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W.P.No.13489 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.13489 of 2020 and
W.M.P.Nos.16661, 16662 of 2020 & 9841 of 2021

P.Manickam

... Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary to Government,
Highways Department,
Fort St. George, Chennai - 600 009.

2. The Superintending Engineer,
Highways, Villupuram.

3. The Divisional Engineer (Highways),
Cuddalore 607 001.

4. The Accountant General (A & E)
Accountant General's Office,
Chennai 600 018.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to quash the order of the 2nd Respondent in Proceedings No.1228/2017/A3, dated 04.07.2017 and the order of the 3rd Respondent in Proceedings No.AA2/496-3/2019, dated



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05.04.2019 read with Proc.No.AA2/496-4/2019 and Proc.No.AA2/496-5/2019, dated 10.04.2019 read with Proc.No.AA2/496/2019, dated 17.10.2019, and direct the Respondents to refix the pay, pension and superannuation benefits of the petitioner after granting Selection Grade from 01.02.1992 and Special Grade with effect from 01.02.2002 including disbursal of the arrears of pension and superannuation benefits as per extant Government circulars together with interest on the said sums at such rate as determined by this Court.

For Petitioner : Mr.Sundar Narayan

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The petitioner was appointed as a Roller Cleaner in the Highways Department in the year 1974 and he has been brought into regular Establishment on 01.01.1980 and was promoted as a Tractor Driver 01.02.1982. Even though the petitioner has been given with the selection grade in the cadre of Tractor Driver after 10 years from the date of his promotion, the Special Grade which was due to him after completing further period of ten years was not granted. The petitioner and three others filed a Writ Petitions in W.P.No.23550 of 2010 and batch in which a



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common order has been passed by fixing the entitlement of scale of pay in the stage of selection grade as well as Special Grade, a direction has been given to pass appropriate orders.

2. While implementing the said orders, the respondents have passed an order by computing the petitioner's services for selection grade and special grade from the year 1987 and not from 1982, as how it has already been calculated while awarding selection grade to the petitioner in the year 1992. Since the petitioner is aggrieved due to the impugned order which has not taken into account of the petitioner's five years of service from 1982 to 1987, but calculating the services from 1987 and fixing the selection grade in the year 1997 and thereafter, special grade in the year 2007. Hence, this Writ Petition.

3. Mr.Sundar Narayan, learned counsel for the petitioner submitted that even while implementing the orders of the Court and by awarding the Special Grade, the respondent ought to have taken into consideration of the earlier orders of awarding the selection grade in the year 1992, but it has



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been stated that there is a mistake on the part of the respondents in calculating the services from 1982 instead of 1987. It is further submitted that no such adverse orders can be passed by reducing the petitioner's services consequent to the retirement, even without giving him any notice.

4. Mr.K.H.Ravikumar, learned Government Advocate appearing for the Respondents submitted that the petitioner's appointment is an improper appointment and the rectification has been done only in the year 1987 and hence the petitioner's selection grade service ought to have been calculated only from the year 1987 and not from the year 1982. He further submitted that the earlier orders allowing the selection grade by counting the services from the year 1982 has been passed, due to some inadvertence and that has been rectified now.

5. Had the respondents given the revision order after giving notice to the petitioner for deleting 5 years of service from 1982-1987 on the ground that it was an improper appointment and the rectification was done only in the year 1987, the petitioner would have got an opportunity to make



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effective representation. Having allowed the petitioner to retire from service and that too after availing the selection grade pay by calculating his services from 1982 to 1990, the respondents are estopped now from claiming that there is some impropriety in the appointment and that has been rectified only in the year 1987.

6. The direction of the Court is only to fix the scale of the petitioner and others in accordance with their entitlement in the selection grade as well as special grade. While doing so, the respondents had exceeded their authority and had reduced five years of experience by stating that the irregularity in the appointment has been rectified only in the year 1987. It is to be noted that after the retirement of the employee, the relationship between the employer and employee ceases to exist except for the purpose of passing any orders in respect of the pay fixation, retiral benefits or all other incidental benefits. But here is an order which has redone the very regularisation of the petitioner by stating that there was some inadvertence committed by the respondent Department. If the said order is allowed to be sustained, that would also result in recovery stating excess payment has



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been made to the petitioner. The position of the law is well settled and it is no more *res integra* that no recovery can be made from the retired employees after five years by stating that the excess payment was done due to some fault on the part of the respondents.

7. So far as this petitioner is concerned, they did not suppress any material facts and even if for any extraneously reasons, the petitioner is given with the benefit of the selection grade and due to any inadvertence on the part of the respondent, that cannot be held adverse to the petitioner after his retirement. So the respondents ought to have passed orders allowing the Special grade by calculating further 10 years of service only from the year from 1992, during which time, the petitioner has been given with selection grade. Since the impugned orders have been passed pursuant to the direction given by the Court in earlier batch of Writ petitions in W.P.No.23550 of 2010 and batch, after the retirement of the petitioner, the same is affected by lack of authority.



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8. It is needless to state that the Hon'ble Supreme Court in *State of Punjab and others vrs., Rafiq Masih (white washer) and ors. reported in (2015) 4 SCC 334*, has already had given guidelines as to which comes under the classification of impermissible recovery. The petitioner falls under clause 1, 2 and 3. what the respondent cannot do directly, cannot be done indirectly as well. Since the impugned orders have been passed without taking into consideration of the settled legal position, they are liable to be set aside.

9. In the result, this Writ Petition is allowed. The respondents are directed to re-fix the selection grade pay of the petitioner as it has been granted already and fix the special grade by calculating 10 years of service of the petitioner from the year 1992 during which time, the petitioner has already been given with the selection grade and pass orders, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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R.N.MANJULA ,J.

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To:

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