



W.P.No.36670 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2024
Pronounced on : 06.02.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.36670 of 2016
and
W.M.P.No.31525 of 2016

D.T.Jothilingam

....Petitioner

Vs.

The Commissioner,
Corporation of Coimbatore,
Coimbatore.

...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of certiorarified mandamus, calling for records relating to the respondent order made in Na.K.No.10731/2010/MC1 dated 26.09.2016 to quash the same and consequently direct the respondent to revise and re-fix the pay and other retiral benefits in the post of Assistant Town Planning Officer, by taking into account the pay of the petitioners as ATPO with effect from 25.06.1999 and to extend all service and retirement benefits thereto forthwith.

For petitioner : Mr.L.Chandrakumar
For respondent : Mr.K.Magesh
Standing Counsel

ORDER



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This writ petition is filed seeking to quash Na.Ka.No.10731/2010/MC1 dated 26.09.2016 and to direct the respondent to re fix the pay and other retirement benefits in the post of Assistant Town Planning Officer, *in short*, ATPO, by taking into account the pay of the petitioner as ATPO w.e.f. 25.06.1999.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner was appointed as a Building Inspector in the year 1977 and was promoted as a Junior Engineer Planning and then as Assistant Town Planning Officer and got superannuated from 30.04.2011. As per the proceedings of the respondent in Na.Ka.No.12715/99/C3 dated 25.06.1999 the petitioner was posted as ATPO and was relieved from service while working as ATPO. He discharged the duties in the capacity of ATPO and underwent various training programmes.

2.2. The petitioner was charge sheeted on 26.11.2008; an enquiry



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was conducted; three charges were alleged against him and all the charges were proved. The petitioner was imposed a penalty of Rs.25,000/- as fine which was ordered to be adjusted in 25 installments of Rs.1,000/- each, from the pension by an order dated 16.07.2014. A Statutory Appeal filed by the petitioner was not disposed of and thereby, a writ petition was filed in W.P.No.6367 of 2015. The said appeal filed by the petitioner on 20.08.2014 was decided and the penalty imposed was modified to that of Rs.10,000/- to be paid in ten installments of Rs.1,000/- each. The petitioner had addressed several representations to the respondent for retirement benefits. Finally, the retirement benefits were fixed in the lower cadre post and hence, the petitioner filed a representation dated 11.11.2015 and sought for revised fixation of retirement and other pensionary benefits in the post of ATPO, which he was holding at the time of retirement. The petitioner filed a writ petition in W.P.No.722 of 2016 for fixation of the retirement benefits in the post of ATPO since 25.06.1999, until he attained superannuation. This Court had directed the respondent to consider the petitioner's representation. However, the respondents as per the proceedings dated 26.09.2016 in Na.Ka.No.10731/2010/MC1 rejected the claim of the petitioner for granting retirement benefits in the post of ATPO, stating that there is no provision to



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grant such benefits. Aggrieved by the same this writ petition is filed.

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3. The respondent has filed counter affidavit and it is submitted by the learned Standing Counsel for the respondent that the petitioner was working in the respondent Corporation as a Junior Engineer and was given incharge to work as Assistant Executive Engineer in Town Planning Section. During his tenure, the petitioner was not promoted to the post of Assistant Executive Engineer till his retirement and also, no such entries were made in his service register. He was also not given pay for the post of Assistant Executive Engineer and that therefore, fixation of his pension and other benefits were done based on the post of Junior Engineer cadre.

4. The learned Standing Counsel for the respondent has referred a Government Order in G.O.Ms.No.237, Municipal Administration and Water Supply Department, dated 26.09.1996, wherein the appointment to the post of Assistant Executive Engineer, as stated in counter affidavit is specified as below:

“7.The Assistant Executive Engineer – by – promotion – must have worked as Assistant Engineer, Junior Engineer for not less than one



year in the Engineering Department of Corporation Main Office and for a period of not less than 3 years in the Ward officers and further specified that promotion for the above post shall be made in accordance with Standing orders and appointment on deputation shall be made only when there is no qualified person is available in the Corporation Service. Before the above said rules were implemented, the Assistant Executive Engineer post in Town Planning Section was called as Assistant Town Planning Officer."

Therefore, according to the above said rules the petitioner was never promoted to the post of ATPO formerly called as Assistant Executive Engineer, and was only given incharge of the said post on temporary basis. Further, he was never paid the salary of ATPO and was only paid the salary of a Junior Engineer till his superannuation. Hence, the petitioner is not entitled to receive the pensionary benefits for the post of ATPO rather entitled to receive the benefits in the cadre of Junior Engineer only.

5. Heard both sides and perused the materials available on record.
6. It is submitted by the learned counsel for the petitioner that the



petitioner was initially working as a Junior Engineer and directed to hold the post of ATPO on a temporary basis, since 25.06.1999 until he retired w.e.f. 30.04.2011 and worked for a considerable period of 12 years in the said post untill his superannuation thereby, the pensionary benefits of the petitioner have to be fixed in the post of ATPO.

7. Though the petitioner was working as a ATPO, his salary was not paid or fixed in the said post and after his superannuation he was receiving a salary in the cadre of Junior Engineer only. In order to fix the pensionary benefits, the salary which the petitioner was receiving in the substantiate post will be considered and not the officiating post. The petitioner who was actually working in the substantiate post of Junior Engineer was directed to work in the officiating post as a ATPO. Even according to the petitioner, the said arrangement is made account of exigency and purely temporary in nature.

8. It is not the case of the petitioner that he was promoted from Junior Engineer to that of ATPO. Though, he was working as a ATPO he was obtaining the salary of a Junior Engineer only. Therefore, working in the post



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of ATPO for more than 10 years; being designated as ATPO until his superannuation and showing the designation of the petitioner as ATPO in his retirement benefits, will not give any right to claim pension in the cadre of ATPO. The petitioner was working as a Junior Engineer and was not promoted to the post of ATPO from Assistant Engineer and his salary was fixed in the cadre of Junior Engineer only. Therefore, his substantive post is Junior Engineer and officiating post is only ATPO. He worked as only an incharge in the ATPO post and on account of the fact that he worked as an ATPO incharge, he cannot claim himself as an ATPO. The criterion for fixation of pensionary benefits is the salary of the substantive post which he was getting at the time of retirement. The petitioner herein was getting the salary of a Junior Engineer at the time of his retirement and thereby, he is entitled for fixation of benefits only in the post of Junior Engineer and not as an ATPO, which is an officiating post.

9. In view of the above, the petitioner is not entitled for the relief sought for and accordingly, this writ petition is dismissed. Connected W.M.P is closed. Costs made easy.



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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

To:

The Commissioner,
Corporation of Coimbatore,
Coimbatore.

DR. D.NAGARJUN,J.

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Pre-Delivery order made in

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