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W.A.No.2825 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No. 2825 of 2021

M.Jayabalan

... Appellant

-VS-

1. The State of Tamil Nadu rep. by Secretary,
Public Works Department,
Fort St. George, Chennai-9.

2. Chief Engineer, (Buildings),
Public Works Department,
Chepauk, Chennai.

3. Executive Engineer, (Buildings),
Public Works Department,
Villupuram.

.... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order
of the learned Judge in W.P.No.25689 of 2014 dated 02.12.2020.

For Appellant : Mr.L.Chandrakumar
For Respondents : Mr.T.Anandakumar
Government Advocate



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J U D G M E N T

S.VAIDYANATHAN.,J
and
MOHAMMED SHAFFIQ.,J

The present Writ Appeal has been preferred against the order of the learned Single Judge dated 02.12.2020 made in W.P.No.25689 of 2014, wherein the Writ Petition was dismissed on the ground that there is delay on the part of the Writ Petitioner, in questioning the impugned order dated 19.01.2011.

2. According to the learned counsel for the Appellant/Writ Petitioner, the Appellant/Writ Petitioner was initially appointed as Work Assistant in the Office of the Co-operative Buildings, Construction Sub Division, Cuddalore through Cuddalore District Employment Exchange and joined duty on 09.04.1975 and his services were regularised with effect from 01.01.1981. He further submitted that vide G.O.Ms.No.184 Co-Op Food and Consumer Production Department dated 16.05.2003, a Co-operative Society Construction Wing has been wound up with effect from 31.08.2003 A.N, due to which, as per G.O.Ms.No.295 dated 13.11.2003, the writ petitioner was absorbed in the Public Works Department, and posted as Work Inspector Gr-III which carries similar scale of pay like that of the post of Work Assistant in the Co-op Construction Department.



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3. It is the further submission of the learned counsel of the Appellant that though the Appellant/Writ Petitioner sought for quashing of the Letter dated 19.01.2021, the main grievance of the Writ Petitioner was that he was deprived the revised pension, applicable to him, in the past, in which he was absorbed. He further submitted that though the impugned order proceeds on the basis that Writ Petitioner requested for promotion, the relief sought for was the extension of benefits of pension, he should be extended the benefits of pension, but the learned Single Judge deprived the pensionary benefits on the ground of laches.

4. In reply, the learned Government Advocate appearing for the Respondents contended that the Appellant/Writ Petitioner joined the services in the year 1975 and due to winding up of the Cooperative Society Construction wing with effect from 31.08.2003, he was absorbed in the post of Work Inspector Grade III having similar pay scale in the post of Work Assistant in the Co-operative Construction Department, vide order dated 13.11.2003. He further contended that the learned Single Judge has rightly rejected the prayer sought for by the Appellant/Writ Petitioner and the same does not warrant any interference by this Court.



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5. Heard both sides. Perused the material available on records.

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6. It is seen that the prayer in the Writ Petition has been inartistically worded as the main sum and substance of the issue on hand is that the Appellant/Writ Petitioner sought for the pensionary benefits applicable to the post of Work Inspector Grade III having similar pay scale like that of the post of work Assistant in the Cooperative Society. Once the Respondents agree that the pay scale applicable to Work Inspector Grade III is same as that of Work Assistant in the Cooperative Department, the Respondents cannot be permitted to deny/deprive the pensionary benefits. However in the light of the Judgment of the Hon'ble Supreme Court in the case of ***Union of India and Ors. Vs. Tarsem Singh*** reported in ***2008 8 SCC 648***, the pensionary benefits can be restricted with effect from 2011.

7. For the foregoing reasons, the order of the learned Single Judge dated 02.12.2020 made in W.P.No.25689 of 2014 does not hold good. The Respondents are directed to pay the pensionary benefits due to the Appellant/Writ Petitioner upto 2010 within a period of four months from the date of receipt of a copy of this Judgment. However, it is made clear that the Appellant is not entitled for any pensionary benefits on and after 2011.



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[S.V.N., J.] [M.S.Q., J]
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and
MOHAMMED SHAFFIQ,J.,
arr

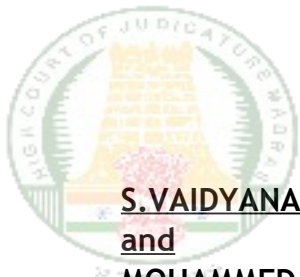
To:

1. The State of Tamil Nadu rep. by Secretary,
Public Works Department,
Fort St. George, Chennai-9.
2. Chief Engineer, (Buildings)
Public Works Department,
Chepauk, Chennai.
3. Executive Engineer, (Buildings),
Public Works Department,
Villupuram.

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and
MOHAMMED SHAFFIQ,J.,

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This matter is listed today under the caption 'For Being Mentioned' at the instance of the learned counsel for the Appellant.

2. Mr.L.Chandrakumar, learned counsel for the Appellant submitted that there is a typographical error crept in the order dated 08.02.2022. especially at Paragraph No.7, in which, it has been wrongly typed as if the petitioner is not entitled to any pensionary benefits on and after 2011, whereas the fact situation is otherwise and therefore, the judgment needs suitable modification.

3. Learned Special Government Pleader (Education) has conceded as to the factum of the error in the order.

4. In view of the above, finding justification in the submission made by the learned counsel for the Petitioner and bearing in mind the judgment of the Supreme Court [2008 (8) SCC 648], the Paragraph No.7 of the said order is substituted to read as under:

“7. For the foregoing reasons, the order of the learned Single Judge dated 02.12.2020 made in W.P.No.25689 of 2014 does not hold good. The Respondents are directed to work out the pensionary benefits due to the Appellant / Writ Petitioner on and from 2011 and

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and



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arr/ar

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disburse the same, within a period of four months from the date of receipt of a copy of this judgment. However, it is reiterated that the Appellant will not be entitled to any benefits for the past period.”

5. Except the above modification, remaining portion of the order dated 08.02.2022 stands unaltered.

[S.V.N,J.,] [M.S.Q,J.,]
20.04.2022

arr/ar

Note to Registry:

Issue a fresh copy of the order to the parties on **25.04.2022**.

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AND
MOHAMMED SHAFFIQ, J.

O R D E R

The above writ appeal has been listed today under the caption "For Being Mentioned".

2. The writ appeal was allowed vide judgment dated 08.02.2022. The learned counsel appearing for the appellant submitted that, in the said judgment, in paragraph Nos.4 and 6, a typographical error has crept in. In the said paragraphs, instead of typing 'Work Inspector Grade I', it has been typed as 'Work Inspector Grade III'. Learned Government Advocate appearing for the State would affirm the contention of the learned counsel for the appellant.

3. In view of the same, in paragraph Nos.4 and 6, wherever the words "Work Inspector Grade III" appear, shall be replaced with "Work Inspector Grade I'. The judgment is clarified, accordingly.

S.VAIDYANATHAN, J.
and



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Asr

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4. Registry is directed to issue a fresh copy of the judgment, after incorporating the above corrections.

Asr

(S.V.N., J.) (M.S.Q., J.)
30.09.2022

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