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W.P. No.29434 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM

THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P. No.29434 of 2022

and

W.M.P. No.28769 of 2022

A.Arumugam

... Petitioner

-VS-

1. Government of Tamil Nadu
Rep. By its Principal Secretary
Finance (CMPC) Department
Fort St. George, Chennai – 600 009.
2. The Chief Engineer
Agricultural Engineering Department
487, Anna Salai, Nandanam
Chennai – 600 035.
3. The Assistant Executive Engineer
Agricultural Engineering Department
487, Anna Salai, Nandanam
Chennai – 600 035.
4. The Superintendent
O/o. Agricultural Engineering Department
487, Anna Salai, Nandanam
Chennai – 600 035.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the third respondent issued a letter



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No.A/735/2021 dated 07.09.2022 and quash the same and further issue a direction directing the third respondent to give selection grade senior plow Driver with the scale of pay of 1320-2040 from 01.07.1989 in the promotional post to the petitioner.

For Petitioner : Mr. P.Ganesan

For Respondents : Mr. R.Baranidharan, AGP (R1)

Mrs. V.Jamunadevi, SGP (RR2 to 4)

ORDER

Heard Mr. P.Ganesan, learned counsel for the petitioner, Mr. R.Baranidharan, learned Additional Government Pleader appearing for the first respondent and Mrs. V.Jamunadevi, learned Special Government Pleader appearing for the second to fourth respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The petitioner, who had retired from service on reaching the age of superannuation on 31.03.2003 in the post of Senior Tractor Driver(Plow), had claimed that he was entitled for the benefit of the selection grade scale of pay with effect from 01.07.1989, which is the date on which he was appointed as a Junior Grade Tractor Driver(Plow). His claim has been rejected through the



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impugned order dated 07.09.2022 in Letter No.A/735/2021, predominantly on the ground that during his service, he was on leave for about 582 days for the period from 25.08.1986 to 29.03.1988 and since neither his leave has been relaxed by the Government, nor has his absence been regularized, he cannot claim for grant of selection grade scale of pay.

3. Learned counsel for the petitioner submitted that the reason assigned in the impugned order has no relevance to claim for notional grant of selection grade scale of pay with effect from 01.07.1989.

4. According to the learned counsel for the petitioner that in case of posts with different grades, for one who has put in 10 years or more of service in the position of Junior Grade Tractor Driver, the respondents ought to have advanced him to the next higher post under the scheme of Flexible Complementing and one with a service of 20 years or more be advanced to Selection Grade of the Senior Tractor Driver Post in accordance with G.O.Ms. No. 210, Personnel and Administrative Reforms (Per.S) Department dated 11.03.1987.



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5. Learned Special Government Pleader appearing for the second to fourth respondents has placed reliance on the averments in the counter-affidavit and submitted that there are laches on the part of the petitioner in not claiming notional grant of selection grade scale of pay. That apart, she also submitted that since the petitioner was on unauthorized absence for 582 days between the years 1986 to 1988 and his absence since not regularized by the Government, the benefit of notional grant of selection grade cannot be considered.

6. The grievance of the petitioner is that the beneficial order of the Government in G.O.Ms. No.210, has not been properly implemented and he has been denied the grant of selection grade scale of pay on completion of 10 years with effect from 01.07.1989.

7. It is not in dispute that the petitioner had joined the post of Junior Grade Tractor Driver (Plow) on 01.07.1969. Thus, he had completed 10 years of service as on 01.07.1979. He was thereafter promoted to the post of Senior Grade Tractor Driver(Plow) on 30.03.1988, before completion of 10 years in the promoted post, which aspect is also not in dispute. Thus, by applying G.O. Ms. No. 210, the petitioner ought to have been granted with the selection grade scale of pay, with effect from 01.07.1989.



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8. The respondents in the impugned order have not referred to the alleged absence of the petitioner for a continuous period of 582 days between the years 1986 to 1988 and by referring to Rule 11 of the Annexure-III of the Fundamental Rules i.e., the Tamil Nadu Leave Rules, 1933, the petitioner claims that he can avail maximum of 180 days alone and therefore, his unauthorized absence has to be regularized by the Government. In the absence of such regularization, he cannot claim the benefit of G.O.Ms. No.210.

9. I am not in agreement with the reasons assigned by the respondents. The leave, which has been referred to relates to about 37 years back, more particularly after the petitioner had retired from service on 31.03.2003. Such an objection of being on unauthorized absence or non-regularization of his absence beyond 180 days was neither objected nor any action taken by the respondents during the petitioner's service period. Even otherwise, this is not reason, which can in any way be related to the claim made by the petitioner. All that the petitioner now claims is that he had completed 20 years of service on 01.07.1989, which date is not in dispute. If at all the respondents are of the view that there was some lacuna in the leave obtained by the petitioner for more than 180 days, that would give rise to a separate cause of action, which ought to have been invoked at the relevant point of time, (i.e.,) immediately after the



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year 1985 and it is now not open to them to reject the petitioner's lawful claim

for grant of selection grade scale of pay.

10. Learned Special Government Pleader appearing for the second to fourth respondents submits that there are laches on the part of the petitioner in having approached them belatedly. To such an objection, learned counsel for the petitioner submitted that in view of the inaction on the part of the respondents in not granting the selection grade with effect from 01.07.1989, he has been receiving the lesser pension till date, which is a continuous cause of action and therefore, the question of laches will not arise. I am of the view that the petitioner's reply is acceptable justifiable. Above all, laches cannot be a ground to deny a legitimate and legal claim, which has been unjustly and unlawfully denied to the Petitioner.

11. This court has already held that the claim of the petitioner is legal and lawful, in view of the scheme under G.O.Ms.No.210. When it is found that the petitioner is entitled for grant of selection grade with effect from 01.07.1989, the same cannot be ignored, merely because there are certain alleged laches on the part of the petitioner and thus, the impugned order citing unrelated reasons



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for refusing the petitioner's claim cannot be sustained.

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12. Accordingly, the order dated 07.09.2022 on the file of the third respondent is quashed. Consequently, there shall be a direction to the third respondent herein to notionally grant selection grade Senior Tractor Driver(Plow) with scale of pay of 1320-2040 with effect from 01.07.1989, by passing appropriate orders within a period of four weeks from the date of receipt of a copy of this order. The arrears of such scale of pay on re-fixation, shall be paid atleast within the said period of four weeks. While passing such orders, the pensionary benefits of the petitioner shall also be accordingly revised.

13. The writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes

NCS : Yes

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M.S.RAMESH , J.

Maya

To

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