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W.P.(MD)No.26032 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.03.2023

PRONOUNED ON : 07.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.26032 of 2019

V.Kalimuthan

... Petitioner

vs.

1.The Managing Director,
Tamilnadu Water Supply and
Drainage Board,
Chepauk, Chennai-5.

2.The Chief Engineer,
Tamilnadu Water Supply and
Drainage Board,
Southern Region, Madurai.

3.The Executive Engineer,
Tamilnadu Water Supply and
Drainage Board,
Mutharasanallur, Trichy.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to implement and give effect to the orders passed by the 3rd respondent dated 25.06.2014 for refixation of pay of the petitioner in the category of Assistant Driller from 01.04.1986 and settle the same which was passed by extending the benefit of Award of Labour Court in I.D.No.147 of 1993 dated 07.11.1996 and also in the light of the judgment of this High Court filed by similarly placed S.Sahul Hameed and 5 others in W.P. (MD).No.6033 of 2012 dated 29.11.2016 which was confirmed in Review Application Rev.Aplc.(MD).No.137 of 2019 dated 19.08.2019 in W.A.(MD).174 of 2018 dated 05.02.2018 and consequently, to revise the pension and other retirement benefits.

For Petitioner : Mr.S.Govindan
For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.R.Satheesh



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ORDER

This writ petition is filed for writ of Mandamus to direct the respondents to implement and give effect to the orders passed by the 3rd respondent dated 25.06.2014 for re-fixation of pay of the petitioner in the category of Assistant Driller from 01.04.1986 and settle the same which was passed by extending the benefit of Award of Labour Court in I.D.No. 147 of 1993 dated 07.11.1996 and also in the light of the judgment of this High Court filed by similarly placed S.Sahul Hameed and 5 others in W.P.(MD).No.6033 of 2012 dated 29.11.2016 which was confirmed in Review Application Rev.Aplc.(MD).No.137 of 2019 dated 19.08.2019 in W.A.(MD).174 of 2018 dated 05.02.2018 and consequently, to revise the pension and other retirement benefits.

2. The brief facts of the case are that the petitioner has passed S.S.L.C. and is holding I.T.I. Fitter certificate, was appointed as Helper



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and joined on 06.05.1976. Subsequently, the Helpers with I.T.I. Certificate were upgraded as Assistant Driller and till the retirement, the petitioner had served in the post without any promotion and retired on 31.03.2009. The Government issued G.O.Ms.No.762, Finance (Pay Cell) Department, dated 20.08.1986, fixing the scale of pay for various categories with S.S.L.C. pass and I.T.I. Certificate in the Ordinary Grade Scale of Pay 610- 1075 and Selection Grade Scale of Pay 705-1230 and as per the said Government Order, the petitioner is entitled to get the scale of pay 610-1075, but the benefit was not extended to the petitioner. In similar circumstances, some of the similarly placed persons who were working in Tirunelveli Division had raised an Industrial Dispute in 1.D.No.147 of 1993 for the revision of pay scale of Helper, Rewinder, Assistant Rewinder, Driller, Assistant Driller, Auto Electrician etc., and the same was allowed, vide order, dated 07.11.1996, directing to revise the scale of pay with effect from 01.04.1986. The 1st respondent directed



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to implement the order, vide letter, dated 18.07.2008 and 2nd respondent had also issued communication to comply the Award of the Labour Court. Even though the petitioner is entitled to, the respondents have not extended the said benefit to the petitioner based on the Award. Hence, the petitioner submitted a detailed representation to the 1st respondent on 20.05.2010 to extend the benefit. Thereafter, the Secretary cum General Manager of the respondent Board had issued instructions to all the Chief Engineers for revision of scale of pay based on the 4th Pay Commission Recommendation and also in compliance of the G.O.Ms.No.762, dated 20.08.1986 and also the Board Proceedings in B.P.No.505, dated 12.12.1986. Thereafter, vide letter, dated 12.03.2014, the Joint Chief Engineer General issued instructions to all the Chief Engineers, Superintendent Engineers and Executive Engineers to implement the BP Proceedings and G.O.Ms.No.762, dated 20.08.1986.

3. In the meanwhile, the similarly placed persons namely S.Sahul



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Hameed and 5 others had filed a writ petition in W.P.(MD)No.6033 of 2012 and the same was allowed, vide order, dated 29.11.2016, directing to implement the Award. Aggrieved over the same, the respondents therein preferred W.A.(MD)No.174 of 2018 wherein the Hon'ble Division Bench modified the order passed in W.P.(MD)No.6033 of 2012 and granted monetary benefit from 04.12.1997 instead of 01.04.1986. Aggrieved over the same, the writ petitioners in W.P.(MD)No.6033 of 2012 filed a Review Application in Rev.Aplc. (MD) No.137 of 2019 and the same was allowed, vide order, dated 19.08.2019, whereby the writ appeal order was set aside and writ petition order was restored. Thereafter, the respondents complied with the order. The contention of the petitioner is that he is a similarly placed person but the respondents have not implemented the order. Hence, the petitioner submitted a detailed representation on 10.08.2019. Since the respondents did not consider the representation, the present writ petition is filed.



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4. The 3rd respondent has filed a counter affidavit stating that V.Kalimuthan, was engaged as Mazdoor under Non Muster Roll and subsequently, appointed as Rig Helper under non provincialised Work Charged Establishment in the scale of pay of Rs.160-5-240 with usual allowances on 04.05.1976 and retired as Driver on attaining the age of superannuation on 31.03.2009. The petitioner has passed SSLC and ITI in the trade of Fitter. Based on the “One Man Commission Report”, Government issued G.O.Ms.No.762, Finance (Pay Cell) Department, dated 20.08.1986. As per B.P.Ms.No.547, dated 04.12.1998, the petitioner, Rig Helper, was re-designated as Assistant Driller, with revised scale of pay Rs.950-20-1150-25-1500 notionally with effect from 01.06.1988 and monetary effect from 01.04.1992. Some of the employees working in Thirunelveli Circle filed an Industrial Dispute in I.D.No.147 of 1993 to fix the scale of pay for certain trade post working in Tamil Nadu Water Supply and Drainage Board and the same was allowed by



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fixing the scale of pay for certain trade post. In this Award, the Scale of Assistant Driller was fixed as Rs.610-1075 and the Award was implemented to the members. The post of Rig Helper was re-designated as Assistant Driller and the petitioner was not appointed as Assistant Driller as per the Service Rules in force. As per Tamil Nadu Water Supply and Drainage Board Service Regulations, 1972, the qualifications prescribed to the post of Assistant Driller by the method recruitment by transfer from the post of Helper, must possess ITI certificate as the trade of mechanic and must have worked as Helper in Rigs for period of not less than 3 years. Initially the petitioner was appointed as Helper having qualification of SSLC passed and ITI in the trade of Fitter. Subsequently, his initial appointment as Helper was re-designated as Assistant Driller as per B.P.Ms.547, 04.12.1997 and scale of pay fixed as Rs.950-50-1500. The petitioner is not possessing the educational qualification for the post of Assistant Driller, since he is not having ITI certificate in the trade of



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Mechanic. Hence, the petitioner is merely possessing a pass in SSLC and ITI in the trade of Fitter. He cannot claim the scale of pay as per the Award. Moreover, the petitioner was initially appointed as Helper and retired as Driver on attaining the age of superannuation. The petitioner has not claimed the same till his date of superannuation. After the receipt of all terminal benefits and after a lapse of ten years, the present writ petition is filed. Hence, the claim of the petitioner deserves no consideration and the same ought to be dismissed with cost. Since the petitioner is not eligible as per the qualification prescribed to the post of Assistant Driller and also filed this writ petition after a lapse of ten years after retirement that too after receipt of all terminal benefits, the prayer of the petitioner deserves no consideration and the same is liable to be dismissed with costs.



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5. The counter affidavit further states that mere re-designation or change of nomenclature will not confer any right to the petitioner to claim higher scale of pay and the same cannot be claimed after a lapse of ten years. Moreover, the petitioner has not raised any industrial dispute till he reached superannuation. If the petition is allowed, it would be opening a flood gate. The said S.Sahul Hameed and others filed a writ petition at the earliest point of time. The petitioner cannot claim the said benefits after a lapse of ten years. The orders issued by the Board implementing G.O.Ms.No.740, Finance (Pay Cell) Department, dated 14.08.1986 and G.O.Ms.No.762, Finance (Pay Cell) Department, dated 20.08.1986, B.P.No.505, dated 12.12.1986 has already been cancelled by the Board in proceedings B.P.Ms.No.55, dated 04.08.2015. Hence, the issue of re-fixation of Assistant Driller reached finality. In such circumstances, reconsidering the request cannot be entertained and



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reconsideration does not arise at this juncture. Hence, the 3rd respondent prayed to dismiss the writ petition.

6. Heard Mr.S.Govindan, learned Counsel appearing for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents and perused the records.

7. The respondents admit that the petitioner was initially appointed as Helper and he was carrying the duty of Rig Helper and he was also assigned duty of Driver. The respondents also accepted that the petitioner is having the qualification of SSLC pass and ITI certificate in the trade of Fitter. But the claim of the respondents is that for the post of Assistant Driller, the prescribed qualification is SSLC pass and ITI in trade of Mechanic and not ITI Fitter. Since the petitioner is not having the qualification of ITI Mechanic, he cannot claim the benefits assigned to the said post. This contention of the respondents cannot be accepted,



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since the respondents ought not to have granted redesignated post of Assistant Driller, if the petitioner is not possessing the concerned educational qualification. Having redesignated the said post as Assistant Driller, the respondents cannot now turn around and deny the monetary benefits assigned to the said post.

8. The respondents further submitted that G.O.Ms.No.762, Finance (Pay Cell) Department, dated 20.08.1986, was issued for the Government Department and the same cannot be relied on. The learned Counsel appearing for the petitioner refuted such claim, since the G.O.Ms.No. 762, Finance (Pay Cell) Department, dated 20.08.1986, has been adopted by the Board in B.P.No.505, dated 12.12.1986 and it is verbatim adoption of the said G.O. In the said B.P.No.505, dated 12.12.1986, the said G.O.Ms.No.762, Finance (Pay Cell) Department, dated 20.08.1986, are extracted hereunder:



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II. G.O. Ms.No.762 Finance (Pay cell) Department, dated 28-8-86.	S.S.L.C. Passed Plus I.T.I. Certificate Scale, Rs.610-1075 with Selection Grade on Rs. 705-1230. 1. Sheet Metal Worker 2. Machinist (Grinder) 3. Electroplator 4. Mechanic (Instrument) 5. Electrician 6. Mechanic (Refrigeration and Air Conditioner) 7. Tool & Die Maker (Basio)	S.S.L.C. Failed plus I.T.I. Certificate Scale Rs.55-970 with Selection Grade on Rs.610-1075. 1. Blacksmith 2. Carpenter 3. Moulder 4. Mechanic (Diesel) 5. Plumber 6. Mechanic (Tractor) 7. Welder (Gas or Electric) 8. Painter (General) 9. Pattern Maker 10. Mechanic (Motor Vehicle) 11. Wireman 12. Turner 13. Machinist 14. Fitter
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Therefore, the claim of the respondents that the G.O. is for the Government servants cannot be accepted, when the respondents had adopted the said G.O. verbatim in the Board Proceedings.



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9. The next plea raised by the respondents is that the petitioner was working as Assistant Driller and such post was not referred in B.P.No. 505, dated 12.12.1986, at all. The said Assistant Driller was granted such benefit only through B.P.No.547, dated 04.12.1997. The respondents further attempted to substantiate by stating that Turner was also granted such relief in B.P.No.547, dated 04.12.1997 only. Such submission is fatal to the respondents, since on perusal of B.P.No.505, dated 12.12.1986, it is seen that Turner was included in SSLC fail category. If the respondents' contention ought to be accepted, then the Turners who had failed in SSLC were considered earlier and were granted revised scale of pay. The Turners who had passed SSLC were considered in 1997 and the scale of pay was revised. It is clearly evident the said submission is not only illogic, but fatal to the respondents' submission, since the failed persons were granted scale of pay from 1986 but the passed persons were granted revised scale of pay from 1997.



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Therefore, such contention and arguments of the respondents is defying logic and clearly shows the irrational policy decision of the respondents.

10. The next plea that was raised by the respondents is delay and latches stating that the petitioner has claimed after a lapse of 14 years. It is seen that the petitioner is fighting with the respondents all these years that is why the respondents has passed an order dated 25.06.2014 granting relief as claimed by the petitioner, but the respondents had not given effect to the said order. Thereafter the petitioner left with no option had approached this Court in the year 2019. Moreover, the petitioner being Rig Helper / Assistant Driller cannot be expected to litigate the might employer. It is also to be taken note of that the litigation incur huge expenses and long time. Hence the plea of delay and latches is not applicable to the present case.



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11. The learned Counsel appearing for the petitioner relied on the judgment rendered by the Learned Single Judge of this Court in Rev.Apl.Nos.26 and 27 of 2020 in W.P.Nos.15799 and 15800 of 2010, dated 03.08.2022. The said review applications were filed by the persons who had served as Rig Helpers in Mechanical Division as that of the petitioner and they were redesignated as Assistant Driller as that of the petitioner. By relying on B.P.No.505, dated 12.12.1986 and B.P.No.547, dated 04.12.1997, the relief was granted.

12. The learned Additional Advocate General appearing for the respondents submitted that the said decision cannot be taken into account, since there is no reference to the subsequent cancellation of board proceedings in B.P.No.55 dated 04.08.2015. The respondents cannot cancel the benefits that has already been accrued to the petitioner. In fact, the respondents have passed the proceedings in favour of the petitioner as early as 25.06.2014 granting the same benefit from



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01.04.1986 onwards. In spite of passing such proceedings, the respondents did not implement the said proceedings. Now, the respondents cannot rely on B.P.No.55 dated 04.08.2015 which is passed subsequent to proceedings dated 25.06.2014 and deny the accrued benefit to the petitioner. Therefore, for all these reasons, the claim of the respondents cannot be entertained and the petitioner is entitled to relief. The respondents shall pay the accrued benefit to the petitioner until 04.08.2015.

13. It is seen that the said B.P.No.55 dated 04.08.2015 is challenged in another writ petition. Therefore, as far as the benefits for the subsequent years from 04.08.2015 onwards, the petitioner would be entitled to, if the said B.P.No.55 dated 04.08.2015 is quashed. Therefore, the respondents shall take a call after the disposal of the said writ petition.



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14. With the above said observations, the writ petition is allowed
in above terms. No costs.

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

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