



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P. (MD) No.18981 of 2018

and

W.M.P. (MD) Nos.16817 & 16818 of 2018

R.Tajudeen

: Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai - 9.
- 2.The Director General (Highways),
Construction and Maintenance,
Guindy, Chennai - 5.
- 3.The Chief Engineer,
Highways Department (C & M),
Guindy, Chennai - 5.
- 4.The Superintending Engineer,
Highways (Construction & Maintenance),
Thamarai Thotti, Madurai.
- 5.The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Madurai.
- 6.The Assistant Divisional Engineer,
Highways Department,
Construction & Maintenance,
Chinnachokkikulam,
Madurai West, Madurai.
- 7.The Principal Accountant General (A&E),
O/o.the Principal Accountant General (A&E),
Tamil Nadu, No.361, Anna Salai,
Chennai - 18.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the seventh respondent in his proceedings in No.P14/2/11415016/ADK/85 dated 02.05.2018 and quash the same as illegal and consequently, directing the seventh respondent to disburse the retirement benefits of the



petitioner in conformity with the proceedings of the fifth respondent in Sey.Mu.Ka.179/2009/Aa2, dated 02.06.2009.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader
for R.1 to R.6

Mr.P.Gunasekaran
Standing Counsel for R.7

ORDER

The petitioner herein was promoted to the post of Road Inspector (Grade I) on 02.06.2009, with effect from 24.12.1996 under the second respondent Department. Subsequently, he retired from service on 31.03.2018. The proposal for disbursement of his retirement benefits was returned by the seventh respondent seeking for a clarification as to whether the promotion of the petitioner to the post of Road Inspector (Grade I) was after completion of five years service or not. Pending such clarification, it was stated that the petitioner's claim cannot be admitted as of now. Aggrieved over the same and the inaction on the part of the respondents in disbursing the petitioner's retirement benefits, the present writ petition has been filed.

2. The learned Senior Counsel appearing for the petitioner would submit that the second respondent herein, having promoted the petitioner wayback in the year 2009 by giving retrospective effect to such promotion from 24.12.1996, and having not opted to cancel the promotion order all these years, is now debarred from quoting the validity of the promotion as an impediment for disbursement of the retirement benefits. According to the learned Senior Counsel, if at all the respondents are aggrieved against the alleged irregularity in the promotion, if any, the only option available would be under the Pension Regulations Act and they have no authority to withhold the retirement benefits.

3. The learned Additional Government Pleader placed reliance on the letter dated 22.02.2018 addressed by the seventh respondent herein, wherein they had stated that the post of Road Inspector (Grade I) is a promotional post and not by upgradation. According to them, the completion of five years in Road Inspector (Grade II) is one of the criteria prescribed for such promotion and hence, on completion of such five years alone, the petitioner would be eligible for promotion to the post of Road Inspector (Grade I). It is further stated that the rules does not provide for retrospective



promotion and consequential benefits.

4. The learned Standing Counsel appearing for the seventh respondent submitted that all they have sought for is a clarification with regard to the irregularity in the mode of promotion and it is for the Department to clarify with regard to the validity of such retrospective promotion.

5. Heard the learned Counsel appearing for the respective parties.

6. It is not in dispute that the petitioner's promotion dated 02.06.2009 has not been either cancelled or revoked and that the petitioner was permitted to retire on 31.03.2018 itself, while he was serving as the Road Inspector (Grade I). While that being so, if at all any of the respondents are of the view that the promotion to the post of Road Inspector (Grade I) was not valid, appropriate steps ought to have been taken at the relevant point of time and at this juncture, when the petitioner had already retired from his service on 31.03.2018 and particularly, when the Department has also permitted him to retire, it is not open to them to stop his retirement benefits on this ground. Though an option was available to the Department to invoke the Pension Regulations, they had failed to do so till date. In this background, the action of having failed to disburse the retirement benefits, is not justifiable and accordingly, the petitioner would be entitled to be succeed.

7. In the light of the above observations, there shall be a direction to the respondents herein, in general and the respondents 2, 5 & 7, in particular, to disburse the petitioner's retirement benefits, as expeditiously as possible, in any event within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above observations and directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Highways and Minor Ports Department,

<https://hcservices.secure.in/hcservices/> Chennai - 9.



2.The Director General (Highways),
Construction and Maintenance,
Guindy, Chennai - 5.

3.The Chief Engineer,
Highways Department (C & M),
Guindy, Chennai - 5.

4.The Superintending Engineer,
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7.The Principal Accountant General (A&E),
O/o.the Principal Accountant General (A&E),
Tamil Nadu, No.361, Anna Salai,
Chennai - 18.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-12672[F] dated
22/03/2021)

+1 CC to M/s.SPL GP (SR-12749[F] dated 22/03/2021)

W.P. (MD) No.18981 of 2018
19.03.2021

SGS (CO)
TR(24.04.2021) 4P 10C