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W.P.No.2611 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.2611 of 2015

K.Shanmugarajan

...Petitioner

Vs.

The Managing Director
Tamil Nadu Water Supply & Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai – 600 005.

...Respondent

Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorarified Mandamus to call for the records in proceedings No.2638/ENT/A3/2014 dated 05.01.2015 on the file of the respondent and quash the same and further direct the respondents to re-fix the salary to the petitioner for the post of chief Accounts officer from 30.04.2005 afternoon till his retirement including sanction of increments and re-fix the pension and retirement benefits according to the said salary and pay to the petitioner the monetary benefits from the date of retirement along with 12% p.a. interest till the date of payment.



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W.P.No.2611 of 2015

For Petitioner : Mr. T.N.Rajagopalan
For M/s.Sudharshana Sundar

For Respondent : Mr. Abdul Hameed
Senior Counsel
For M/s. S.Mekala

ORDER

Challenging the order rejecting his request to consider his salary for the post of Chief Accounts Officer was holding full additional charge and from which post the petitioner had retired, he is before this Court.

2. It is the case of the petitioner that he had been discharging the duties of the Chief Accounts Officer for two spells, first from 20.08.2002 to 19.02.2003 and second from 30.04.2005 to 30.06.2006. He had superannuated on 30.06.2006 while holding full additional charge of the Chief Accounts Officer. However, the petitioner had



been given pension and retirement benefits in the category of Deputy Chief Accounts Officer.

3. While so, in October 2013, the petitioner came to know about one Jayabalan who was Assistant Secretary who had held full additional charge as Secretary of the TWAD Board, on his retirement while holding the post of Secretary TWAD Board had been given pension equivalent to the post in which he retired. He had claimed the above on the basis of the Judgement in the case of ***T.Thangaraj Vs. Secretary to Government*** reported in ***2011 (7) MLJ 1280***. Therefore, the petitioner made a representation and reminders to the respondent on 23.11.2013, 30.12.2013 and in person on 23.01.2014.

4. There was a response from the respondent on 23.04.2014 stating that Jayabalan had got orders of the Court and therefore he was granted pension. Therefore, the petitioner had filed W.P.No.20904 of 2014 seeking direction to the respondent to consider his representations. The Writ Petition was disposed of with a direction to



W.P.No.2611 of 2015

the respondent to dispose of the representation within a period of 8 weeks from the date of receipt of a copy of the order. Thereafter, on 05.01.2015 through impugned order the respondent had rejected the petitioner's request, hence the writ petition.

5. In the counter, the respondent would submit that the said Jayabalan's pay has been fixed notionally on the basis of the Judgement passed on his favour. They would further submit that as per regulation the appointment for the post of Secretary was through promotion, whereas the appointment for the post of Chief Accounts Officer was through deputation. Therefore, the case of Jayabalan cannot be compared to that of the petitioner herein. The respondent would further submit that the Judgment in the said Jayabalan's case was already appealed and was pending before the Hon'ble Supreme Court.

6. The learned counsels on the either side made submissions basically on the lines of the respective affidavit and counter affidavit.



W.P.No.2611 of 2015

7. A perusal of the order passed in the case of Jayabalan, namely W.P.No.14815 of 2012 would show that the Writ Petition had been filed to consider the representation of the petitioner therein, namely, Jayabalan, in the light of the Judgement in ***T.Thangaraj Vs. Secretary to Government – 2011 (7) MLJ 1280***. The Writ Petition was allowed directing the 1st respondent to consider the representation of the said Jayabalan and to pass appropriate orders within a period of 6 months from the date of receipt of a copy of this order. Thereafter, the said Jayabalan was granted the relief claimed by him and his salary was re-fixed in the same post from which he had retired, namely, the Secretary, TWAD Board.

8. In the Judgement in ***T.Thangaraj Vs. Secretary to Government – 2011 (7) MLJ 1280***, the learned Judge has observed that the petitioner has served as a full charge officer though not promoted and had retired from the said capacity, therefore he is entitled to the salary for higher post. In fact in the said Judgement, the learned Judge



has come down heavily on the agreement that was obtained by the respondent therein from the said Thangaraj stating that his promotion to the higher post was only stop gap arrangement and that he would not claim higher salary or other benefits.

9. In the instant case, the petitioner was holding full additional charge as Chief Accounts Officer twice, first for a period of 6 months and in the second spell he held the post for over a year and had retired from the said post.

10. Regulation 19 deals with the appointment to the various posts specified in column 1 of the table given thereunder. Regulation 54 gives power to the Board to relax the regulations. Though under Regulation 19 appointment to the post of Chief Account Officer is through deputation, the respondent have not resorted to that method of appointment but have chosen to utilise the service of the person of the next rank to hold full charge of the said post and the petitioner has also held the post and discharged the duties of the Chief Accounts Officer.



WEB COPY



W.P.No.2611 of 2015

11. Therefore, considering the Judgement in ***T.Thangaraj's case*** and ***Jayabalan's case***, this petitioner also deserves the same relief and accordingly, the Writ Petition is allowed. The respondent is directed to re-fix the salary to the petitioner for the post of Chief Accounts Officer from 30.04.2005 afternoon till his retirement including sanction of increments and re-fix the pension and retirement benefits according to the said salary and pay to the petitioner the monetary benefits from the date of retirement along with 12% p.a. interest till the date of payment. No costs.

18.07.2024

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WEB COPY



W.P.No.2611 of 2015

To

The Managing Director
Tamil Nadu Water Supply & Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai – 600 005.



WEB COPY



W.P.No.2611 of 2015

P.T. ASHA, J,

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W.P.No. 2611 of 2015



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W.P.No.2611 of 2013

18.07.2024