



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.11.2021

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) .No.1188 of 2018

and

W.M.P (MD) .No.1256 of 2018

WEB COPY

S.Ramesh

... Petitioner

vs.

1.The Director of Local Fund Audit,
4th Floor, Kuralagam,
Chennai 600 108.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

3.The Commissioner,
Srivaikundam Panchayat Union,
Srivaikundam 628 601,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order the third respondent in his proceedings in A1/238/2017, dated 18.12.2017 and quash the same as illegal and consequently directing the third respondent herein restore the petitioner salary and gave him all other Selection Grade Office Assistant.

For Petitioner

: Mr.S.M.Mohan Gandhi

For Respondents

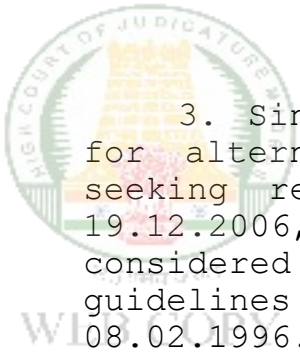
: Mr.A.K.Manikkam

Special Government Pleader

O R D E R

Heard Mr.S.M.Mohan Gandhi, learned counsel for the petitioner and Mr.A.K.Manikkam, learned Special Government Pleader for respondents 1 to 3.

2. The petitioner was appointed as a Jeep Driver in the Srivaikundam Panchayat Union, by proceedings dated 20.04.1999. While in Service, he suffered Spondy Litic (spelt as set out in affidavit) changes in his Vertabrane. He was referred to the Medical Board and on 02.03.2006, the Joint Director of Medical and Rural Health Services and Family Welfare opined that he should be provided alternate employment in the Department, taking into consideration his past services.



3. Since there was no response from R3 to his representation for alternate employment, the petitioner approached this Court seeking relief in W.P.(MD).No.11352 of 2006. By order dated 19.12.2006, this Court directed that his representation be considered and appropriate orders passed, taking note of the guidelines laid down in G.O.(Ms).No.86, P&AR Department, dated 08.02.1996.

4. Pursuant thereto, R3 has provided alternate employment by way of Office Assistant under proceedings dated 07.03.2007. It is relevant to note that at the time of provision of alternate employment, the petitioner has been assured of continuity of monetary benefits as per original entitlements when appointed to the post of Driver.

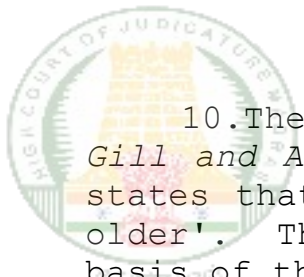
5. This is clear from condition No.3 in Proceedings dated 07.03.2007 to the effect that 3. இவர் தற்போது பெறும் ஊதியம் அலுவலக உதவியாளர் பதவிக் கான ஊதிய விகிதத்தில் நிர்ணயம் செய்யப்படும். This benefit flows from G.O.(Ms).No.145, dated 17.08.2007, wherein in the case of displaced employees, similar to the case of the petitioner, continuity in monetary benefits as per eligibility in the earlier post was specifically granted.

6. Referring to the aforesaid Government Order, communication bearing No.V12/47546/2008, dated 21.07.2008 has come to be passed assuring the petitioner parity of pay protection in the new post, equitable to the benefits obtained by him in the earlier post as Driver.

7. In stark contrast to the letter and spirit of the above proceedings and GO, impugned order dated 18.12.2017 directs recovery of the pay revision to which the petitioner was entitled to and granted, on the basis that the period of his services as Office Assistant ie., from 07.03.2007 to 09.05.2009 should stand excluded in the computation of eligible and qualifying services of 10 years.

8. The shift in position from Driver to Office Assistant was on account of medical disability caused by virtue of his previous post as Driver. That apart, his placement as an Office Assistant has been made with the full assurance of continuity of service and monetary benefits. For these reasons I am of the considered view that the impugned recovery has no legs to stand.

9. It is perhaps for this reason that in the counter the respondents have given entirely different reason to justify the impugned order. I see no reason to delve in detail into the reasoning given in counter as it is settled position that a counter can neither add to nor modify the reasoning set out in the impugned order.



10.The Supreme court, in the celebrated case of *Mohinder Singh Gill and Another v. Chief Election Commissioner* [1978 (1) SCC 405] states that 'orders are not like wine becoming better as they grow older'. Thus, an impugned order has to either stand or fall on the basis of the reasoning that it contains and no more.

11. The reasoning set out in the impugned order to the effect that the period of employment of the petitioner as Office Assistant does not qualify to be included in the relevant and qualifying period fails to impress, for the reasons as above. Impugned order 18.12.2017 is set aside and this Writ Petition, allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

akv

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Director of Local Fund Audit,
4th Floor, Kuralagam,
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- 2.The District Collector,
Thoothukudi District, Thoothukudi.
- 3.The Commissioner,
Srivaikundam Panchayat Union,
Srivaikundam 628 601,
Thoothukudi District.

+1 CC to M/s.SPL GP (SR-35874[F] dated 25/11/2021)

ORDER MADE IN
W.P. (MD) .No.1188 of 2018
23.11.2021

KS (CO)

GC(08.02.2022). 3P 5C

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