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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2022
Pronounced on : 06.06.2022

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.18524 of 2010

- 1.P.Renganathan (Deceased)
- 2.Smt.Rajakumari
- 3.R.Elumalai
- 4.R.Sivaprakash
- 5.Smt.Kokila
- 6.Athilakshmi

... Petitioners

[P2 to P6 substituted as Lrs of the
deceased sole petitioner vide order dated
12.04.2022 made in W.M.P.No.3517 of 2022]

Versus

1. State of Tamil Nadu,
rep.by The Secretary,
Highways Department,
Fort St.George, Chennai.
2. The Chief Engineer,
Highways Department,
Chepauk, Chennai.
3. The Divisional Engineer,
Highways Department, Villupuram.
4. Divisional Engineer,
Rural Roads, (NABAD), Chengalpet.
5. Asst. Divisional Engineer,
Highways Department,
Gingee (H) NABARD & Rural Roads,
Gingee, Villupuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorarified Mandamus



call for the records relating to the order in G.O.Ms.No.96, Highways (M) Small Ports (H.M.2) Department, dated 25.05.2009, of the first respondent in prescribing the clause denying monetary benefit and entitled to monetary benefit from the date of G.O. And quash the same as far as the petitioner is concerned and further direction to the respondents to pay all monetary benefits from the date of regularisation i.e., 30.03.1993 with all arrears of pay.

For Petitioners : Mr.K.M.Ramesh

For Respondents : Ms. E. Renganayaki,
Additional Govt. Pleader.

O R D E R

This Writ Petition was originally filed by P.Renganathan, S/o. Perumal, who was regularised in service as Watchman in the scale of pay of Rs.2550 - 3200 with effect from 30.03.1993, i.e., from the date of completion of ten years of his service as per the G.O.Ms.No.96, Highways (M) Small Ports (H.M.2) Department, dated 25.05.2009, however, he was granted monetary benefits only from the date of the Government Order i.e., 25.05.2009. Therefore, claiming the monetary benefits from the date of regularisation the present Writ Petition is filed.

2.Pending the Writ Petition, the above said petitioner died and the petitioners 2 to 6 being the legal heirs were brought on record.

3.Heard, Mr. K. Ramesh, Learned Counsel for the petitioner and Ms. E. Renganayaki, Learned Counsel appearing for the respondents.

4.The learned counsel for the petitioner would submit that by an order dated 10.03.1983, the petitioner was appointed as a Watchman, upon being sponsored by District Employment of Exchange. Thereafter, by a communication of the Chief Engineer dated 24.11.1993, he was sought to be placed in the scale of pay and by order dated 24.04.2000 and he was also placed in the scale of pay Rs.2550-3300. The Divisional Engineer thereafter by an order dated 18.05.2000, found that originally the petitioner was appointed as a Godown Watchman on a daily rated basis, that being so, regularizing him as a Sundry Watchman and granting him the scale of pay is not permissible and passed an order stating that he be continued on daily rate basis alone. Subsequently, by a communication dated 13.12.2001, the Divisional Engineer, Rural Roads, Chengalpet communicated to the



Divisional Engineer, Highways Department, Viluppuram stating that he has been brought under Sundry Expenses head with effect from 01.09.1984 and therefore, sought that he be permitted to be brought under the time scale of pay.

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5. Again, by another communication dated 03.06.2003, the very same recommendations were made. However, subsequently, by the impugned Government Order while he was regularised from 30.03.1993, the monetary benefits were restrained from the date of issue of Government Order i.e., with effect from 25.05.2009. Therefore, the learned counsel for the petitioner would submit that once the petitioner was appointed in the year 1983 and completed ten years of service in 1993 and from the said date when the service of the petitioner was brought under regular establishment there was no justification for the respondents to deny the monetary benefits from the date of regularisation, and especially, when the petitioner was granted scale of pay in the year 2000.

6. On the contrary, the respondents resisted the writ petition by filing a counter affidavit. It is their submission that by virtue of G.O.(Ms).No.52 dated 14.01.1977, there was a ban on engagement of contingency staff and therefore, even as on the date of engagement of the petitioner on 01.08.1992, his engagement was illegal. However, on humanitarian grounds, a policy decision was taken to regularise the employees after completion of ten years of service and it was given effect by passing G.O.(Ms).No.96 dated 25.05.2009. Accordingly, the petitioner was granted monetary benefits from the said date, whereby the petitioner was brought into regular establishment. When the petitioner was granted time scale in the year 2000, it was canceled on 18.05.2000 as it was against the rules and the petitioner also did not challenge the same. The other cases cited by the petitioner relates to the implementation of Court orders. Therefore, the respondents would contend that the principles of equal pay for equal work is not applicable in the instant case.

7. I have considered the rival submissions made on behalf of the both sides and perused the material records of the case.

8. Firstly, in the instant case the petitioner was brought into the regular scale of pay by an order dated 20.04.2000, but, within a month, on 18.05.2000, the same was canceled. Even though by the subsequent communications dated 13.02.2001 and 03.06.2003, the third and fourth respondents sought to justify the placing of the petitioner in the time scale, the petitioner was allowed to be treated only as a daily rated watchman and he did not challenge the said orders and they have become final. When the retrospective regularisation was granted, the respondents granted monetary benefits with prospective effect



only from the date of issue of Government Order. This being so, this Court under Article 226 of Constitution of India can neither order the retrospective regularisation nor grant retrospective monetary benefits. The ground on which the relief is pressed by the petitioner is by invoking the principle of 'equal pay for equal work'.

9. In this case, when, by an express order dated 18/05/2000, such grant of pay-scale has been canceled and the same remaining unchallenged, at this stage, this Court cannot undo the same by invoking the principle of equal pay for equal work. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Highways Department,
Fort St. George, Chennai.
2. The Chief Engineer,
Highways Department,
Chepauk, Chennai.
3. The Divisional Engineer,
Highways Department, Villupuram.
4. The Divisional Engineer,
Rural Roads, (NABAD), Chengalpet.
5. The Assistant Divisional Engineer,
Highways Department,
Gingee (H) NABARD & Rural Roads,
Gingee, Villupuram District.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.32148

+1cc to the Government Pleader, S.R.No.32563

W.P.No.18524 of 2010

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NSK/14/06/2022