



W.P.(MD)No.4696 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4696 of 2014

S.Devarajan

... Petitioner

vs.

1.Union of India,
represented by the Commissioner of
Central Excise and Customs,
Trichirapalli.

2.Assistant Commissioner of Central Excise,
Madurai.

3.The Pay and Account Officer,
Central Excise and Customs,
Trichirapalli.

4.The Pay and Accounts Officer,
Central Excise and Customs,
Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating with the order of the 3rd respondent made in his proceeding in No.PAO-II/CCE/TRY/CAT/2010-11/1408, dated 06.03.2014 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents 3 and 4 to refix the petitioner's pay as per order, dated 02.02.1996, made in C.No.II/24/14/93 AC.II and to refund the amount of Rs. 29,850/- which was already recovered from him and also to direct them to pay the arrears of increment from 01.02.1999 to 31.10.2001 to the tune of Rs.15,000/- and to pay revised pension accordingly from 01.11.2001, all with interest, by extending the benefit of order, dated 03.05.2006, passed by Central Administrative Tribunal, Chennai in O.A.No.415 of 2005 and upheld by the order, dated 16.07.2009, by Hon'ble Division Bench of this Court in W.P.(MD)No. 25216 of 2007.

For Petitioner : Mr.R.Suriyanarayanan

For R1 : Mr.K.Asok Kumar Ram

For R2 to 4 : No appearance



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ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 06.03.2014 of the 3rd respondent as arbitrary and illegal and in consequence to direct the respondents 3 and 4 to refix the petitioner's pay as per order, dated 02.02.1996 and to refund the amount of Rs.29,850/- which was already recovered from him and also to direct them to pay the arrears of increment from 01.02.1999 to 31.10.2001 to the tune of Rs.15,000/- and to pay revised pension accordingly from 01.11.2001, all with interest, by extending the benefit of order, dated 03.05.2006, passed by Central Administrative Tribunal, Chennai in O.A.No.415 of 2005 and upheld by the order, dated 16.07.2009, by Hon'ble Division Bench of this Court in W.P.(MD)No. 25216 of 2007.

2. The petitioner joined as a Lower Division Clerk in October



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1962, thereafter, promoted as UDC in April 1971 and then promoted to Cadre of Inspector of CE (O.G) on September 1974. There was a vacancy to the post of Inspector of CE (S.G.) on 01.02.1986 and he was promoted as Inspector of CE (S.G.) Selection grade in the scale of pay of Rs. 550-25-750-EB-30-90 (pre revised) with effect from 01.02.1986, vide order of the Deputy Collector, dated 03.03.1988.

3. The petitioner is claiming the benefits granted under the Office Memorandum, dated 14.05.1987, which is Central Pay Commission revision. In the said Office Memorandum, the respondents have taken a policy decision to discontinue the selection grade to the posts in group C and D. The office memorandum further states that the selection grade shall be continued to the existing incumbents, i.e., those who were already granted selection grade. However, the same was discontinued from 12.09.1986. The petitioner was granted selection grade, vide order,



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dated 03.03.1988. Even though the petitioner was granted selection grade through the order, dated 03.03.1988, the retrospective effect of promotion was granted in the said order wherein he and five others were granted promotion retrospectively by fixing the revised pay for the petitioner as on 01.02.1986. Since there is a retrospective promotion, the petitioner is claiming that the benefits shall be granted to the petitioner.

4. However, the stand of the respondents is that even though retrospective effect is granted it has to be taken that the petitioner was granted promotion from the date of the order, i.e., 03.03.1988. If that is so, the policy decision taken in the office memorandum will not be applicable to the petitioner. Hence, he is not entitled to the selection grade pay.

5. This issue was already settled by the Central Administrative



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Tribunal in O.A.No.415 of 2005. One Manickam had filed the said O.A., who is one of the pensioners and in the promotion order he is shown in Serial No.5. The Central Administrative Tribunal, vide order, dated 03.05.2006 has held as under:

“9. From the above facts disclosed, it is seen that the applicant Shri P. Manickam was promoted strictly in terms of the above OM to the Selection Grade post on his seniority as well as availability of vacancy w.e.f. 11.8.1986 i.e., well before the crucial date of 12.9.1986. Therefore, he became eligible for pay fixation under clause (1) of para (b) of the OM cited above. It is this point which has been repeatedly submitted to the respondents and they appear to have followed the same while fixing his pay, though after a long inexplicable delay on 6.2.2005. The objection of Audit and Accounts in this regard merely relying on para 2(b)(2) of the OM dated 14.5.1987 appears to have missed the point. The reliance placed by the Audit with reference to para 2(b)(2) of the OM dated 14.5.1987 has failed to take note of para 3 as well as para 2(b)(1). Vide para 3, the Government held that where clear vacancies available prior to 13.9.1986 and where the staff



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were eligible for the reliefs on the relevant crucial date, there was no objection to allow non-functional Selection Grade to those staff and regulate their cases in accordance with the present orders. This actually would mean that this case would need to be considered under para 2(b)(i) wherein it has been stated that the employees appointed to Selection Grade in pre-revised scale between 1.1.1986 and 12.9.1986 would be eligible for the pay fixation under CCS (Revised Pay) Rules, 1986 with effect from the date on which he was appointed to the Selection Grade post and his pay in the revised replacement scale corresponding to pre-revised Selection Grade scale may be fixed in accordance with the provisions contained in OM dated 10.1.1977 and such incumbents on selection grade posts will carry the revised replacement scales as personal to them.”

The petitioner has already submitted a representation to grant same relief. However, the respondents did not consider the same. Hence, the petitioner filed W.P.(MD)No.9688 of 2009 and this Court directed the respondents to consider and pass orders. Thereafter, the impugned order



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came to be passed.

6. The only contention of the respondents is that the promotion is granted retrospectively, therefore, the petitioner is not entitled to the same. It is seen that the scale of pay is also fixed in the promotion order which is stated as pre-revised scale of pay. Therefore, the respondents are relying on the promotion order and is declining to grant the said benefit. However, when the respondents have passed a specific office memorandum covering the entire issue by granting retrospective promotion, the respondents cannot deny the monetary benefits and service benefits attached to the promotion.

7. Therefore, this Court is of the considered opinion that the Tribunal is right in granting the relief in its order passed in O.A.415 of 2005. Hence, the impugned order is quashed and the respondents are



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directed to grant the same benefit to the petitioner as well. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above said observation, the writ petition is allowed.

No costs.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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