



W.P.(MD)No.8470 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.8470 of 2020

and

W.M.P(MD) No.7856 of 2020

K.Subramaniam

: Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai.

2.The Director of Public Health
and Preventive Medicine,
Chennai-6.

3.The Deputy Director of Health Services,
Dindigul District.

: Respondents



W.P.(MD)No.8470 of 2020

WEB COPY

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in R.No.22856/MP2/S1/2014 dated 17.4.2020 and quash the same and direct the respondents to sanction yearly increments and selection grade in the cadre of Technical Personal Assistant Grade I with all consequential benefits and also refund the recovered amount of Rs.51.234/- to the petitioner in the light of the order made in W.A.(MD)No.149 of 2019 dated 06.02.2019.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.S.P.Maharajan,
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order passed by the 2nd respondent in his proceedings in R.No. 22856/MP2/S1/2014 dated 17.4.2020 and direct the respondents to sanction yearly increments and selection grade in the cadre of Technical Personal



W.P.(MD)No.8470 of 2020

WEB COPY

Assistant Grade I with all consequential benefits and also refund the recovered amount of Rs.51.234/- to the petitioner in the light of the order made in W.A.(MD)No.149 of 2019 dated 06.02.2019.

2. The learned counsel for the petitioner submitted that the petitioner is appointed Health Inspector in the year 1967 and he was awarded selection grade in the year 1977 and Special Grade in the year 1987 and thereafter, promoted as Block Health Supervisor in the year 1996. While-so, by transfer of service, he was appointed as Technical Personal Assistant Grade-I in the year 1999 and his pay was fixed in the post of Technical Personal Assistant Grade-I with effect from 01.10.1999 and thereafter, the petitioner had retired from service on 30.04.2005 and at the time of retirement, while disbursing the monetary benefits to the petitioner, the Accounts Department raised an objection that the petitioner had not passed the Account Test for the Executive Officer and deducted Rs.51,234/- and after retirement, the petitioner made representation to refund the amount on 20.05.2016 on the ground that the promotion to the Executive post os not required for any departmental test. However, the same was not considered



W.P.(MD)No.8470 of 2020

and subsequently, the petitioner made another representation, dated 19.09.2000 and the same was not considered. Hence, the petitioner filed a writ petition before this Court in W.P.(MD) No.1498 of 2020 and this Court by order, dated 20.07.2020 issued a direction to the respondents to consider the petitioner's representation and pass appropriate orders. Thereafter, the present impugned order is passed. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner submitted that for promotional post there is no need for passing the Account Test and further passing the Account Test is already relaxed for several persons and when the same issue was came up for consideration, this Court allowed the writ petition. Against which, writ appeal also preferred before Division Bench this Court in W.A.(MD)No.149 of 2019 and the same was dismissed. Hence, the petitioner is entitled to avail the benefit of the Division Bench order and deducting the amount for not passing the departmental test is not sustainable one. Hence, he prayed for allowing the writ petition.



W.P.(MD)No.8470 of 2020

WEB COPY

4. Per contra the learned Special Government Pleader appearing for the respondents submitted that that according to the adhoc rules framed by the Government of Tamil Nadu, the Test prescribed for the said post is as follows :

"6. Test : Every person appointed to the posts shall pass the Account Test for Executive Officers within a period of two years from the date of appointment, failing which his second and subsequent increment shall be stopped without cumulative effect till he passes the said test."

5. It is further submitted that the internal audit party of the second respondent has conducted an Audit and found that without fulfilling the Rules i.e. passing of the Account Test for Subordinate Officers, the Officer of the Deputy Director of Health Services, Dindigul had sanctioned the second and subsequent increments to the petitioner. Based on the audit objections, the second increment already sanctioned to the petitioner has been cancelled and ordered for recovery of Rs.51,234/- and hence, the said amount was recovered from the petitioner. Hence, he prayed for dismissal of the writ petition.



W.P.(MD)No.8470 of 2020

WEB COPY

6. Heard the learned counsel on either side and perused the materials available on record.

7. The short issue that arises in the present case is that the petitioner retired from service on 30.05.2005. At the time of retirement, the amount of Rs.51,234/- was deducted from the petitioner's account on the ground that the petitioner's had not passed the Account Test and availed the earlier increment without possessing the Account Test. After a lapse of two decades, the petitioner made a representation to refund the amount and the said representation was rejected on the ground that the petitioner as per the Tamil Nadu Adhoc Rules, every person appointed to the post shall pass the Account Test for Executive Officer, within a period of two years from the date of appointment, failing which, the second and subsequent increment shall be stopped without cumulative effect.

8. Admittedly, the petitioner has not possessed the Account Test in the post of Executive Officer. However, he received the earlier increment continuously and the same was objected to by the Audit Department and



W.P.(MD)No.8470 of 2020

thereafter, the amount was deducted at the time of retirement. However, the petitioner claimed that initially made representation in the year 2016, in which, he mentioned that he made application in the year 2005, however no proof was filed before this Court and the settled issue cannot be reopened or unsettled after a lapse of two decades. Hence, the prayer sought for in this writ petition cannot be granted.

9. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM



W.P.(MD)No.8470 of 2020

To
WEB COPY

- 1.The State of Tamil Nadu
Rep. by its Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai.
- 2.The Director of Public Health
and Preventive Medicine,
Chennai-6.
- 3.The Deputy Director of Health Services,
Dindigul District.



WEB COPY



W.P.(MD)No.8470 of 2020

M.DHANDAPANI, J.

RM

W.P.(MD)No.8470 of 2020

06.01.2023