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W.P.No.24095 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.24095 of 2018

G.Rajalingam

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Principal Secretary
Highways and Rural Works Department
Secretariat, Fort St.George,
Chennai – 9.

2.The Chief Engineer
Highways Department
Chepauk, Chennai -5.

3.The Superintending Engineer,
Highways (Construction and Maintenance Dept)
Villupuram.

4.The Divisional Engineer
Highways (Construction and Maintenance Dept)
Perambalur.

... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 4th respondent in Ku.Nu.148/2017/A2 dated 06.02.2017 and to quash the same as illegal, incompetent and ultravires and consequently direct the respondents to extend the benefit of GO.Ms.No.856 (Public Works Department)



W.P.No.24095 of 2016

dated 01.06.1977 by notionally promoting the petitioner to the post of Road Inspector Grade -I with effect from 01.01.1983 and consequently to revise his pay and other benefits including the pensionary benefits in the light of the order passed by this Court in WP.No.7738 of 2008 and batch of cases dated 12.12.2012.

For Petitioner : Mr. R.Jayaprakash

For Respondents : Mr.L.S.M.Hasan Fizal, Addl. Government Pleader

ORDER

This writ petition has been filed seeking to issue a writ of certiorarified mandamus to call for the records in Ku.Nu.148/2017/A2 dated 06.02.2017 on the file of the 4th respondent and to quash the same as illegal, incompetent and ultravires and consequently direct the respondents to extend the benefit of GO.Ms.No.856 (Public Works Department) dated 01.06.1977 by notionally promoting the petitioner to the post of Road Inspector Grade - I with effect from 01.01.1983 and consequently to revise the pay and other benefits including the pensionary benefits in the light of the order passed by this Court in WP.No.7738 of 2008 etc., batch dated 12.12.2012.

2. The case of the petitioner is that he joined service as Road Inspector – Grade II on 01.08.1972 and his service has been regularized after a period of six years from the date of appointment. As per GO.Ms.856 dated 01.06.1977 in terms of which experience for promotion to the post of Grade-I Road Inspector was reduced



from 10 years to 5 years of service as on 01.01.1983, hence, the petitioner was eligible for promotion to the post of Road Inspector Grade-I. But, the petitioner was given promotion as Road Inspector Grade - I only on 01.01.1988. The petitioner retired from service on 31.03.2014. Despite several representations submitted by the petitioner seeking notional promotion and consequential monetary benefits there has been no effective action taken by the respondents.

3. Thereafter, the petitioner filed WP.No.42515 of 2016 seeking to extend the same benefit to him, in the light of the order dated 12.12.2012 passed by this Court in WP.(MD).Nos.7738 to 7749 of 2008. This Court disposed of the writ petition by order dated 02.12.2016 directing the 4th respondent to consider the case of the petitioner on merits and pass orders in accordance with law. Pursuant to the order, the 4th respondent passed impugned proceedings dated 06.02.2017 rejecting the request of the petitioner. Aggrieved against the said order, the petitioner has filed the present writ petition.

4. The 4th respondent has filed a counter and stated that in so far as the subject matter, the State had preferred Writ Appeals and therefore in such circumstances as a policy decision, the request of the petitioner was rejected by the impugned order. Subsequently, the 4th respondent has also filed an additional counter stating that the



Writ Petition is liable to be dismissed on the ground of laches and the petitioner could not, at this length of time claim the notional benefits.

5. The counsel for the petitioner contended that the conditions of merit, ability and seniority were no longer available for consideration given that the petitioner has already retired and he is only seeking notional benefits. The counsel for the petitioner also invited the attention of this Court to various decisions which are infact enclosed along with the typed set of papers also.

6. In WP.No.42515 of 2016 filed by the petitioner, this Court directed the respondents to consider the case of the petitioner on merits for promotion to the post of Road Inspector Grade - I with effect from 01.01.1983. Pursuant to the same, the respondent passed the order impugned in this writ petition.

7. In Writ Appeal Nos.262 and 273 of 2016, the Division Bench of this Court in appeals filed challenging the order in W.P.Nos.7738 to 7749 of 2008 referred supra, recorded the submissions that the Appeals had become infructuous, since the Government has decided to pay the arrears of salary to the respondents at the earliest. Thus, it is clear that the respondents themselves have taken a policy decision to comply with the orders of the learned Single Judge in W.P.Nos.7738 to 7749 of



2008 dated 12.12.2012 and a representation was also made before the Division Bench of this Court and recording the said submission, the Writ Appeals were disposed of. It is contended by the respondents that the petitioner does not fall within the same category as that of the Writ Petitioners in the batch of cases. Therefore, in the light of the decision of the Government to pay benefits to several other similarly placed employees, there is no reason why the petitioner should be left out and denied the benefits.

8. The counsel for the petitioner also invited the attention of this Court to the G.O.Ms.No.56 dated 16.03.2018. In the said G.O, pursuant to the order passed in the batch of Writ Petitions several other Road Inspectors have been sanctioned monetary benefits. The case of the petitioner cannot be treated as an exception and to be denied the benefits which had been given to similarly placed Road Inspectors. Even though the impugned order was passed rejecting the petitioner's claim way back in 2017, there have been subsequent developments which watered down the very effect of the impugned order. As already noted herein above, the respondents themselves have decided to pay the benefits to several other similarly placed Road Inspectors and necessary order had also been passed in that regard vide G.O.Ms.No.56. In this factual background, in the considered opinion of this Court, the Writ Petitioner is entitled for relief sought in this writ petition.



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9. Accordingly, the Writ Petition is allowed. The respondents shall disburse the amount payable to the Writ Petitioner within a period 12 weeks from the date of receipt of a copy of this order. No costs.

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Index :Yes/No

Neutral Citation :Yes/No

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BATTU DEVANAND, J.

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