



W.P.No.11921 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.11921 of 2015

K.Karuppiah

.... Petitioner

VS

1. The Government of Tamil Nadu,
rep. By the Secretary to Government
Public Works Dept.,
Fort St.George,
Chennai – 600 009.

2. The Chief Engineer (General)
Public Works Department,
Ezhilagam, Chepauk,
Chennai – 600 005.

3. The Superintending Engineer,
Machinery Division No.1,
Public Works Department,
Chepauk,
Chennai – 600 005.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a
Writ of Mandamus to direct the respondents 1 to 3 to draw and disburse



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the pay, attendant, service and monetary benefits for the period from 31.10.1990 in the promoted post of Heavy Earth Moving Machinery Operator Grade III and consequently, revise the pensionary benefits of the petitioner from 1.7.2009 and to direct the respondents herein to pay the arrears pursuant to the said revision of pension within a short date that may be fixed by this Court.

For Petitioner : Mr.K.S.Govinda Prasad

For Respondents : Mr.U.M.Ravichandran
Special Government Pleader

ORDER

This Writ Petition has been filed to direct the respondents 1 to 3 to draw and disburse the pay, attendant, service and monetary benefits for the period from 31.10.1990 in the promoted post of Heavy Earth Moving Machinery Operator Grade III and consequently revise the pensionary benefits of the petitioner from 1.7.2009 and to direct the respondents herein to pay the arrears pursuant to the said revision of pension within a short date that may be fixed by this Court.

2. The case of the petitioner is that he was appointed in the Public Works Department on 24.10.1990 and was temporarily promoted to the post



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of Heavy Earth Moving Machinery Operator Grade III (H.E.M.M.O in short) and retired from service on attaining the age of superannuation on 30.06.2009. The Executive Engineer, PWD Machinery Division, ,Chennai - 600 028, in proceedings dated 11.0.1990, granted temporary promotion to the petitioner along with 8 other individuals from the post of Cleaner to the post of H.E.M.M.O. Grade- III. Thereafter, vide G.O.Ms.No.203 PWD dated 27.04.2000, the service of the petitioner and 9 other individuals was ordered to be regularised from the date of issue of the said G.O. and further directed that the rules relating to the educational qualification be relaxed from the date of the issue of the order. The petitioner service was regularised only from the date of issue of the said G.O. whereas the petitioner have been discharging his duties in the promoted post of Heavy Earth Moving Machinery Operation Grade II right from 31.10.1990.

3. Subsequently, the petitioner came to know that one N.Elumalai, H.E.M.M.O. Grade II who performed identical nature of duties like the petitioner filed O.A.7773 of 2000 before the Tamilnadu Administrative Tribunal and the Tribunal passed order on 27.06.2001 regularising his service with effect from 24.10.1990, the date on which he was promoted as Heavy Earth Moving Machinery Operation, Grade-III. In pursuant to the



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said order of the Tribunal, the Government issued G.O.3(D) No.35 Public Works Department dated 03.06.2003 regularising the service of N.Elumalai in the post of H.E.M.M.O from the date of his temporary promotion viz., 24.10.1990. Citing the same, the petitioner sent representation to the Department to regularise his service also on par with N.Elumalai. Since, the same was not considered, he filed W.P.No.397 of 2008 and this Court vide order dated 5.1.2008, passed a direction to the respondents to consider the representation of the petitioner within 8 weeks. Subsequently, the petitioner's request was rejected by the respondents. While so, similarly situated persons like the petitioner, viz., A.Dominic Savio approached this Court by filing W.P.No.6319 of 2010 and this Court, vide order dated 31.03.2010, dismissed the said writ petition. The writ appeal filed against the said order in W.A.No.925/2010 was allowed by this Court vide order dated 24.03.2001, by quashing said G.O. dated 23.08.2006 insofar as it denies the monetary benefits from the period from 24.10.1990 to 30.6.2002 in the promoted post of Heavy Earth Moving Machinery Operator Grade III, and directed the respondents to pay the monetary benefits for the period in question and raise the pensionary benefits to the appellant suitably . Similarly situated person N.Elumalai was also promoted on the same day



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i.e., on 24.10.1990. The petitioner and N.Elumalai were given relaxation of rules relating to educational qualification by the Government. But N.Elumalai was ordered to be regularized retrospectively from the date of his temporary promotion and given full attendant, monetary and service benefits in the promoted post. Denying the same benefit to the petitioner is discriminatory. Hence, this writ petition.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

5. Learned counsel for the petitioner would submit that the petitioner is similarly placed person like N.Elumalai and A.Dominic Savio. All of them, were promoted on the same day i.e., on 24.10.1990. Vide letter dated 15.12.1998, the Head of the Department viz., the Engineer-in-Chief requested the 1st respondent to issue similar order to the petitioner and certain others to enable them to get monetary benefits from the date of promotion as H.E.M.M.O.Grade-III. All were given relaxation of rules relating to the education qualification by the Government. Vide G.O.(3D) No.35 PWD Department dated 3.6.2004, it was ordered that the services of the N.Elumalai were ordered to be regularized retrospectively w.e.f. the date of his temporary promotion i.e., on 24.10.1990 in the promoted post of



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H.E.M.M.O. Grade III. He was given full attendant, monetary and service benefits in the promoted post. As far as A.Dominic Savio is concerned, the Division Bench of this Court, by judgement dated 24.03.2011 in W.A.No.925 of 2010, was pleased to grant revised pensionary benefit with effect from 1st July, 2002 by allowing the same. Learned counsel would further submit that denial of the same benefits to the petitioner is highly discriminatory and it is also hit by the principle of "Equal pay for equal work".

6. Resisting the aforesaid contentions, the learned Special Government Pleader appearing for the respondents would state that the petitioner was temporarily appointed as cleaner on 1.7.1990 and his service was regularised w.e.f. 1.1.1977. The petitioner and others were promoted as H.E.M.M.O. Gr.III w.e.f. 24.10.1990 for urgent works in Krishna Water Supply Project in Tiruvallur District. But the petitioner was placed at Madurai and was discharging the duties of lower post, even though he was promoted as H.E.M.M.O. Grade.III. Whereas N.Elumalai and Dominic Savio were placed in Chennai for performing the duties in Krishna Water Supply Project and were regularized from the date of temporary promotion. Though this Court, by order dated 5.1.2008 in W.P.No.397/2008, directed



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the 1st respondent to consider the petitioner's claim on his representation dated 13.02.2007, the Government, after careful consideration of the same, on merits and in accordance with law, rejected the request of the petitioner. Hence, he would pray to dismiss the writ petition.

7. This Court, considered the submissions on either side and perused the materials available on record.

8. It is not in dispute that the petitioner and 8 others were promoted as Heavy Earth Moving Machine Operator, Gr.III. The petitioner joined duty as H.E.M.M.O.Gr.III on 31.10.1990. Vide letter dated 15.12.1998, the Head of the Department viz., the Engineer-in-Chief, requested the 1st respondent to issue similar order to the petitioner and others to enable them to get monetary benefits from the date of promotion as H.E.M.M.O.Grade-III. The service, in the cadre of Heavy Earth Moving Machine Operator, Gr.III, was regularised from 24.10.1990 to the similarly placed persons viz., N.Elumalai and Dominic Savio. The Chief Engineer, vide order dated 1.4.2010, has stated that the petitioner's service cannot be regularised on par with N.Elumalai who obtained a direction from this Court and that is not applicable to the petitioner. However, apart from N.Elumalai, the service of Dominic Savio, K.Raju and S.Natarajan who were similarly given



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promotion as H.E.M.M.O. Gr.III were also regularised from the date of joining the promoted post as H.E.M.M.O Gr.III. as detailed below .

Sl. No.	Name and Designation	Date of Regularisation in the cadre of Heavy Earth Moving Machine Operator Grade-III	Particulars of the orders passed
1	Elumalai Heavy Machine Operator Grade-III	102490	G.O.(3D) No.35, PWD(C2), Department dated 03.06.2004
2	Domic Savio Heavy Machine Operator Grade-III	102490	G.O.(D) No.359, PWD(C2), Department dated 23.08.2006
3	K.Raju Heavy Machine Operator Grade-III	102490	G.O.(D) No.48, PWD(C2), Department dated 08.02.2007
4	S.Natarajan Heavy Machine Operator Grade-III	43090	G.O.(D) No.665, PWD(C2), Department dated 22.11.2007

9. It is true that the petitioner and other promoted employees were not having the required educational qualification as per recruitment rules. In spite of non-possession of education qualification, the Public Works Department promoted the petitioner and others as they were in need of Heavy Earth Moving Machinery Operators. Therefore, it is clear that the



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department has extracted the work from the petitioner, but not regularised the service of the petitioner like other employees, who were paid the monetary benefits. Thus, in the case of the petitioner, discriminatory approach was taken and he was denied monetary benefits. The contention of the learned counsel for the respondent that the decision taken in the case of Elumalai, cannot be applied to the petitioner, cannot be countenanced at all. The aforesaid persons were promoted along with the petitioner and they were also not having the required educational qualification and ultimately relaxation was given to them.

10. Admittedly, the petitioner worked as Heavy Earth Moving Machinery Operator for the period from 31.10.1990 to 30.06.2002. The department extracted work from him for the period of twelve years. However, when it comes to the payment of service benefits, the department rejected the claim of the petitioner. Therefore, after careful consideration of the entire factual matrix and in the light of the benefits given to the similar placed persons like that of the petitioner, this Court is of the view that the petitioner is entitled for all attendant, monetary and service benefits from 31.10.1990 to 30.06.2002 in the promoted post of Heavy Earth Moving Machinery Operator Grade III.



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11. For the foregoing reasons, this Writ Petition is allowed. The respondents are directed to pay the attendant, service and monetary benefits to the petitioner for the period from 31.10.1990 to 30.06.2002 and revise the pensionary benefits to the petitioner suitably with effect from 1st July, 2009 and the respondents are also directed to pay the arrears pursuant to the said revision. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

10.04.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

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J.NISHA BANU,J.

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