



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)Nos.10414 of 2012

and

M.P (MD)Nos.1 of 2013 and 2 of 2012

WEB COPY

A.Mariappan

... Petitioner

Vs.

1.The State of Tamil Nadu,  
Rep by the Secretary to Government  
Labour and Employment Department,  
Secretariat, Chennai-9.

2.The Director/Commissioner,  
Employment and Training  
Guindy, Chennai-32.

3.The Accountant General (Accounts and Entitlement)  
Tamil nadu, Chennai.

4.The Deputy Director/Principal  
Government Industrial Training Institute,  
Trichy-4.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents 2, 3 and 4 dated 20.01.2006 in Na.Ka.No.47720/Tho ThuPa.5/05, date Nil in Pen.12/V/M173-1607AR/04-05/ADK and dated Nil.05.2012 in proceeding 559/U3/2007 respectively, quash the same and consequently direct the respondents to pay the pensionary benefits including monthly pension commutation pension and other retirement benefits on the last drawn pay of Rs.10,200/- on the date of retirement ie., 31.03.2005 with 12% interest per annum.

For Petitioner : Mr.Selvathirumurugan

For R1, R2& R4 : Mr.C.Mari Chelliah Prabhu

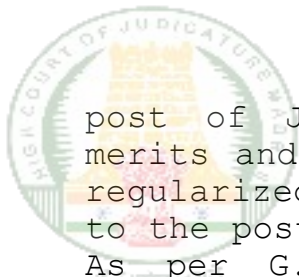
Additional Government Pleader

For R3 : Mr.P.Gunasekaran

### O R D E R

This writ petition has been filed by the petitioner, to call for the records on the file of the respondents 2, 3 and 4 dated 20.01.2006 in Na.Ka.No.47720/Tho ThuPa.5/05, date Nil in Pen.12/V/M173-1607AR/04-05/ADK and dated Nil.05.2012 in proceeding 559/U3/2007 respectively, quash the same and consequently direct the respondents to pay the pensionary benefits including monthly pension commutation pension and other retirement benefits on the last drawn pay of Rs.10,200/- on the date of retirement ie., 31.03.2005 with 12% interest per annum.

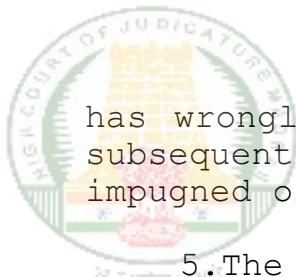
2.The case of the petitioner is that he was selected to the



post of Junior Trainee Officer through Employment Exchange, on merits and he joined the service on 24.03.1973 and his service was regularized with effect from 04.07.1974. Thereafter, he was promoted to the post of Assistant Trainee Officer (Drawing) in the year 1992. As per G.O.Ms.No.57, Finance (Pay Cell -II) Department, dated 28.01.1991, special pay was given to the petitioner with effect from 24.03.1993. Without considering the said G.O, the third respondent raised an Audit Objection. After coming to know that the petitioner made several representations, dated 20.08.2007, 06.11.2007 and 06.02.2008 to the third respondent. So far the third respondent has not passed any orders on the petitioner's representations. Therefore, the petitioner has made a detailed representation to the first respondent, in the light of G.O.Ms.No.57, dated 28.01.1991, pursuant to which, the fourth respondent has communicated an order of the second respondent that the petitioner's claim is unacceptable. Challenging the same, the present writ petition is filed.

3.The learned counsel appearing for the petitioner submitted that though the petitioner was given Special pay, as per G.O.Ms.No.257, dated 28.01.1991, the said pay fixation was revised based on the audit objection, without issuing notice to the petitioner. Thereafter, the petitioner has made a detailed representation to the respondents and the same was not considered properly. Again, the petitioner has made a representation, dated 27.08.2008 to the respondents and pursuant to the same, the fourth respondent communicated the order of the second respondent stating that the petitioner's claim is unacceptable, without giving any reason. Hence, he prays for allowing the present writ petition.

4.The learned Additional Government Pleader appearing for the respondents 1, 2 and 4 submitted that the petitioner was appointed in the post of Junior Trainee Officer, on 24.03.1973 and later, he was promoted to the post of Assistant Trainee Officer on 29.10.1992. Subsequently, the second respondent had issued a proceedings, for revising the Craft Instructor post and it has been revised as on 24.03.1993 instead of 04.07.94. The petitioner has given his option for the fixation of pay in the promotional post as well as in the Special Grade on the basis of para No.3 of G.O.Ms.No.57, Finance (Pay cell II) Department, dated 28.01.1991, wherein it has been stated that the fixation of pay for the post of Assistant Training Officer shall be fixed after fixing the pay for Special Grade. As per the said option, pay fixation was made by the then incumbent in the post available with the fourth respondent Institute. As such, the respondent has paid the revised pay until retirement. The pension proposal of the petitioner was sent to the third respondent, as per the last drawn pay of Rs.10,200/- wherein it was found that the petitioner was promoted on 20.09.1992, earlier to his eligibility for Special Grade on 24.03.1993. Hence, the fixation of pay in the post of Assistant Trainee Officer, after fixing special grade was not in order. Therefore, the petitioner



has wrongly opted, as per the said G.O and the same was rectified subsequently and, therefore, no interference is called for with the impugned order.

5.The third respondent has filed a counter affidavit, wherein, in paragraph No.9, it has been stated as follows:

*"9.It is submitted that even if G.O.Ms.No.57 dated 28.01.1991 is applied in his case, on the analogy that he would have drawn more pay and he continued in his substantive post (lower post) and hence, his pay needed to be stepped up on par with that of the lower post, it would not be beneficial to the petitioner as would be evidenced from the comparative table of fixation of pay of higher and lower posts presented below:*

| Promotional post of Assistant Trainee Officer(1640-2900) |                       | Lower Post of Special Grade Junior Trainee Officer(1640-2900) |                       |
|----------------------------------------------------------|-----------------------|---------------------------------------------------------------|-----------------------|
| 29.10.92                                                 | 2000                  |                                                               | 2000                  |
| Promoted as Assistant Trainee Officer on 29.10.92        | 2060                  | 11.93 Increment                                               | 2060                  |
| 1.10.93 Increment                                        | 2120                  | Special Grade in STO 24.03.93                                 | 2120                  |
| 1.10.94                                                  | 2180                  | 1.1.94                                                        | 2130                  |
| Special Grade in Assistant T.O                           | 2240 (2000-3200)      | 1.1.95                                                        | 2140                  |
| 1.10.95                                                  | 2300                  | 1.1.96                                                        | 6900 (6500-200-10500) |
| 1.1.96                                                   | 7100 (6500-10500)     | 1.1.96                                                        | 7100                  |
| 1.10.96                                                  | 7300                  | 1.1.97                                                        | 7300                  |
| 1.10.97                                                  | 7500                  | 16.10.97                                                      | 7700 (6500-11100)     |
| 16.10.97                                                 | 7900                  | TO Promotion (6500-11100)                                     | 7900                  |
| Trainee Officer Promotion 1.10.98                        | (6500-200-11100) 8100 | 1.10.98                                                       | 7900                  |
| 1.10.99                                                  | 8300                  | 1.10.99                                                       | 8100                  |
| 1.10.2000                                                | 8500                  | 1.10.2000                                                     | 8300                  |
| 21.09.2001                                               | 9100                  | 1.10.2001                                                     | 8715                  |
| 1.7.2002                                                 | 9375                  | 2.09.2002                                                     | 9100                  |
| 1.7.2003                                                 | 9650                  | 1.7.2003                                                      | 9375                  |
| 7.2004                                                   | 9925                  | 1.7.2004                                                      | 9650                  |



6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The grievance of the petitioner is that he is entitled to get pensionary benefits on the basis of his last drawn pay of Rs.10,200/-. However, the fact remains that though the petitioner was promoted as Assistant Trainee Officer on 29.10.1992, he had been erroneously awarded increment for Special Grade in the lower post of Junior Trainee Officer with effect from 24.03.1993, on the ground that the petitioner had exercised his option to have his pay fixed in the promotional post of Assistant Trainee Officer on 24.03.1993, which per se is inadmissible, since the petitioner can only exercise his option insofar as regular increment is concerned and not insofar as Special Grade Pay is concerned as Special Grade Pay is given only for such of those employees who get stagnated without any promotion and only as an alternate to promotion, Special Grade Pay by granting certain increments is given. However, the petitioner herein, having been promoted even on 29.10.1992 to the next higher post, exercised his option for fixation of Special Grade Pay on 24.3.1993, on which date alone the said Special Grade Pay accrues. The petitioner having already earned his promotion to the next higher post even as early as on 29.10.1992, the petitioner is not entitled for increments granted in the Special Grade. The mistake committed in fixation of pay has been rightly pointed out by the third respondent as the petitioner is not eligible for Special Grade increments from 24.3.1993 and in such a backdrop, the pensionary benefits have been correctly worked out on the basis of the actual entitled last drawn pay of Rs.9925/- to which the petitioner is eligible.

8. For the reasons aforesaid, no interference is called for with the order passed by the respondents and, accordingly, finding no merits, this writ petition is dismissed. No costs. Consequently, connected M.Ps are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

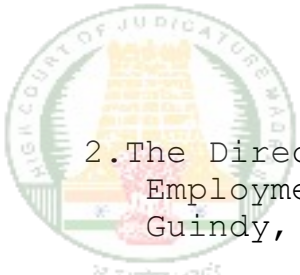
Sub Assistant Registrar(CS)

Ns

To

1. The Secretary to Government  
The State of Tamil Nadu,  
Labour and Employment Department,

<https://hcservices.ecourts.gov.in/hcservices/> Chennai-9.



2.The Director/Commissioner,  
Employment and Training  
Guindy, Chennai-32.

3.The Deputy Director/Principal  
Government Industrial Training Institute,  
Trichy-4.

+1 CC to M/s.D.SELVANAYAGAM, Advocate ( SR-7391[F] dated  
25/02/2021 )

+1 CC to M/s.SPL GP ( SR-7516[F] dated 26/02/2021 )

+1 CC to M/s.P.GUNASEKARAN, Advocate ( SR-7736[F] dated 01/03/2021 )

**W.P.(MD)No.10414 of 2012**

**25.02.2021**

RD(23.07.2021) 5P 7C