



WEB COPY



W.P.No.17 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.17 of 2022

S.Jothimani

... Petitioner

Vs.

1.The Director,
Tamil Nadu Motor Vehicles Maintenance Department,
Chennai-600042.

2.The Regional Deputy Director,
Government Automobile Workshop,
Salem-636007.

3.The Principal Accountant General,
(Accounts & Entitlements), Tamilnadu,
No.361, Anna Salai, Chennai-600018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the first respondent in R.C.No.A3/8320/2019 dated 02-06-2020 and quash the same and direct the respondents to revise pay and pension by granting the Selection Grade and Special Grade Scales of pay due to the petitioner with effect from 01-02-1999 and 01-02-2009 respectively, within a time limit to be fixed by this Court.

For Petitioner : Mr.P.Mohanraj

For Respondents : Mr.V.Jeevagiridharan,
Additional Government Pleader



W.P.No.17 of 2022

ORDER

This Writ Petition has been filed to quash the impugned order issued by the 1st respondent in R.C.No.A3/8320/2019, dated 02.06.2020 and direct the respondents to revise the pay and pension by granting the Selection Grade and Special Grade Scales of pay due to the petitioner with effect from 01.02.1999 and 01.02.2009 respectively, within a time limit to be fixed by this Court.

2.The case of the petitioner is that while he was working as Blacksmith at the Government Automobile Workshop, Hasthampatti, Salem, a charge under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was initiated against the petitioner for the reason of bigamy. The disciplinary proceedings initiated against the petitioner was culminated in removal of service *vide* proceedings, dated 01.06.2000. Consequently, the petitioner has filed O.A.No.5504 of 2000 before the Tamil Nadu State Administrative Tribunal and the same was transferred to the file of this Court and renumbered as W.P.No.44180 of 2006. This Court, by order, dated 08.12.2010 confirmed the order of removal from service and dismissed the Writ Petition. Aggrieved over the same, the petitioner preferred an appeal before this Court in W.A.No.286 of



2011 and this Court *vide* judgment dated 15.12.2014 modified the punishment of the petitioner to compulsory retirement from removal of service and thereby, the petitioner retired from service with effect from 20.04.2016 as per proceedings, dated 20.01.2015. Thereafter, the petitioner has sought to revise the pay and pension by granting the Selection/Special Grade scale as per G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992 and the same was rejected citing the G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986 *vide* impugned order, dated 02.06.2020. Challenging the same, the present Writ Petition has been filed.

3.The learned counsel appearing for the petitioner would mainly submit that subsequent to G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986, G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992 has been passed wherein it is directed that the criterion that one should possess the qualification and pass the tests, if any, prescribed for next higher posts need not be insisted upon for movement to the Selection Grade. Based on the said G.O.Ms.No.276, Personnel and Administrative Reforms



W.P.No.17 of 2022

(Personnel-S) Department, dated 07.08.1992, this Court in W.P.No.7008 of 2007 had held that the pendency of disciplinary proceedings is not a bar for grant of Selection Grade. Therefore, it is the contention of the learned counsel for the petitioner that the impugned order cannot be sustained in the eye of law and in the light of the G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992.

4. Whereas the stand of the respondent in the counter that as per the scheme of advancement of Selection Grade and Special Grade on completion of 10 years / 20 years of service, revised guidelines have been issued in G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department, dated, 23.01.1986. In view of the same, a major charge involving moral turpitude was pending against the Petitioner on the date of his eligibility for movement to the Selection Grade on 01.02.1999. At that time, a charge under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules for Bigamy (Involving moral turpitude) issued in Memo No.A1/7352/1992, dated 02.01.1997 by the Automobile Engineer, Government Automobile Workshop, Salem was pending against the Petitioner. Further, on the date of his entitlement to move Special Grade on



W.P.No.17 of 2022

02.01.2006, the Petitioner was already removed from service on 01.06.2000, but reinstated into service on 06.09.2000 based on the interim stay granted by the Tamil Nadu State Administrative Tribunal pending disposal of the original application and continued in service till he was compulsorily retired only based on the interim orders of the Court. It is also submitted that G.O.Ms.No.276, Personnel and Administrative Reforms (Per-S) Department, dated 07.08.1992 removed only the bar that qualifications required for next promotional post and pass the departmental tests for movement to Selection/Special Grade. The other guidelines issued for movement to Selection/Special Grade remain unchanged. Therefore, the above stated condition of no charge pending and after the completion of punishment is to be fulfilled for the award of Selection/Special Grade. As major charge involving moral turpitude pending against the petitioner which culminated in the imposition of the punishment of "Compulsory retirement", the Petitioner is not entitled for the movement of Selection Grade and Special Grade on 01.02.1999 and 01.02.2009 respectively.

5.Heard the submissions made by the learned counsel for the



W.P.No.17 of 2022

petitioner and the learned Additional Government Pleader appearing for the respondents.

6. Admittedly, the petitioner was facing disciplinary proceedings under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules for Bigamy which culminated into removal of service on 01.06.2000. Only this Court in W.A.No.286 of 2011 modified the punishment from removal of service into compulsory retirement. This facts are not disputed by the learned counsel for the petitioner. It is relevant to extract paragraph No.3(ii) of the G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986 and the same is read as follows:

“3(ii) All other normal criteria for promotion to a higher post viz., seniority, good or satisfactory record of service, the nature of punishments imposed on the employee and the lapses for which the punishments were imposed, the pendency of charges or disciplinary proceedings or enquiry, by Director of Vigilance and Anti-Corruption, qualifications/tests prescribed under the Special/Adhoc Rules for the higher post etc., should be followed while moving the employee to the Selection/Special Grade.”

7. Clause 3(ii) of the G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986 makes clear that all other



normal criteria including the nature of punishments imposed on the employee and the lapses for which the punishments were imposed shall be taken into consideration while moving the employee into Selection/Special Grade. The relevant portion of the G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992 is as follows:

“3.The Government after careful consideration of the request of the Service Association and in partial modification of the orders issued in the Government order first read above and the clarification issued thereon from time to time, direct that the criterion that one should possess the qualifications and pass the tests, if any, prescribed for next higher posts need not be insisted upon for movement to Selection/Special Grade.

4.All other conditions and guidelines contained in the Government Order first read above will remain unchanged.”

8.On perusal of the subsequent Government Order in G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992 makes it very clear that though the representation is made to remove the condition that one should possess all



W.P.No.17 of 2022

the qualifications for promotion to the next higher post for awarding Selection/Special Grade should be removed, the Government has not accepted the request in its entirety. The Government has accepted only the criterion that one should possess the qualifications and pass the tests, if any, prescribed for next higher posts need not be insisted upon for movement to Selection/Special Grade. Further makes it clear that all other conditions and guidelines contained in the Government Order (G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986) will remain unchanged.

9.Thus, on combined reading of both the Government Orders makes very clear that the recommendation has been accepted only in respect of the qualification and the tests need not be insisted upon for the next higher post. The other conditions set out in the paragraph No.3 of the G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986 are remain unchanged. The paragraph No.3 makes very clear that while moving the employees to the next higher grade, besides the seniority, disciplinary proceedings and punishments imposed also to be recorded.



W.P.No.17 of 2022

WEB COPY

10.In such view of the matter, the contention of the petitioner that punishment imposed by the disciplinary proceedings is not a bar to grant Selection Grant, cannot be countenanced. Though the learned Single Judge in W.P.No.7008 of 2007 has held that there is no bar for grant of Selection Grade, this Court is of the view that the conditions set out in both the Government Orders have not been brought to the notice of the learned Single Judge. Accordingly, I am of the view that the same cannot operate as a precedent.

11.In the light of the observations, the impugned order, dated 02.06.2020 passed by the 1st respondent is confirmed and this Writ Petition stands dismissed. No costs.

22.09.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

vv2

N.SATHISH KUMAR, J.

vv2



W.P.No.17 of 2022

To

WEB COPY

- 1.The Director,
Tamil Nadu Motor Vehicles Maintenance Department,
Chennai-600042.
- 2.The Regional Deputy Director,
Government Automobile Workshop,
Salem-636007.
- 3.The Principal Accountant General,
(Accounts & Entitlements), Tamilnadu,
No.361, Anna Salai, Chennai-600018.

W.P.No.17 of 2022

22.09.2023