is not justified. The learned single Judge did not consider all these aspects and dismissed the writ petitions.

13. On the above contentions, we have heard the respective learned counsel for the respondents and perused the materials placed.

14. The appellants were working in Highways and Rural Works Department until 1999. In the year 1999, the persons working in the Highways Department were sought to be absorbed in the Rural Development and Panchayat Raj Department. For this purpose, option of the employees working in the Highways Department were sought. The appellants have exercised their option to get absorbed in the Rural Development and Panchayat Raj Department. Thus, from 19.03.1999, the appellants were transferred and/or absorbed into Rural Development and Panchayat Raj Department and working there, as is evident from the proceedings dated 19.03.1999 of the Director of Rural Development. In the operative portion of the proceedings dated 19.03.1999, it is specifically stated as under:-

"Accordingly, 547 personnel belonging to the Chief Engineer (Highways and Rural Works) in the post of Road Inspectors in Rural Development Department (vide Annexure) who opted for permanent absorption in Rural Development Department is hereby ordered to absorb them permanently in Rural Development Department subject to condition of pending framing of Adhoc/Service Rules for Tamil Nadu Rural Development Engineering Service and Tamil Nadu Rural Development Engineering Subordinate Service by Government in Rural Development Department."

15. Thus, the appellants were permanently absorbed in the Rural Development and Panchayat Raj Department from 19.03.1999 without any lien with their parent Department namely Highways and Rural Works Department. Therefore, the benefits conferred to the employees working in the Highways and Rural Works Department in the year 2002, much after the absorption of the appellants in the year 1999, cannot be extended in their favour. It is needless to mention that the benefits conferred upon the Highways and Rural Works Department in the year 2002, are exclusively meant for those working in the said Department as on the date when the Government Order was sought to be implemented and it cannot be extended to the appellants, who were no longer working in the Highways and Rural Works Department, but were absorbed to the Rural Development and Panchayat Raj Department even in the year 1999.

16. Above all, we find that all the appellants have reached the age of superannuation and retired from service on various

dates. The writ petitions were filed atleast after five to ten years of the retirement of the appellants from service by claiming that the benefits extended to those who were working in the Highways and Rural Development Department, have to be extended to them, inasmuch as they were also employees of the Highways and Rural Development Department until 1999. At the outset, it is to be stated that the Writ Petitions filed by the appellants in the year 2017 or 2018, after their retirement has to be dismissed on the ground of delay and laches. It is not known as to what prompted the writ petitioners to keep quiet from 2002 to 2017 to file the writ petitions before this Court, seeking to extend the benefits, which were extended to the employees of the Highways and Rural Works Department in the year 2002. There is no explanation forthcoming on the part of the appellants. The appellants have filed the writ petitions before this Court only after coming to know about the order passed by the Madurai Bench of this Court in favour of those working in the Highways and Rural Works Department. Thus, even the order or direction issued by the Madurai Bench of this Court cannot enure to the benefits of the appellants herein as they were no longer working in the Highways and Rural Development Department. Thus, the appellants are fence-sitters who have waited for some orders to be passed in similar situation by this Court and based on the same, they have filed the present Writ Petitions. The Writ Petitions have been filed by the appellants before the learned Single Judge with enormous delay and laches. It is in those circumstances, the learned single Judge refused to entertain the writ petitions filed by the appellants. Thus, the writ petitions were rightly dismissed by the learned Single Judge and we see no reason to interfere with the orders, which are impugned before us.

17. In the result, we confirm the order dated 13.03.2019 passed by the learned Single Judge in WP No. 3203 of 2017 and WP No. 29520 of 2018. The writ appeals fail and they are dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Secretary to Government
Rural Development and Panchayat Raj Department
Fort St. George
Chennai - 600 009
2. The Director
Rural Development and Panchayat Department
Panagal Building, Saidapet
Chennai - 600 015
3. The Principal Accountant General
361, Anna Salai
Chennai - 600 018
4. The District Collector
Thiruvallur
5. The District Collector
Vellore District

+2cc to Mr.G.Murugendran Advocate, S.R.Nos.15949 &15950

+1cc to the Government Pleader, S.R.No.16360

Pre-delivery common Judgment in
WA Nos. 2374 and 2832 of 2019

GSM(CO)
RG.17.04.2021