



W.P.No.15392 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

W.P.No.15392 of 2016
and
W.M.P.No.13418 of 2016

P.Gandhi

... Petitioner

-Vs-

- 1.The State of Tamil Nadu
Rep by its Secretary, Highways Department,
Fort St. George, Chennai 9
- 2.The Divisional Engineer (Highways),
Construction & Maintenance,
Kallakurichi, Cuddalore
- 3.The Assistant Divisional Engineer,
Construction & Maintenance,
Thirukovilur
- 4.The Accountant General (A&E)
No.361 Anna Salai,
Chennai 18.

...Respondents



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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for records relating to 2nd respondent made in Se.Mu.Ka.No.815/2011/A2 dated 05.02.2015 and that of the consequential proceedings of the 3rd respondent made in Ku. No. 231/2015/A1 dated 31.08.2015, to quash the same and to consequently direct the respondents to forthwith revise and refix the pay and other attendant benefits thereto in the post of Road Inspector Grade I w.e.f. 05.03.2003 and to consequently refix the pension and other pensionary benefits on the said basis and to continue to extend the same.

For Petitioner : M/s.L.Chandrakumar

For Respondents : M/s.Jeevagiridharan, AGP
[for R1 to R3]]

: M/s.Sree Vidya [for R4]

ORDER

The above Writ Petition is filed to call for records relating to 2nd respondent made in Se.Mu.Ka.No.815/2011/A2 dated 05.02.2015 and that of the consequential proceedings of the 3rd respondent made in Ku.No.231/2015/A1 dated 31.08.2015, to quash the same and to consequently direct the respondents to forthwith revise and refix the



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pay and other attendant benefits thereto to the petitioner in the post of Road Inspector Grade I w.e.f. 05.03.2003 and to consequently refix the pension and other pensionary benefits on the said basis and to continue to extend the same benefit.

2. The petitioner would submit that he was appointed as a Road Inspector GR-II in 1981 from which post he was ousted and reappointed. The period out of employment was regulated as per the Fundamental Rules and he was thereafter promoted as a Road Inspector Gr-I in 1998. The said promotion and appointment to the post of Road Inspector Gr.-1 was carried out in accordance with the Statutory Rules issued in G.O.Ms.856 PWD dated 01.06.1977. The said Statutory Rule prescribes the promotion of Road Inspector Gr.II to Road Inspector Gr.I upon completion of 5 years of service, subject to an assessment of merit and ability.

3. However, the then Divisional Engineers who were not fully aware about the above selection rules had promoted some of the Road Inspectors Gr-II to Road Inspectors Gr-I on their completion of 5



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years of service without considering their merit and ability. As the number of vacancies was large, there was no necessity to test merit and ability. Therefore, the said promotion cannot by any stretch of imagination be faulted with.

4. Since the promotion was contrary to the rules, by a proceeding dated 18.03.2004 the same was cancelled and he was reverted. This reversion order was challenged by the affected parties in W.P.No.8836 of 2007 but however, the Divisional Engineer, Cuddalore had requested them to withdraw the Writ Petition stating that he would cancel the reversion order. Accordingly, the reversion orders were cancelled and the benefits were restored vide proceedings of the Divisional Engineer dated 27.10.2010.

5. A batch of writ petitions were also filed challenging these reversions and the same were dismissed finding fault with the Divisional Engineers who have cancelled the reversion and granted the benefits. The learned Single Judge had held that action should also



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be taken against the erring officials. The above order of the learned Single Judge was taken up on appeal in WA.Nos.810 to 815 of 2013 before the Division Bench of this Court.

6. In the meantime, it appears that yet another batch of writ petitions was considered by a learned Single Judge of the Madurai Bench of the Madras High Court in W.P.(MD).Nos.7738 to 7749 of 2008, in and by which the petitioners therein sought to implement the G.O.Ms.856 PWD dated 01.06.1977. By an order dated 12.12.2012, the learned Single Judge had taken a contrary view and allowed the Writ Petitions and the consequential order of implementation were also given effect to by the respondents therein.

7. However, in the case of the petitioner, a recovery has now been ordered. It has been fairly conceded that the order passed by the Madurai Bench of the Madras High Court had not been brought to the notice of the Division Bench when they were considering the Writ Appeal Nos.810 to 815 of 2013 both by the learned counsel for the petitioner as well as by the respondents.



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8. Be that as it may, the petitioner has been reverted and has retired from service. The recovery is now sought to be made against him. These recoveries have been ordered on the basis of an Audit Objection with reference to the wrong fixation of pay. The petitioner cannot be found fault with for the grant of the benefits at the time of promotion. Therefore, in view of the dicta laid down by the Hon'ble Supreme Court in the judgment reported in **(2015) 4 SCC 334 – State of Punjab and others Vs. Rafiz Masih (White Washer) and Others**, there shall be no recovery of the amounts already paid to the petitioner. However, his pension can be refixed considering the emoluments to which the petitioner would be entitled at the time of his retirement and in accordance with the extant rules.

9. A similar view has been taken by the Hon'ble Supreme Court in a recent judgement reported in **2023 SCC Online SC 513 - Sasikala Devi Vs. State of Kerala and Another**, wherein the learned judges had held as follows:-

*“At the time of the hearing, it was submitted that
all the appellants who were given the benefits have*



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*retired from service and recoveries were sought to be made from them though they were not at fault in grant of those benefits at the time of promotion. Considering the aforesaid fact and keeping in view the judgment of this Court in the **State of Punjab and Others v. Rafiq Masih (White Washer)**, we direct that no recovery of the amount already paid to them be effected. However, their pension can be refixed considering the emoluments to which the appellants were entitled at the time of their retirement in accordance with the rules."*

10. The writ petition is therefore disposed of in terms of the above cited judgments. No costs. Consequently, the connected Miscellaneous Petition is closed.

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(shr)

Index : Yes/No

Speaking / Non Speaking Order

Neutral Citation : Yes/No



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