



W.P.No.17462 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17462 of 2015

K.Krishnamoorthy

... Petitioner

-Vs-

1. The State of Tamil Nadu represented by its
The Secretary to the Government of Tamil Nadu,
Tourism and Culture Department,
Fort St. George, Chennai 600 009.

2. The Managing Director,
Tamil Nadu Tourism and
Development Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai 600 002.

3. The Manager i/c, (Administration),
Tamil Nadu Tourism and
Development Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai 600 002.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records in respect of order/memo No.5214/A2/2013 dated 18.02.2015 issued by the third respondent, quash the same and direct the second respondent to pay the petitioner the pay and allowances admissible to the higher post of Supervisor



W.P.No.17462 of 2015

from 10.01.1990 to 31.03.2015, the date of retirement after deducting the salary paid in the post of Store Keeper.

For Petitioner : Mr.R.Ramachandran
For Respondents
R1 : Ms.Akila Rajendran
Government Advocate
R2 and R3 : No appearance

ORDER

This Writ Petition has been filed challenging the order dated 18.02.2015, thereby rejected the claim of the petitioner that revision to pay scale on par with the pay scale of supervisor.

2. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

3. The petitioner was initially appointed as a Store Keeper on 19.08.1988. During his tenure, the second respondent, by its communication dated 10.01.1990, communicated that the petitioner and other two persons, who are technically qualified in their garage are to work as Supervisors hereafter and they shall not work as Store Keepers. All of them should be sent for training to M/s Khivraj Motors for a period of 30 days. They should report before the Manager (Marketing), M/s Khivraj Motors. They will learn all the repairs in Ambassador cars including diesel driven cars and coaches. They will



W.P.No.17462 of 2015

submit a weekly report to the Managing Director in the name covers.

Thereafter, by a communication dated 03.05.1990, the petitioner was directed to join duty as shift in charge supervisory work at garage, Madras-2. Thereafter, by a communication dated 14.07.1992, the petitioner was posted in the place of Depot Supervisor with immediate effect. He was also directed to follow the procedure of handing over and taking over of stocks and records relating to this subject properly without any lapse and copy marked to Assistant Chief Manager. Thereafter, he retired from service on 31.03.2015. While he was in the fag end of his retirement, he made representations dated 03.10.2012, 12.12.2013 and 31.10.2014 for revision of his pay scale on par with the pay scale of Supervisor.

4. A perusal of his representations revealed that the petitioner categorically stated that he had completed 26 years and he is looking after Supervisor works in addition to normal duties of Store Keeper (Technical), till date without any remarks. He is also being acted as a Manager (Transport) and ordered to look after the works of Manager (Transport), whenever the non-technical officers were posted as Transport Manager to Transport Division by Head Office in the past period.



W.P.No.17462 of 2015

5. The learned counsel for the petitioner vehemently contended that the petitioner was directed to undergo training in M/s.Khivraj Motors. Further, the second respondent categorically stated that he should not work as Store Keeper hereafter, since he was technically qualified and he has to work as Supervisor. Subsequently, he was also posted in the post of Supervisor in the depot in the place of one S.A.Gangadharan, by an order dated 14.07.1992.

6. Therefore, the petitioner was working as Supervisor. However, he was not granted pay scale in the post of Supervisor. Therefore, he made repeated representations. However, the same were not considered. Finally, for grievance of pay, he submitted an application before the District Collector and the same was forwarded to the third respondent and the third respondent mechanically rejected the claim of the petitioner.

7. He further submitted that once the petitioner was directed to hold higher post, he is entitled for salary for the post which was occupied by him. In support of his contention, he relied upon the Judgment of Hon'ble Supreme Court of India reported in **1998 4 SCC 291** in the case of **Selvaraj Vs Lt.Governor Of Island, Port Blair and others**, in which the Hon'ble Supreme Court of India held that on the Principle of quantum meruit the respondents



W.P.No.17462 of 2015

authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post, though in an officiating capacity and not as a regular promotee.

8. He also relied upon the Judgment of this Court reported in **2006 2 MLJ 420**, in the case of ***N.Rajasekran Nair Vs. Secretary to Government, Municipal Administration and Water Supply Department, Fort St.George and another***, wherein this Court held that after citing the Judgment of the Hon'ble Supreme Court of India, the pay of higher post if admissible when the employee is looking after the duties of that port, the employee is entitled to get the higher pay even though the said post is not to be treated as promotion. The Hon'ble Supreme Court of India also held that even if a person promoted is not qualified to hold the post, but discharged the duties in the promotion post, he is entitled to get the pay and allowances admissible to the promotion post.

9. He also relied upon the Judgment of this Court in ***W.P.Nos.654 to 658 and 26211 of 2008*** in the case of ***N.R.Venkataraman and others Vs. The Management of Metropolitan Transport Corporation Ltd., Annasalai, Chennai***, in which this Court directed the respondent to fix the pay of allowance of the petitioners in the higher post from the date when there were



W.P.No.17462 of 2015

directed to act as higher post in-charge. However, taking note of the fact that the petitioners have chosen to approach this Court after seven years of their retirement, this Court is of the view that they are not entitled for the arrears of salary from the date when they were made to work as higher post in charge till the date of retirement, but they should be construed as retired in the said post and their pensionary benefits should be fixed from the date of retirement by treating them to the higher post and arrears of pensionary benefits paid to the petitioners.

10. In the case on hand, though the petitioner was directed to work in the place of Supervisor, he was not promoted to the said post. Even according to the petitioner's representation dated 31.10.2014, he was looking after the post of Supervisor in addition to the normal duties of Store Keeper (Technical). He also stated that he had been acting as Manager (Transport) and ordered to look after the works of Manager (Transport) whenever the non-technical officers were posted as Transport Manager to Transport Division by Head Office in the past period.

11. Therefore, there is no material to show that the petitioner was in



W.P.No.17462 of 2015

charge of the post of Supervisor. Even assuming that the petitioner was given the post of Supervisor in the year 1992, till his fag end of his service, he did not claim any pay scale for the post of Supervisor. Only after a period of 21 years, namely in the year 2013, he claimed scale of pay on par with the post of Supervisor. No prudent man would work in the promotional post without a higher scale of pay, that too in a promotional post.

12. Further on perusal of the order passed by the third respondent dated 18.12.2015 stating that the request for the elevation to the post of Supervisor cannot be considered as there is no such post in existence.

13. Therefore, the Judgments cited by the learned counsel for the petitioner are not applicable to the case on hand and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition is dismissed. No costs.

20.07.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

mn



WEB COPY



W.P.No.17462 of 2015

G.K.ILANTHIRAIYAN, J.

mn

To

1. The Secretary to the Government of Tamil Nadu,
The State of Tamil Nadu,
Tourism and Culture Department,
Fort St. George, Chennai 600 009.
2. The Managing Director,
Tamil Nadu Tourism and
Development Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai 600 002.
3. The Manager i/c, (Administration),
Tamil Nadu Tourism and
Development Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai 600 002.

W.P.No.17462 of 2015

20.07.2023