BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.12904 of 2016
and
W.M.P.(MD).No.9729 of 2016

G.Moorthy ... Petitioner

Vs.

1.The Joint Commissioner (Commercial Taxes),
Tirunelveli.

2.The Deputy Commissioner (Commercial Taxes),
Sivakasi,
Virudhunagar District.

3.The Assistant Commissioner (CT-1),
Rajapalayam,
Virudhunagar District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.A1/799/2005 dated 25.05.2016 and quash the same and further direct the respondents to continue to pay the yearly increment from 2012 onwards to till date of petitioners retirement.

For Petitioner : Mr.A.Thirumurthy,
For M/s.Victory Associates

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

This Writ Petition is filed to quash the order dated 25.05.2016 and direct the respondents to continue to pay the yearly increment from 2012 onwards to till date of petitioner's retirement.

2. The facts as stated in the affidavit are that the petitioner was initially appointed as a Peon on 06.09.1982 on daily wage basis. After completion of 6 years 9 months, the petitioner was regularly appointed as Office Assistant by order dated 14.06.1989 and the service was regularized with effect from 14.06.1989. His probation was declared vide order dated 07.09.2006 with effect from 14.06.1990. The petitioner had completed 10 years of regular service on 13.06.1999 and was granted Selection Grade. Thereafter, the petitioner was granted Special Grade from 13.06.2009 vide order dated 30.03.2010. The petitioner has completed unblemished record for 34 ½ years and he was 58 years old at the time of filing of this Writ Petition. However, the

respondents issued G.O.(2D).No.140 Commercial Taxes and Registration (A1) Department dated 02.09.2011 stating that the method of recruitment and the rule of reservation were not followed, when the petitioner was appointed. Therefore, the appointment of the petitioner cannot be regularized. Challenging the aforesaid Government Order, the petitioner had filed Writ Petition and the same was allowed. Aggrieved over the respondents filed Writ Appeal and the same was dismissed. The present Writ Petition is filed claiming Special Grade and Selection Grade and yearly increment based on the regularization with effect from 14.06.1989.

3. The learned Special Government Pleader submitted that through G.O.2(D).No.30 dated 21.05.2015, the petitioner was regularized from 05.09.1992. Therefore, the petitioner's service which was regularized with effect from 14.06.1989 cannot be considered. The learned Special Government Pleader further contended that the petitioner has crossed the age limit prescribed for appointment as Office Assistant. Even though his appointment was held irregular, the Government have gracefully protected his service by passing G.O.Ms.No.140 dated 02.09.2011 and later on, G.O.2(D).No.30 dated 21.05.2015 was passed regularizing the service of the petitioner with effect from 05.09.1992.

4. Heard Mr.A.Thirumurthy, learned counsel for M/s.Victory Associates, appearing for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader, appearing for the respondents.

5. After hearing the rival submission and perused the records, it is seen from the records that the respondents had already passed an order fixing the date of regularization as 14.06.1989 in early round of litigation. Thereafter, the third respondent had admittedly declared probation in the year 2006 with effect from 14.06.1990. Once regularization is declared and probation is declared, the respondents cannot reconsider the issue and fix the date of regularization as 05.09.1992. In consequence thereof, the petitioner is entitled to all benefits including yearly increment and the Selection Grade and Special Grade by fixing the date of appointment as 14.06.1989. Hence, the impugned order is liable to be quash and it is quashed. This Court directs the respondents to confer all yearly increments which was stopped from the year 2012 onwards. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

28.11.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Joint Commissioner (Commercial Taxes),
Tirunelveli.

2.The Deputy Commissioner (Commercial Taxes),
Sivakasi,
Virudhunagar District.

3.The Assistant Commissioner (CT-1),
Rajapalayam,
Virudhunagar District.

S.SRIMATHY, J.

Nsr

W.P.(MD).No.12904 of 2016

28.11.2022