



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2022

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.14131 of 2014

R. Raman

... Petitioner

vs.

1.The Principal Chief Engineer (WRD)
cum Chief Engiener (General),
Public Works Department,
Chepauk, Chennai-600 005.

2 .The Executive Engineer,
Public Works Department,
Periyar Main Canal Division,
Water Resources Organization,
Melur, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Letter No.S5(3)/57517/2014, dated 10.6.2014, by the 1st respondent to quash the same and to direct the respondents to refix the scale of pay of the petitioner on par with his juniors in order to get higher pension.

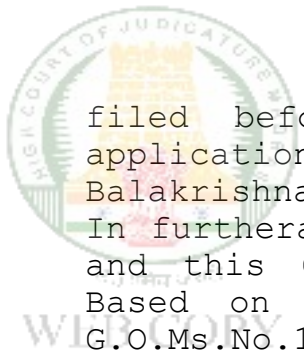
For Petitioner : No appearance

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned Letter No.S5(3)/57517/2014, dated 10.6.2014, by the 1st respondent and to direct the respondents to refix the scale of pay of the petitioner on par with his juniors in order to get higher pension.

2. The facts of the case are that the petitioner joined the service of Water Resources Department as a Work Attendant on 02.09.1967. The said post was changed into Work Assistant on 10.12.1971. Thereafter, promoted as Draughtsman Grade III and regularized on 26.08.1974. Number of original applications were



filed before Tamil Nadu Administrative Tribunal and Transfer application in T.A.No.362 of 1989 was decided in favour of one V. Balakrishnan, Draughtsman Grade III, vide order, dated 16.03.1989. In furtherance the Writ Petition W.P.(MD)No.3340 of 1982, was filed and this Court, vide order, dated 18.12.1988, passed an order. Based on this, the Public Works Department passed a G.O. in G.O.Ms.No.1995, dated 19.09.1990, cancelling the earlier regularization of Draughtsman Grade III post for 22 persons including the petitioner and directed to regularize the service right from the date of the joining. Thereafter, the petitioner was working as Draughtsman Grade III and retired on 30.06.2002. The scale of pay was fixed lesser than the petitioner's juniors, especially one M/s. Thangamani, who is more junior than the petitioner. Therefore, the petitioner requested the respondents in the representation, dated 03.01.2012 to refix the scale of pay on par with his junior M/s.Thangamani. Since the representation was not considered, the petitioner filed W.P.(MD)No.15828 of 2013, to direct the respondents to consider the representation. This Court, vide order, dated 25.09.2013, directed the respondents to consider and pass orders. Hence, the impugned order came to be passed. In the impugned order, it has been stated that the said Thangamani was directly recruited to the post of Draughtsman Grade III and both are not the same cadre and same appointment. Therefore, they cannot consider under the Fundamental Rule 22B(2)(i). Aggrieved over the same, the petitioner has filed this Writ Petition.

3.The respondents have filed a counter affidavit stating that after the order passed in W.P.(MD)No.15828 of 2013, the service records of the petitioner was perused. The appointment of Thangamani was through employment exchange and it is a direct recruitment, whereas the petitioner was initially appointed as Work Assistant then, promoted as Draughtsman Grade III. Hence, both of them cannot be considered as belonging to same cadre. The Fundamental Rule 22 B(2)(i) is extracted under:

"Both the Junior and Senior Officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre."

4. Heard Mr. N. Ramesh Arumugam, learned Government Advocate appearing for the respondents.

5. On perusing the affidavit it is seen that the petitioner is appointed in the year 1967 and was retired from service on 30.06.2002. The petitioner has not raised this issue, while he was in service. The petitioner retired on 30.06.2002 and even after retirement, the petitioner has not raised this issue and suddenly woke up in the year 2012 and submitted a representation and gave life to the claim. This Court in Division Bench headed by Justice V. Ramasubramanian and Justice N. Kirubakaran in W.A. (MD) No. 312 /



2011 vide order dated 09.12.2015 has held in paragraph 5, "that the employees who were in service in 1997-1998 as well as in the year 2002 did not rise a little finger either at the time of when the original applications were filed in the year 1997-1998 or at the time when the original application were allowed by the Tribunal in the year 2002". And further held the Court cannot entertain any dead and stale claims. Hence this Court is of the considered view that stale and dead claims cannot be entertained after a lapse of so many years. After lapse of so many years, the employees have found a tactics to revive the stale and dead claims by submitting a representation and file a writ of mandamus and an order is passed to consider and pass orders. The respondents would reject the claim by passing an order, then the employee challenge the said order thereby reviving the dead and stale claims. Such practice were deprecated by this Court is several judgments.

6. Therefore, this Court is of the considered opinion that the claim of the petitioner is hit by delay and laches. The petitioner is comparing with one Thangamani who is a direct recruit and the petitioner is in-service promotee. Therefore, both cannot be taken as same cadre. The Fundamental Rule 22 B(2)(i) states that if the petitioners belong to the same cadre, they can be considered. In this case, the petitioner and the comparative person does not belong to the same cadre. Therefore, Fundamental Rule 22 B(2)(i) is not applicable.

7. Therefore, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

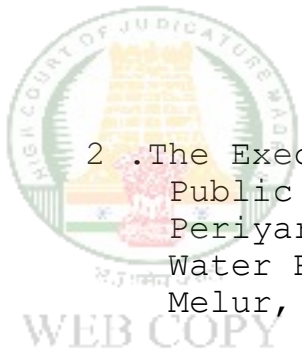
Note:

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 Principal Chief Engineer (WRD)
cum Chief Engiener (General),
Public Works Department,
Chepauk, Chennai-600 005.

<https://hcservices.ecourts.gov.in/hcservices/>



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RK(23/03/2022) 4P 3C