



W.P(MD)No.11734 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

DATED : 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.11734 of 2017
and W.M.P.(MD) No.9038 of 2017

Pattaiah

...Petitioner

Vs.

1. The Principal Accountant General (A & E) Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018

2. Dean,
Tirunelveli Medical College Hospital,
Tirunelveli – 11,
Tirunelveli District.

....Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus directing the respondents to permit the petitioner to continue in the Special Grade pay band Electrician Grade II post which is Rs.9300-34800+ GP of Rs.4200 and to sanction pensionary benefits with effect from 31.3.2016 when he was allowed to go on retirement from his service and to pay the arrears of pension payable to him within a period that may fixed by this Court.



W.P(MD)No.11734 of 2017

For Petitioner : Mr.V.Kannan
For R1 : Mr.P.Gunasekaran for R1
For R2 : Mr.A.Kannan
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus directing the respondents to permit the petitioner to continue in the Special Grade pay band Electrician Grade II post, which is Rs.9300-34800+ GP of Rs.4200 and to sanction pensionary benefits with effect from 31.03.2016.

2. Heard the learned counsel for the petitioner, learned Standing Counsel appearing for the 1st respondent and the learned Additional Government Pleader appearing for the 2nd respondent and perused the materials available on record.

3. The issue to be considered in this Writ Petition is whether the petitioner is eligible for Grade pay of Rs.4200/- or not.



W.P(MD)No.11734 of 2017

WEB COPY

4. The petitioner was appointed as Electrician Grade II in the 2nd respondent College on 26.02.1982. He was awarded with Special Grade and posted as Special Grade Electrician Grade II with effect from 26.02.2002. Subsequently, he was re-designated as Skilled Assistant Grade II by the proceedings of the 2nd respondent dated 08.10.2014 pursuant to the Government Order in G.O.Ms.No.338, Finance (PC) Department dated 26.08.2010 and letter No.11266/E5/2/2012 dated 10.05.2012 of the Director of Medical Education, Chennai. The petitioner's pay was re-fixed in pursuant to the Government Order in G.O.Ms.No.325, Finance (PC) Department dated 22.07.2013 and letter No.63305, Pay cell/2010 dated 08.11.2010 of Finance Department. As per the above said Government letter dated 08.11.2010, the appropriate scale of pay for special Grade Skilled Assistant Grade II is Rs,9300 – 34,800 + 4400 GP and it is restricted to the pay scale of Electrical Supervisor i.e Rs.9300-34,800 + 4200 GP which is the second level promotion post of Electrician Grade II.

5. Subsequently, the petitioner was promoted to the post of Electrician Grade I and posted in Tirunelveli Medical College Hospital,



W.P(MD)No.11734 of 2017

Tirunelveli by the proceedings of the 2nd respondent dated 22.05.2015.

WEB COPY

The pay of the petitioner was fixed by giving one increment in the scale of pay of Rs.9300=34,800 + 4200 prescribed for Special Grade Electrician Grade II with effect from 01.06.2015 as per the proceedings of the 2nd respondent dated 03.09.2015. The 2nd respondent has forwarded the combined application Form for GPF final closure and pension proposal along with a letter dated 28.01.2016 recommending to sanction pension benefits due to the petitioner to the first respondent. The petitioner was permitted to retire from the Government service on 31.03.2016 and he was relieved from duty on the afternoon of 31.03.2016 by the proceedings of the 2nd respondent dated 31.03.2016.

6. The 1st respondent by the proceedings in P20/2/12018767/ADK dated 25.05.2016 has returned the pension proposal in respect of the petitioner to the 2nd respondent saying that clarification has been sought from the Government in their office letter dated 11.08.2015 regarding award of Grade pay of 422/4400 for Selection Grade/Special Grade Skilled Assistant Grade II and that the petitioner was awarded Special Grade on 26.02.2002 and as such, the petitioner is eligible for



W.P(MD)No.11734 of 2017

Grade pay of Rs.2600 only restricted to promotion post of Skilled Assistant Grade I pending receipt of clarification from the Government. Thereafter, the petitioner has sent a representation dated 30.07.2016 to the 1st respondent through the 2nd respondent requesting to permit him to continue in the Special Grade pay band of Electrician Grade II post which is Rs.9300- 34,800+ GP of Rs.4200 and to admit his pension proposal and to issue the Pension Payment Order. On receipt of the said representation, there is no response from the first respondent.

7. The second respondent sent a reply dated 22.08.2016 along with the pension proposal to the first respondent informing that since the petitioner was already appointed as Special Grade Electrician Grade II on 26.02.2002, he is eligible for Grade Pay of Rs.4200/- restricted to second level promotion post of Electrical Supervisor pay band of Rs.9300 – 34,800 + 4200 GP with effect from 01.01.2006 with monetary benefit with effect from 01.04.2003 as per G.O.Ms.No.338 dated 26.08.2010 and G.O.Ms.No.325 dated 22.07.2013 and Government letter dated 08.11.2010 of Finance Department.



W.P(MD)No.11734 of 2017

WEB COPY

8. Once again the first respondent by proceedings dated 18.11.2016 has returned the pension proposal of the petitioner to the 2nd respondent raising the same ground stating that clarification has been sought from the Government in their letter dated 11.08.2015 and further action will be taken at their end. Aggrieved by the action of the first respondent in returning the pension proposals of the petitioner twice unreasonably and kept it pending for all these years, the present Writ Petition is filed.

9. On a careful examination of the materials available on record, in the considered opinion of this Court, the 1st respondent erroneously returned the proposal sent by the 2nd respondent twice without looking into the Government Orders and the Government Letter sent by the 2nd respondent in proper perspective by saying that he sought certain clarification from the Government and he returned the proposals sent by the 2nd respondent 2 times and kept the issue pending for the last 8 years without any reasons which is not permissible under law.



W.P(MD)No.11734 of 2017

WEB COPY

10. In fact, in the letter No.63305/Pay cell/2010 dated 08.11.2010 of the Principal Secretary to Government, Finance PC Department, certain instructions are issued with regard to revision of scales of pay based on the recommendations of One Man Commission, 2010 with regard to fixation of pay of employees in the Selection Grade/Special Grade.

11. The relevant portion of the said letter which is applicable to the present case is extracted herein under:

4) The above issue has been examined by Government in detail in the light of the orders issued in para-4 of Government Order second cited and the consequential revision made to the various categories in the Ordinary Grade scales of pay based on the One Man Commission recommendations and subsequent Government Orders. Accordingly. I am directed to issue the following guidelines for fixation of pay in the revised Selection Grade / Special Grade posts:

The revised Selection Grade / Special Grade scales of pay in the case of employees awarded Selection Grade / Special Grade prior to 1-1-2006 and in whose cases the Ordinary Grade scales of pay have been revised based on the recommendations of One Man Commission/further order of



WEB COPY



W.P(MD)No.11734 of 2017

Government thereon shall be fixed as per the scales of pay indicated in the Annexure-I to this letter following the same methodology of fixation of pay in the Selection Grade / Special Grade scales of pay of employees as was done in pre--2006 scales of pay as indicated in Appendix-II of G.O.Ms.No.162, Finance (PC) Department, dated: 13-4-98 subject to the same condition stipulated therein that if the revised Selection Grade Special Grade scales of pay indicated in the Annexure-I happens to be higher than the first level/second level promotion posts, then in such cases only the revised Selection Grade / Special Grade scales of pay should be restricted to the level of their first level and second level promotional posts respectively.

12. On a perusal of Annexure-1 of the said letter the pay band mentioned at serial No.9 is applicable to the petitioner. Admittedly, the learned counsel for the 1st respondent submits that though the first respondent sought clarification in the year 2015 from the Principal Secretary of Finance Department of the Government of Tamil Nadu till 14.11.2022, they did not receive any clarification from them and in the clarification received on 14.11.2022 also, there is no clarity with regard to the clarification sought by the first respondent.



W.P(MD)No.11734 of 2017

WEB COPY

13. Considering all these facts, this Court has no hesitation to observe that the 1st respondent without looking into the relevant Government Orders applicable to consider the petitioner's claim unnecessarily returned the proposals sent by the 2nd respondent twice. The concerned Principal Secretary of the State Government also is responsible for the delay caused in not settling the issue of the petitioner for all these years without giving certain clarification. This Court is placing its displeasure on record towards the attitude of the 1st respondent and the concerned Principal Secretary of the State Government, who failed to furnish clarification sought by the 1st respondent for 7 years.

14. However, in my considered view, the petitioner is entitled for the relief as sought in this Writ Petition in the light of the letter No.63305/Pay cell/2010 dated 08.11.2010 of the Principal Secretary to Government, Finance Department.



W.P(MD)No.11734 of 2017

15. For the above mentioned reasons, this Writ Petition is allowed with the following directions:

i) The 2nd respondent shall re-submit the proposal of the petitioner within a period of 2 weeks from today;

ii) On receipt of the proposal, the 1st respondent shall settle all the benefits, for which the petitioner is entitled, within a period of 3 weeks thereafter.

16. No costs.

17. Consequently, connected miscellaneous petition is closed.

25.09.2023

Index : Yes / No

NCC : Yes / No

CM

Note: Issue order copy on 26.09.2023

To,

1. The Principal Accountant General (A & E)
Tamil nadu,
No.361, Anna Salai,
Chennai – 600 018

2. Dean,
Tirunelveli Medical College Hospital,
Tirunelveli – 11, Tirunelveli District.



WEB COPY



W.P(MD)No.11734 of 2017

BATTU DEVANAND, J.

CM

W.P.(MD)No.11734 of 2017
and W.M.P.(MD) No.9038 of 2017

25.09.2023