



WEB COPY



W.P. No. 8340 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 8340 of 2023

L.Mani

... Petitioner

-VS-

1. The Director General,
Highways Department,
Guindy, Chennai – 600025.
2. The Divisional Engineer, (H) (C&M),
Highways, Construction and Maintenance,
Tiruvannamalai District – 606601.
3. Assistant Divisional Engineer, (H) (C&M),
Highways, Construction and Maintenance,
Polur, Tiruvannamalai District – 606751.
4. The Accountant General (A&E),
No. 361, Anna Salai,
Chennai – 600018.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining with the impugned order in Memo. No. 930/2018/Aa3 dated 01.02.2023 by the Second Respondent quash the same and consequently direct the Respondent passed order to grant pension by virtue of G.O. Ms. No. 856, Public Works Department dated 01.06.1977 within the stipulated time as fixed by this Court.



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For Petitioner : Mr. G.Mohan
For Respondents : Mr.N.Naveenkumar,
Government Advocate (for R1 to R3)
Mr. S.Balaji (for R4)

ORDER

Heard Mr. G.Mohan, Learned Counsel for the Petitioner, Mr. N.Naveenkumar, Learned Government Advocate for the First to Third Respondents and Mr. S.Balaji, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has filed this Writ Petition challenging the Proceedings in Memo No. 930/2018/Aa3 dated 01.02.2023 issued by the Second Respondent declining to grant pension to him in terms of G.O. Ms. No. 856, Public Works Department dated 01.06.1977 issued by the Government of Tamil Nadu.



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3. The Second Respondent has filed Counter-Affidavit dated 17.04.2023

justifying the impugned order and explaining that the Petitioner is not entitled to the pensionary benefits claimed.

4. In view of the same, Learned Counsel for the Petitioner seeks permission of the Court to withdraw the Writ Petition reserving the right of the Petitioner to make an application for relaxation of rules for grant of pension in terms of Rule 82 of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules' for short), which reads as follows:-

“82. Power to relax:-- Where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Finance Department.”



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While construing a similar provision contained in Rule 88 of the Central Civil Services (Pension) Rules, 1972, the Hon'ble Supreme Court of India in ***Union of India -vs- Gandiba Behera*** (Order dated 08.11.2019 in Civil Appeal No. 8497 of 2019) has observed as follows:-

“25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered....”

This would obviously mean that the Petitioner is entitled to seek to dispense with the requirement of the relevant rules prescribed for grant of pension before the concerned authority, who would have to examine whether the conditions for the same have been fulfilled in this case.



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5. In the result, the Writ Petition is dismissed as withdrawn with the clarification that it would not preclude the Petitioner from making necessary representation along with supporting documents to the concerned authority under Rule 82 of the Rules for his claim for pension, and depending upon its outcome, to work out his rights in accordance with law. No costs.

19.04.2023

kv

Index: Yes/No

Note: Issue order copy by 31.07.2022.

To

1. The Director General,
Highways Department,
Guindy, Chennai – 600025.
2. The Divisional Engineer, (H) (C&M),
Highways, Construction and Maintenance,
Tiruvannamalai District – 606601.
3. Assistant Divisional Engineer, (H) (C&M),
Highways, Construction and Maintenance,
Polur, Tiruvannamalai District – 606751.
4. The Accountant General (A&E),
No. 361, Anna Salai, Chennai – 600018.

Copy to

L.Mani,
S/o. Lakshmanaudayar,
Melsiruvallur Village,
Kettavarapalayam (Post),
Aadhamangalam Via,
Kalasapakkam Taluk,
Thiruvannamalai District.



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P.D. AUDIKESAVALU, J.

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