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W.P. No. 34741 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE K. RAJASEKAR

W.P. No. 34741 of 2022

&

W.M.P. No. 34191 of 2022

P. Thirunavukkarasu

..Petitioner

Vs.

1. Registrar General,
High Court, Madras.

2. Principal District Judge,
District Court, Vellore.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records pertaining to Proceedings in DIS No.4153/22.04.2019 /Shr dated 16.04.2019 issued by the 2nd respondent and Proceedings Notice in ROC No



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42188/2019/G2 dated 30.06.2022 by the 1st respondent/ quash the same and direct the respondents to place the petitioner in Selection Grade from 19.09.1996 and extend the benefits as per the representation of the petitioner dated 04.04.2018.

For Petitioner :: Mr.B. Ravi

For Respondents :: Mr.V. Vijay Shankar

O R D E R

(Made by K. Rajasekar,J.)

This writ petition has been filed challenging the order of the Original Authority dated 16.04.2019 and the order of the Appellate Authority dated 30.06.2022.

2. The petitioner was originally appointed as Process Server on 18.10.1972. His services were regularized with effect from 01.01.1973 vide proceedings dated 29.01.1974. After completion of 10 years of service, he was moved to selection grade in the same post of Process Server vide proceedings dated 27.07.1983 with effect from 01.01.1983. Thereafter, he was promoted as Senior Bailiff with effect from 19.09.1986 and on



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completion of 10 years of service in the post of Senior Bailiff, as per G.O.(Ms) No. 304, Finance (Pay Cell) Department dated 29.03.1983, he was moved to Selection Grade in the post of Senior Bailiff with effect from 01.01.1998 instead of 19.09.1996 as according to the petitioner, he was promoted to the post of Senior Bailiff with effect from 19.09.1986. The petitioner submitted a petition to the 2nd respondent seeking to advance the date of Selection Grade from 01.01.1998 to 19.09.1996. However, the letter was returned with the endorsement dated 06.08.2015 stating that since the services of the petitioner in the post of Senior Bailiff was regularised with effect from 01.01.1998, the petitioner is not entitled to Selection Grade from 19.09.1996. The subsequent representation made by the petitioner was also returned. Hence, the petitioner made a representation to this Court on 04.04.2018 stating that he has been granted Selection Grade in the post of Senior Bailiff 2 years after the completion of 10 years of service in the said post and the representation was forwarded to the 2nd respondent for conducting an enquiry. According to the petitioner, though enquiry was fixed on various dates, no enquiry was conducted. Subsequently, the petitioner submitted an application on 22.02.2007 for promotion and



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regularisation in the post of Senior Bailiff, but there was no response.

Thereafter, by proceedings dated 16.04.2019, impugned in this writ petition, the 2nd respondent rejected the representation of the petitioner stating that it has been made after 33 years and that too, after his retirement, i.e, on 31.05.2009 and that the petitioner had not made any representation to the appointing authority. Challenging the same, the petitioner preferred an appeal before the 1st respondent on 06.05.2019 and by the impugned order dated 30.06.2022, the 1st respondent rejected the appeal petition stating that there is no entry in the service register regarding the date of joining duty as Senior Bailiff on 19.09.1986 and that the application was submitted to the 2nd respondent on 21.07.2015 after a lapse of 6 years. Hence, the present writ petition.

3. Learned counsel for the petitioner would submit that the petitioner was promoted to the post of Senior Bailiff on 19.09.1986 and as per G.O.Ms. No. 68 Personnel & Administrative Reforms (Per-M) Department dated 23.01.1986, the Selection Grade shall be granted to persons, on completion of 10 years in a particular post reckoned from the



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date of regular appointment and in this case, the petitioner has not been awarded the Selection Grade in spite of his representation made both to the Appointing Authority and Appellate Authority. According to the learned counsel, based on the improper entry made in the Service Register that the individual's service was regularised in the post of Senior Bailiff only with effect from 01.01.1988, the grant of Selection Grade has been postponed by 2 years.

4. On the other hand, the counter filed on behalf of the respondents states that the petitioner was in the post of Process Server from 03.09.1986 to 30.09.1986. As such, the writ petitioner was not in the post of Senior Bailiff on 19.09.1986 and the entries made in the Service Register and pay fixation proceedings of the District Munsif, Gudiyatham, dated 20.10.1986 clearly establish that the individual joined in the post of Senior Bailiff only on 01.10.1986 and his services were regularised in the said post with effect from 01.01.1988 and as per G.O.Ms. No. 68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986, for award of Selection Grade, the period of ten years in a post will be reckoned from



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the date of regular appointment. As such, the date from which the services of the individual were regularised in the post of Senior Bailiff i.e, 01.01.1988 has been taken into consideration for granting Selection Grade and accordingly, he has been granted Selection Grade with effect from 01.01.1998. Moreover, it is the stand of the respondents that the claim of the petitioner seeking regularisation of his service in the post of Senior Bailiff with effect from 1986, after a lapse of 33 years and after his retirement, is highly belated and time barred and has been rightly rejected.

5. Heard both sides.

6. The petitioner had joined the post of Process Server in Sub Court, Thiruvannamalai on 18.10.1972 and though his services were regularised with effect from 01.01.1973, it will have retrospective effect. When a person is posted in a promoted post, the regularisation of his service in the promoted post will take effect only from the date of promotion and not on any subsequent date. Hence, the petitioner is entitled to the benefit sought.



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7. However, learned counsel for the respondents would submit that there has been a delay of 24 years and this Court, in similar circumstances, in W.P. No. 9712 of 2022, by order dated 22.04.2022, has declined to grant the relief claimed by the petitioner therein. The said judgment would apply to the case on hand and the order passed by both the authorities are perfectly in order.

8. Since regularisation and grant of monetary benefits will have a bearing on pension, which is a continuous cause of action, the delay as such cannot be put against the individual. In this case, the order passed is also incorrect. Since the original date of his promotion is 01.10.1986, the same has to be taken as reckoning date and not the date on which the services of the petitioner were regularised. Accordingly, the contention of the respondents is rejected and as stated by the learned counsel for the petitioner, the petitioner is entitled to the relief sought.



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9. Since pension is a property under Article 300A of the Constitution of India, it cannot be deprived except in accordance with the Rules. In this case, the factum of delay is staring against the petitioner. Therefore, though the petitioner would be entitled to refixation of Selection Grade pay with effect from 01.10.1986, he would be entitled to revised pension from the date of superannuation. However, he would not be entitled to any interest as the delay is enormous. The respondents are expected to pay the revised pension with effect from 1st October, 2023 and arrears of pension from the date of superannuation till 31st August, 2023 within a period of three months from the date of receipt of a copy of this order.

10. The writ petition is disposed of accordingly. No costs. Connected W.M.P. is closed.

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(S.V.N.J.) (K.R.S.J.)
11.09.2023



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To

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AND

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