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W.P.No.194 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.194 of 2017
and W.M.P.No.185 of 2017

K.Kumaresan

... Petitioner

-Vs-

- 1 Government of Tamil Nadu rep.by its
Secretary to Government, Highways
and Minor Ports Department,
Secretariat, Chennai-9.
- 2 Director General
Highways Department
HRS Campus, No.76, Sardar Patel Road
Guindy, Chennai-25.
- 3 Superintending Engineer (Highways)
Construction and Maintenance Wing
Villupuram District.
- 4 Divisional Engineer (Highways)
Construction and Maintenance Wing
Kallakurichi, Villupuram District.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the entire records of the 4th respondent herein in his Lr.No.1059/ 2015/B-1 dated 28.9.2015 and quash the same and consequently direct the respondents



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herein to re-fix the pay of the petitioner herein in the Selection Grade Scale for the Post of Driver w.e.f. 1.1.2010 and accordingly pay the difference in pay pension and other monetary benefits with due interest in accordance with law.

For Petitioner : Mr.V.R.Rajasekaran
For Respondent : Mr.S.Ravi Kumar
Special Government Pleader

ORDER

The writ petition has been filed in the nature of Certiorarified Mandamus calling for the entire records of the 4th respondent herein in his Lr.No.1059/ 2015/B-1 dated 28.9.2015 and quash the same and consequently direct the respondents herein to re-fix the pay of the petitioner herein in the Selection Grade Scale for the Post of Driver w.e.f. 1.1.2010 and accordingly pay the difference in pay pension and other monetary benefits with due interest.

2. The petitioner originally joined as Cleaner on 13.06.1978 in the Highways Department. His services were regularized on 01.01.1984. He had been granted selection and special grade of pay in the post of Cleaner on 01.01.1994 and 04.01.2004 respectively. The petitioner was promoted as Road Roller Driver on 01.01.2000. Thereafter, the Government had taken a policy decision to close the Maintenance Division and absorb the workers in



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other Divisions. The petitioner was working as Driver in the Machinery Division. Since the Machinery Division itself was closed, he was absorbed as Cleaner once again. When the petitioner and others were so absorbed, G.O.Ms.No.54, Highways Department was passed on 26.03.2009 granting protection of pay to those who had been re-designated to various other posts. Very specifically, the name of the petitioner is also found in the annexure to the said Government Order. Thereafter, this period of functioning as Cleaner continued from 01.07.2003 till 04.03.2007. On 05.03.2007, the petitioner had been promoted as Driver. He worked as Driver till his date of retirement by superannuation on 30.06.2012.

3. The claim of the petitioner is that the period when he was re-designated as Cleaner should also be considered as a service as Driver and that his entire period of service from the original promotion as Driver till his date of retirement by which date he had put in more than 10 years of service, he should be granted selection grade in the post of Driver.

4. The respondents have rejected this particular claim by stating that in the interregnum period between 01.07.2003 and 04.03.2007, the petitioner was not working as Driver, but had been re-designated as Cleaner consequent to the disbanding of the Machinery Division itself which was a



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policy decision. In the counter affidavit, it had been stated that the petitioner had not questioned that particular policy decision. It had also been stated that the petitioner, after his retirement, had given several representations regarding his pay anomaly, which had all been rejected and thereafter in the year 2015 he gave another representation raising this particular issue of grant of selection grade in the post of Driver. Therefore, it is stated that this particular representation is also hit by latches.

5. Even if that particular ground is overlooked by this Court, as a fact the petitioner's pay had been protected by passing of G.O.Ms.No.54 dated 26.03.2009. That benefit had enured to the petitioner. Therefore, since there had been protection of pay in some manner, it would be an issue of once again considering the same benefit to the petitioner by granting selection grade. Even though the petitioner had been promoted as Driver earlier and had been functioning in that particular post till the Department itself was disbanded, thereafter he was re-designated as Driver from 05.03.2007. The period when he served as Cleaner cannot be taken as a period he served as Driver since for that particular post of Cleaner, pay protection was given. In view of this particular fact, I hold that the request placed by the petitioner cannot be considered and has been correctly rejected by the respondents.



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6. Learned counsel for the petitioner however stated in the annexure to G.O.Ms.No.54 as many as 73 individuals had been mentioned and the learned counsel stated that, if it comes to the knowledge of the petitioner herein that anyone of them who had been so re-designated to other posts consequent to disbanding of the Machinery Division had been subsequently granted selection grade as if they had continued in the same post in the Machinery Division, then the petitioner may be granted permission to give necessary representation to be treated on par with that particular person. This liberty is always available to the petitioner herein and if at all it is found that any one of the 73 individuals was granted selection grade, then the petitioner can make necessary representation, but as on date no such information is furnished. Hence, reserving such liberty to the petitioner to make a representation, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Index : Yes/No
Internet : Yes/No
KST



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C.V.KARTHIKEYAN, J.

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