



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP No.1854 of 2022

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G.Nagaraj

.. Petitioner

-VS-

1.The Registrar-General,
High Court of Madras,
Chennai-600 104.

2.The Sub-Judge,
Dharapuram,
Erode District.

3.The Principal Accountant General (A&E),
Tamil Nadu, 361, Anna Salai,
Chennai-600 018.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India,
praying for the issuance of a Writ of Certiorarified Mandamus, calling for
the records relating to the impugned order of the third respondent in



PO2/3/10226546/ADK dated 20.07.2021 and quash the same and direct the respondents to restore the increment granted to the petitioner on 02.01.1997 and revise his pension and other retirement benefits by taking into account his actual last drawn pay of Rs.59,100/- and grant him all consequential benefits.

For Petitioner : Mr.P.Rajendran

For Respondents-1 and 2 : Mr.V.Ayyadurai,
Senior Counsel for Mr.Durai Eswar

For Respondent-3 : Mr.V.Vijay Shankar

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The petitioner was initially appointed as Copyist on 25.12.1983. His services were regularised with effect from 23.07.1984 and he was promoted to the post of Typist on 02.01.1997. The petitioner was allowed to draw promotional increment consequent to the promotion and continued to receive the said increment till the date of his retirement on 28.02.2018.



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2. After allowing the petitioner to retire from service, the third respondent Accountant General revised the scale of pay of the writ petitioner by stating that the post of Copyist and Typist were merged with effect from 15.09.1993. Therefore the petitioner is not eligible to draw promotional increment at the time of grant of promotion on 02.01.1997.

3. The last drawn pay of the writ petitioner was Rs.59,100/- based on the objections raised by the third respondent-Accountant General, last drawn pay has been reduced to Rs.57,400/-. Thus, the present writ petition came to be instituted.

4. Mr.P.Rajendran, learned counsel for the petitioner would submit that the third respondent has raised an objection, based on the mistaken fact. The post of Copyist and Typist were actually merged on 03.07.2007. The Government passed an order to that effect in G.O.Ms.No.1006, Home (Courts-V) Department, dated 03.07.2007. By erroneously citing the merger of those two posts the objection was raised.



Consequently, the last drawn pay was reduced from Rs.59,100/- to Rs.57,400/-.

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5. Mr.V.Ayyadurai, learned Senior Counsel appearing on behalf of respondents 1 and 2 would submit that the merger of posts of Copyist and Typist occurred with effect from 03.07.2007 pursuant to G.O.Ms.No.1006, Home (Courts-V) Department, dated 03.07.2007. Therefore, the last drawn pay is to be calculated taking note of the date of merger i.e., 03.07.2007. Thus the objection raised by the third respondent was found to be erroneous. The counter of the first respondent-Registrar-General would reveal that the Government issued G.O.Ms.No.1006, Home (Courts) Department, dated 03.07.2007 ordering merger of posts of Copyist with that of Typist in Tamil Nadu Judicial Ministerial Service, subsequently through proceedings dated 06.08.2007, the post of Copyist in Tamil Nadu Ministerial Service had been merged with the post of Typist in the said Service with effect from 01.01.2007.

6. The first respondent has further stated that the impugned order of the third respondent dated 30.07.2021 came to be passed without



considering the clarification of the Government issued in letter dated 31.12.1997.

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7. The learned counsel for the third respondent would oppose by stating that the date of merger was taken by the third respondent as 15.09.1997, based on the merger occurred in the Consumer Forum. Therefore, the impugned order is correct and in accordance with law. Further in paragraphs 6 to 8 of the counter, the third respondent has stated as follows:-

"6. It is therefore submitted that while the posts of Copyist and Typist have become identical as early in the year 1994, prior to the movement of the petitioner as Typist on 02.01.1997, the formal merger was stated to have effected on 03.07.2007, after the movement of the petitioner to the post of Typist.

7. It is submitted that as per proviso (ii) below FR 22-B, if a Government Servant has previously held substantively or officiated in

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or



(iii) a permanent post on an identical time-scale or a temporary post on an identical time-scale, such post being on the same time-scale as a permanent post then the initial pay shall not be less than the pay other than special pay, personal pay or emoluments classed as pay by Government under Rule 9(21)(a)(iii) which he drew on the last such occasion and he shall count the period during which he drew that pay on such last occasion and any previous occasions, for increment in the stage of the time-scale equivalent to that pay.

The petitioner having been placed in the scale of pay of Rs.975-1660 by virtue of G.O.Ms.No.903, dated 09.08.1994, even when he was a Copyist, the question of grant of promotional increment in the same scale of pay, on his posting as Typist on 02.01.1997 does not arise.

8. It is however submitted that with a view to clear the ambiguity, that seems to have set in, by way of interpretation of the relevant Government Orders and the subsequent clarifications, this respondent has addressed the Government, Home (Courts) Department through



a Demi Official Letter No.A.G (A&E)/Legal Cell/WP 1854/2022/21-22/1819 dated 31.03.2022, calling for the clarifications on the subject matter of dispute. The reply is still awaited."

8. Seeking further clarification in the present case would not arise at all. The Government Order issued in G.O.Ms.No.1006, dated 03.07.2007, unambiguously states that the merger of post of Typist and Copyist will be with effect from 03.07.2007. The High Court also clarified the said fact.

9. That being the factum established, the petitioner is entitled to succeed. Consequently, the order impugned passed by the third respondent in proceedings PO2/3/10226546/ADK dated 20.07.2021 is quashed. The last drawn pay of the petitioner with the pay scale of Rs.59,100/- is to be taken into consideration for fixation of pension and all other benefits. The said exercise of restoration of last drawn pay is directed to be completed, within a period of six weeks from the date of receipt of a copy of this order.



10. With the above directions, the present writ petition stands

allowed. However, there shall be no order as to costs.

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(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

01-03-2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

Svn



To

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Chennai-600 104.

2. The Sub-Judge,
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Erode District.

3. The Principal Accountant General (A&E),
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