



WEB COPY



W.P.No.2350 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2024

DELIVERED ON : 28.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.2350 of 2017

and

W.M.P.No.14024 of 2018

M.Indira

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Information and Technology Department,
Fort St. George,
Chennai- 600 009.

2. The Managing Director,
Electronics Corporation of Tamil Nadu Limited,
(ELCOT)
692, Anna Salai,
Nandanam, Chennai- 600 035.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order No.PRO.No.ELCOT/PER/OPC-07, dated 08.03.2013 issued by the second respondent, to quash the same and to direct the respondents to reimburse the recovered increments for the period from 20.02.2013 to 31.03.2015 with



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arrears of retirement benefits and all other consequential benefits.

For Petitioner : M/s.S.Meenakshi

For R1 : Mr.R.Kumaravel
Additional Government Pleader

For R2 : Mr.G.Gopalakrishnan
For Agam Lagal dated 18.12.2023

ORDER

The writ petition has been filed challenging the order passed by the second respondent, dated 08.03.2013, and consequently, directing the respondents to reimburse the recovered increments for the period from 20.02.2013 to 31.03.2015 with arrears of retirement benefits and all other consequential benefits.

2. The short question for consideration in the writ petition is whether the impugned order, dated 08.03.2013 cancelling two additional increments with effect from 25.02.2008 is valid or not.

3. The case history narrated in nutshell is as follows:

The petitioner was given promotion as Deputy Manager -II on 28.05.2005



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and she joined the service on 01.06.2005. Thereafter, in pursuance to

G.O.Ms.No.12, dated 08.11.2006, the petitioner was re-designated as Superintendent and granted the relevant scale of pay for the said post. On 25.02.2008, the petitioner along with seven other employees was promoted as Deputy Manager -II with retrospective effect from 10.09.2007. The second respondent thereafter passed an order on 02.07.2009, cancelling all the promotions given to the employees and reverted them to the level as on 01.06.2003. The said order was challenged in a batch of writ petitions in W.P.No.12817 of 2009 etc., batch. This Court allowed the writ petition vide order, dated 10.02.2011. Though the writ petitions were allowed, the petitioner aggrieved by the fact that her claim for fixation of pay as Deputy Manager -II as on 23.05.2005, was not specifically dealt with, filed writ appeal in W.A.No.610 of 2011. The said writ appeal was disposed of on 27.11.2014, with direction to the petitioner to file a clarification petition before the learned Single Judge. The clarification petition was disposed of on 11.03.2015, directing the second respondent to treat the petitioner as Deputy Manager Grade -II and to compute the retirement benefits accordingly. As the direction of this Court was not complied with by the second respondent, the petitioner filed contempt petition in Cont.P.No.1839 of 2015. The second respondent filed a review application in



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Rev.Appln.No.112 of 2015, on the ground that the petitioner's contempt petition

claiming benefits on the basis of the promotion order, dated 28.05.2005, which was never acted upon was not maintainable. This Court vide common order, dated 29.11.2016, closed the contempt petition and disposed of the review application. During the pendency of the aforesaid proceedings, the second respondent passed the impugned order on 08.03.2013, on the basis of the order of this Court, dated 10.02.2011, in W.P.No.12817 of 2009 etc., batch giving liberty to the second respondent to re-fix the salary of the petitioner with prospective effect in accordance with law. Challenging the impugned order, the petitioner has filed the above writ petition for the aforesaid relief.

4. The respondents contended *inter alia* that on 25.02.2008, the then Chairman and Managing Director issued a proceeding promoting several employees, including the Petitioner, to Deputy Manager-II with two additional increments. However, upon scrutiny by the Accountant General, the proceeding was found irregular regarding increments and was cancelled on 02.07.2009. The petitioner challenged the cancellation, requesting promotion from the year 2005. This court set aside the cancellation only regarding recovery while allowing the Corporation to re-fix salary and promotion prospectively. By 01.06.2008, the



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petitioner completed five years in the Government pay scales as Technical Assistant-I and thus, become eligible for promotion to Deputy Manager-II.

Consequently, she was promoted to Deputy Manager-II with effect from 01.06.2008. The respondents contended that according to the Corporation's Service Rules, the feeder category for the post of Deputy Manager was Superintendent, requiring five years of service in that role for eligibility. Given that the Petitioner was included in the Government pay scales from 01.06.2003, she completed the five-year period on 31.05.2008 and thus promoted with effect from 01.06.2008. However, due to the direction issued by this Court, the Corporation was advised to grant her promotion retroactively from 25.02.2008. The respondents contended that the impugned order, dated 08.03.2013 merely refixed the petitioner's salary, with effect from 20.02.2013, and no recovery was made from the petitioner. Under the impugned order, the erroneous promotion order, dated 25.02.2008 was cancelled and the petitioner's salary was refixed. The respondents therefore prayed to dismiss the writ petition as meritless.

5. The learned counsel for the petitioner submitted that the second respondent had never risen the issue of grant of two increments to the petitioner on 25.02.2008, through out the earlier litigations in connection with the order



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dated 02.07.2009. According to the learned counsel for the petitioner, the

second respondent having complied with the order, dated 10.02.2011 of this

Court by validating the promotion of the petitioner along with relevant scale of

pay, the second respondent erred in issuing the impugned order withdrawing

the two increments granted to the petitioner on 25.02.2008 under the promotion

order dated 25.02.2008. Therefore, according to the learned counsel for the

petitioner, impugned order was illegal as it attempted to override the judicial

order of this Court. The learned counsel for the petitioner further submitted that

the effect of the impugned order was severe on the petitioner as the petitioner's

scale of pay was reduced from Deputy Manager -II to Superintendent for four

months from 25.02.2008 to 01.06.2008. The learned counsel for the petitioner

therefore submitted that the impugned order was un-sustainable and the same

deserved to be set aside.

6. The learned counsel for the respondents submitted that the impugned

order, dated 02.07.2009, was set aside only to the extent of recovery and the

second respondent was permitted to re-fix the salary with prospective effect. The

learned counsel for the respondents further submitted that no recovery was made

from the petitioner at any point of time and that the impugned order merely



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refixed the salary of the petitioner by cancelling the erroneous promotion order, dated 25.02.2008. The learned counsel for the respondents submitted that the claim now made in the writ petition is barred by the principles of *resjudicata*. The learned counsel for the respondents therefore submitted that there were no merits in the writ petition and the same deserved to be dismissed.

7. I heard both sides and perused the materials placed on record.

8. It is seen from a reading of the orders passed by this Court in earlier round of litigation that the claim of the petitioner for promotion and benefits from 23.05.2005 was rejected while upholding the contentions of the respondents that the petitioner was entitled for promotion and benefits only from 25.02.2008. In this regard, it is pertinent to note here the observation of the learned Single Judge in the clarification petition at Paragraph No.9, which reads as follows:

"9. Even though the order dated 10.02.2011 does not contain consideration of the issue regarding cancellation of promotion, the fact remains that the learned Judge ultimately quashed the impugned order dated 02.07.2009 on the file of second respondent. It is worth mentioning here that even the second respondent has not expressly cancelled the promotion order issued to the petitioner, while recalling the earlier order dated 25.02.2008."



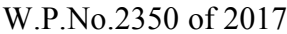
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9. It is also relevant to note here the common order passed in cont.P.No.1839 of 2015 and Rev.Apln.No.112 of 2015, dated 21.09.2016, which at Paragraph No.7, reads as follows:

"7. The Management has paid the benefits pursuant to the order dated 11.03.2015. The Management has come up with the review application on account of the unreasonable stand taken by the petitioner in the contempt petition, even after payment of the entire benefits, pursuant to the order passed in M.P.No.1 of 2015, dated 11.03.2015. The petitioner in the contempt petition insisted that she should be paid benefits in the promoted post from 23.05.2005. The order passed by this Court, in fact, does not require any review. The order is very clear that the petitioner is entitled to the benefits only from 25.02.2008. The Management has already paid the benefits to the petitioner. I am therefore of the view that the Management has fully complied with the order passed by this Court."

(emphasis supplied)

10. Even in the grounds of review in the review application, the second respondent clearly admitted that "the petitioner would be entitled to promotion from 25.02.2008". Therefore, it is clear that the issue in the earlier proceedings was whether the petitioner was entitled to promotion and benefits thereon from 28.05.2005 or 25.02.2008. The second respondent all through contended that the petitioner was entitled from 25.02.2008, it is only under the impugned order that the second respondent for the first time stated that the petitioner was not entitled for promotion from 25.02.2008, but was eligible for promotion from



11. Indisputably, two increments granted to the petitioner were on the basis of the promotion order, dated 25.02.2008. Admittedly, the Corporation was advised not to challenge the said order granting promotion with effect from 25.02.2008. While so, the impugned order setting aside the promotion order dated 25.02.2008, and re-fixing the salary of the petitioner with effect from 01.06.2008 is un-sustainable.

12. Therefore, I am of the view that the impugned order, dated 08.03.2013 cannot be sustained and the same is set aside. The second respondent is directed to reimburse the recovered increments for the period from 20.02.2013 to 31.03.2015 with arrears of retirement benefits and all other



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consequential benefits within a period of 6 weeks from the date of receipt of a
copy of this order.

13. Accordingly, the writ petition stands allowed. No costs. Consequently,
connected miscellaneous petition is closed.

28.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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To:

- 1.The Secretary to Government,
Information and Technology Department,
Fort St. George,
Chennai- 600 009.
2. The Managing Director,
Electronics Corporation of Tamil Nadu Limited,
(ELCOT)
692, Anna Salai,
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N.MALA, J.

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