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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

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THE HONOURABLE JUSTICE BATTU DEVANAND

Writ Petition No.35424 of 2019

A.S.Ramanujam(deceased)

2.R.Kumari

3.A.R.Baskaran

4.R.Sashirekha

..Petitioners

(P2 to 4 substituted as petitioners
vide order dated 10.07.2024 made
in WMP No.26242 of 2023 in
WP.No.35424 of 2019 by MSKJ)

vs.

1.The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai-600 009

2.The Engineer-in-Chief,
Water Resources Department and
Chief Engineer(General), Public Works Department,
Chepauk, Chennai-600 005

3.The Superintendent Cum Executive Engineer,
Office of Superintendent and Executive Engineer,
Public Works Department Work Shop, Mint,
Chennai-600 001



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4.The Pay and Accounts Officer(North),
O/o. the Pay and Accounts Office(North),
Singaravelan Malagai, Chennai-600 001.

5.A.R.Gopinath

(R5 substituted as LR of the deceased petitioner
vide order dated 10.07.2024 made
in WMP No.26242 of 2023 in
WP.No.35424 of 2019 by MSKJ)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order no.E1/1368/2013-2 dated 03.06.2016 passed by the 3rd respondent and quash the same and consequently direct the 4th respondent to pay the revised pay to the petitioner as per the order of the 3rd respondent in Order No. E1/1368/20136 dated 12.11.2013.

For Petitioners : Mr.Ramesh Venkatachalapathy

For Respondents : Mr.V.Jeeva Giridharan, AGP, R1 to 3

ORDER

Heard the learned counsel for the petitioners and the learned
Additional Government Pleader appearing for the respondents 1 to 3.



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2. During the pendency of the Writ Petition, the sole petitioner died and his legal heirs are substituted as the petitioners 2 to 4.

3. Aggrieved by the pay anomaly of the petitioner with his juniors, the petitioner requested the third respondent to revise the pay after retirement and considering the request of the petitioner, the third respondent issued proceedings dated 12.11.2013 to modify the grade pay equivalent to the petitioner's junior and directed the 4th respondent to pay as per the order of the third respondent. The issue of rectifying the pay anomaly was again reviewed by the third respondent by *suo-motu* and passed an order dated 03.06.2015 cancelling the earlier order dated 12.11.2013.

4. Aggrieved by the same, the petitioner had submitted several representations to the third respondent. As no proper action was forthcoming by the respondents, the petitioner has constrained to file the present Writ Petition.

5. On behalf of the respondents, a counter affidavit has been filed. It is stated in the counter affidavit that the order of revision of pay was



WEB COURT

forwarded to the Office of the Accountant General(Accounts & Entitlements), Chennai, for revision of petitioner's pension. However, the Accountant General had returned the proposal, instructing to get the ratification of the Government, since the petitioner was a retired Government servant/Pensioner. Hence, the pay revision proceeding was submitted to the Government to obtain ratification order and the Government in the letter dated 22.01.2016 advised to send the proposal to the Government to rectify the pay anomaly after cancelling the earlier pay revision proceeding dated 12.11.2013. Accordingly, the pay revision proceeding was cancelled vide proceedings dated 03.06.2016 as per the Government letter and the proposal was returned alongwith the comparative statement and Service Registers advising to resubmit the proposal in the prescribed 16 column format, obtaining the same from the petitioner.

6.It is stated in the counter affidavit that no *suo-motu* order was passed for cancelling the sanction order dated 12.11.2013 by the third respondent, but because of the instructions received from the Accountant General(A&E) and thereafter, from the Government the sanction order was



cancelled as the Executive Engineer is not the Competent Authority but the Government is the authority for rectifying anomaly in pay for retired Government servants and it has also been informed to the petitioner.

7.It is further averred in the counter affidavit that the proposal was sent to the Government through the Engineer -in- Chief and Chief Engineer General, Water Resources Department vide letter no.S4(3)/40636/2018 dated 18.04.2022 for rectification of pay anomaly of the petitioner.

8.The said proposal was rejected by the Government vide letter no.3374/C2/2022-1, Water Resources Department, dated 09.05.2022, stating that the petitioner's pay anomaly cannot be accepted, as it does not satisfy the conditions stipulated in rulings 2(i), (ii) & (iii) under Rule 22(B) of the Fundamental Rules.

9.The learned Additional Government Pleader contends that the petitioner has submitted all relevant documents and the proposal was forwarded in the prescribed format to the Government to consider the case of the petitioner and while it is pending before the Government for



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consideration, the petitioner filed the present Writ Petition against the cancellation order dated 03.06.2016 issued by the third respondent. He further submits that on examination of the proposal relating to the petitioner has been rejected vide Government letter no.3374/C2/2022-1, Water Resources Department, dated 09.05.2022 and accordingly, a request for rectification of pay anomaly cannot be accepted as per the relevant Fundamental Rules.

10.The learned Additional Government Pleader further contended that if the petitioner is so aggrieved by the rejection order dated 09.05.2022 issued by the Government, the petitioner has to challenge the same.

11.Having considered the facts and circumstances of the case and submissions of the respective learned counsel, it is an admitted fact that the third respondent has passed an order dated 12.11.2013 to rectify the pay anomaly of the petitioner with his juniors. Subsequently, the said order was cancelled on 03.06.2016 and a proposal was sent to the Government for passing necessary orders as per the relevant Fundamental Rules. It is also an admitted fact that the petitioner has submitted all relevant documents and



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particulars to the Government for consideration of his claim. During the pendency of the proposal before the Government, the petitioner approached this Court. The proposal was rejected by the Government vide proceedings dated 09.05.2022 stating that the request for rectification of pay anomaly of the petitioner cannot be accepted. But unfortunately, the order dated 09.05.2022, wherein, the petitioner's request was rejected by the Government was not served to the petitioner till date. Except the mentioning in the counter affidavit about the order dated 09.05.2022, the respondents did not chose to enclose the order copy, alongwith the counter affidavit. Due to this reason, the petitioner could not challenge the order of the Government dated 09.05.2022.

12.This is one of the classic example of irresponsible attitude of the Government Officials in discharging their legitimate duties. Passing an order and keeping it in their Office files and Almira cannot be treated as an order, if it is not communicated to the concerned person, who has to challenge the same before the appropriate forum as per the law, if he is aggrieved.



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13. In the present case, admittedly the order dated 09.05.2022 is not communicated to the petitioner till now. Definitely, it would cause irreparable loss and in-justice to the petitioner. For the loss caused to the petitioners, they have to be compensated from the respondents for imposing exemplary costs. The learned Additional Government Pleader appearing for the respondents 1 to 3 requested the Court to take lenient view towards the respondents and requested not to impose costs. But this Court is not inclined to accept the same. If, we take a lenient view towards the Officers like the third respondent, who miserably failed to discharge his duties, it will send wrong message to all the Government Officers.

14. Under these circumstances, to send a serious message to all Officers to be very cautious and vigilant in discharging their duties by following the due process of law, in the considered opinion of this Court, it is appropriate and necessary to impose exemplary costs against the third respondent to compensate the petitioners.

15. Accordingly, this Writ Petition is disposed of, with the following directions:



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(i)The third respondent shall communicate the proceedings issued by the Government vide letter No.3374/C2/2022-1, Water Resources Department, dated 09.05.2022 to the petitioners within a period of one week from today.

(ii)The third respondent shall pay a sum of Rs.25,000/- to the petitioners towards costs to compensate the loss caused to them due to non-communication of the proceedings dated 09.05.2022 issued by the Government vide letter No.3374/C2/2022-1, Water Resources Department.

(iii)After receipt of the proceedings dated 09.05.2022, the petitioners are at liberty to challenge the same, if they are so advised, by following due process of law, before the appropriate forum.

16.It is made clear that the Officer, who held the post of the third respondent herein during the period between May 2022 to June 2022 is personally liable to pay the cost imposed by this Cost.

09.09.2024

Index : Yes/No
Speaking order: Yes/No
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Issue order copy today



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To

- 1.The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai-600 009
- 2.The Engineer-in-Chief,
Water Resources Department and
Chief Engineer(General), Public Works Department,
Chepauk, Chennai-600 005
- 3.The Superintendent Cum Executive Engineer,
Office of Superintendent and Executive Engineer,
Public Works Department Work Shop, Mint,
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- 4.The Pay and Accounts Officer(North),
O/o. the Pay and Accounts Office(North),
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BATTU DEVANAND, J

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