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W.P.No.8749 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.8749 of 2018

and

W.M.P.No.10657 of 2018

1. M.Balakrishnan (Died)
2. Kalaiselvi
3. Bala Dinesh
4. Harikumaresh

... Petitioners

[P2 to P4 substituted as LR's of the deceased
sole petitioner vide order dated 27.10.2022]

Vs.

1. The Secretary to Government of Tamil Nadu,
Public Works (E2) Department,
Fort St. George, Chennai – 600 009.
2. The Chief Engineer (General),
Government of Tamil Nadu,
WRD & Public Works Department,
Chepauk, Chennai – 600 005.
3. Executive Engineer PWD,
Water Resources Department,
Lower Bhavani Basin Division,
Konavaikkal, Erode – 638 002.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus, calling for the records of the



2nd respondent in his letter No. S2(2) / 26177/ 2017 dated 05.10.2017 and quashing the same as illegal and against the letter and spirit of the orders, made by the Hon'ble Court in W.P.No.40666 of 2006, by its order dated 28.08.2009 directing the respondents to reinstate the petitioner from 25.11.1983 when he was dismissed from service and to provide terminal and pension benefits till his date of superannuation on 31.12.2000 and the same upheld by the orders of the Honble Court in W.A. No. 2171 of 2010 by its order dated 12.11.2013, with modification to grant the same except the backwages and further also being ordered by the 1st respondent by its orders in Government order G.O (D) No.345, Public Works (E2) Department dated 16.12.2014 passed in obedience to the orders of this Hon'ble Court and consequently to grant commensurate notional promotions thereby enhancing the terminal and pension benefits to the petitioner herein.

For Petitioner : Mr.M.Purushothaman

For Respondent : Mr.M.Murali, Government Advocate

ORDER

The petitioner herein while working as Assistant Engineer, Public Works Department, Investigation Section-III, Coimbatore was subjected to



disciplinary proceedings resulting in dismissing the petitioner from service by issuing G.O (Ms) No.2636, Public Works Department dated 25.11.1983. The petitioner herein, aggrieved by the said order of dismissal, approached this Court by filing W.P.No.40666 of 2006 and the said Writ Petition was allowed by the learned Single Judge of this Court by an order dated 28.08.2009 duly setting aside the order of dismissal from service and directing reinstatement of the petitioner into service with 25% backwages. The relevant paragraphs from the said order reads as under:-

“ 7. In such circumstances, normally, the matter should not remanded to the respondents. But as far as the case of the petitioner is concerned, this disciplinary proceedings was initiated as early as 1979. Now, the petitioner might have reached the age of superannuation. Since, the impugned orders are prima facie unsustainable, the same are set aside and since the petitioner had already reached the age of superannuation, the petitioner is deemed to have been reinstated in service from the date of which the punishment or dismissal from service has been imposed.



However, he is entitled to only for 25% of the backwages. But as far as the pension and retirement benefits of the petitioner are concerned, since reinstatement has been ordered with effect from 25.11.1983, the petitioner is deemed to be in service till he attains the age of superannuation and for calculating the qualifying service for pension and other retirement benefits, the petitioner is entitled for the interregnum period viz., from 25.11.1983 till the date of superannuation has to be taken into account. It is not the case of the respondents that during the pendency of the Writ Petition and the original application, the petitioner as gainfully employed anywhere and also basing upon the erroneous order, he was out of employment from 1983. Taking note of hits, the respondents are directed to pay 25% of the backwages to the petitioner. This Writ Petition is disposed of accordingly. No costs.”



2. Aggrieved by the same, the respondents herein filed W.A.No.2171 of 2010 and the learned Division Bench of this Court by an order dated 12.11.2023, partly allowed the said Writ Appeal, directing reinstatement of the petitioner into service without any backwages but with continuity of service. The operative portion of the said order reads as under:-

“ 5. The respondents having reached the age of superannuation during the pendency of the Writ Petition, which is also recorded by the learned Single Judge, we are of the view that interest of justice would be met by reinstating the respondent with continuity of service and benefits other than backwages from the date of dismissal i.e., from 25.11.1983 till the date of superannuation, as ordered, the appellants are directed to pay retirement benefits to the respondent. The appellants are directed to pay retirement benefits to the respondent. The appellants are directed to implement this order by sanctioning and paying the terminal benefits



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to the respondent within a period of four months from the date of receipt of a copy of this order. The Writ Appeal is disposed of with the above direction. No costs. Connected Miscellaneous Petition is closed.”

3. Thereafter, the Government issued G.O (D) No.345, Public Works (E2) Department dated 16.12.2014 duly complying with the above orders passed by this Court and reinstated the petitioner into service without backwages and ordered for release of pensionary and terminal benefits in favour of the petitioner. Accordingly, the petitioner was paid the terminal and other benefits by passing an order dated 06.07.2015. There is no dispute about the amounts that are payable to the petitioner.

4. However, having received the terminal benefits pursuant to the abovesaid Government Order, the petitioner made a claim for payment of backwages and also for notional promotion from the post of Assistant Engineer to the post of Assistant Executive Engineer, Executive Engineer, Superintending Engineer and Chief Engineer etc., and for fixation of his pay in the said promotional posts and for payment of arrears. Consequent upon the said pay fixation, the claim of the petitioner was rejected by the respondents



by passing the impugned Letter No.S2(2)/26177/2017 dated 05.10.2011.

Aggrieved by the same, the petitioner approached this Court by filing the present Writ Petition.

5. There is no dispute about the payment of pensionary and terminal benefits payable to the petitioner pursuant to the superannuation of the petitioner from services as Assistant Engineer with effect from 12.01.2000. The only claim that remains to be considered is in respect of the notional promotions that are claimed by the petitioner and for enhancement of terminal and pension benefits. During the pendency of the Writ Petition, the petitioner passed away and his legal heirs are brought on record as petitioners 2 to 4 herein in the Writ Petition.

6. This Court heard the learned counsel on either side and also perused the materials available on record.

7. The reinstatement of the petitioner into service is pursuant to the order passed by the learned Single Judge in W.P.No.40666 of 2006, as modified by the learned Division Bench of this Court in W.A.No.2171 of 2020. The learned Single Judge, while disposing of the Writ Petition, having



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found fault with the procedure followed by the respondents in conducting the disciplinary proceedings, came to the conclusion that the order of dismissal was unsustainable and accordingly, the same was set aside. However, the learned Single Judge instead of remanding the matter back to the Disciplinary Authority for re-doing the entire exercise in accordance with law, having taken note of the fact that the petitioner has already attained the age of superannuation, directed the respondents to reinstate the petitioner into service with effect from 25.11.1983 and further made it clear that the petitioner shall be deemed to be in service till he attained the age of superannuation and for calculating the qualifying services for pension and other retirement benefits. Thus, the reinstatement of the petitioner and counting the services from the date of dismissal till the date of superannuation is directed to be taken into consideration only for the purpose of qualifying service for pensionary and other retirement benefits but not for any other purpose. The said order of the learned Single Judge was accepted by the petitioner no.1 herein and the same was also confirmed by the Hon'ble Division Bench of this Court subject to little modification, as noted above. The petitioner, having accepted the said order of the learned Single Judge restricting the relief of reinstatement only for the limited purposes as mentioned at Paragraph No.7 of the order of the learned Single Judge, is not



entitled to claim the benefits over and above that were granted by the learned
Single Judge.

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8. In the circumstances, this Court does not find any merit in the claim made by the petitioner for grant of notional promotion and also does not find any error or irregularity in the impugned order passed by the respondents. Accordingly, the Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions, if any, shall stand closed.

02.04.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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