

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.2054 of 2021

&

W.M.P.(MD).No.1731 of 2021

P.Ramamoorthy

... Petitioner

Vs.

1.The Commissioner of Municipal Administration
Chepauk
Chennai-600 005

2.The Commissioner
Kulithalai Municipality
Kulithalai-639 104
Karur District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records
relating to the order Na.Ka.No.1606/2017/C1 dated 05.10.2020 passed by the
2nd respondent and quash the same and consequently, direct the respondents

to grant the “Bonus Increment” to the petitioner as per G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998 with effect from 23.04.2017 and disburse arrears of pay and allowances within a time limit.

For Petitioner : Mr.A.Thirumurthy

For Respondents : Mr.D.Sasi Kumar, AGP for R1

Mr.A.N.Ramanathan for R2

ORDER

The petitioner herein was appointed as Lorry Driver in Karur Municipality on 23.04.1987. While working in the post of Lorry Driver he was granted Selection Grade on completion of 10 years of service on 23.04.1997. Thereafter, the petitioner met with an accident resulting in disabling him to continue as a Lorry Driver and as such the petitioner was posted as Junior Assistant in the same scale of pay. Thereafter, on 23.04.2007 i.e., on completion of 20 years of service, petitioner was granted Special Grade. Thereafter, the petitioner was transferred from Karur Municipality to the 2nd respondent Municipality and his case came up for consideration for promotion to the post of Assistant in the year 2014 and at that stage, the petitioner relinquished his promotion temporarily and the same was accepted

by the respondent by issuing proceedings in Na.ka.4393/2014/C1 dated 07.04.2014 accepting the waiver of promotion for a period of 3 years based on the request made by the petitioner. The said three years period was in operation till 06.04.2017. The petitioner is continuing in the very same post of junior Assistant as on date. As the petitioner has completed 10 years of service after grant of Special Grade, he made a claim for grant of bonus increment in terms of G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998. Paragraph 2 of the said G.O reads as under:

“2. The Government after careful examination of the recommendations of the One Man Commission has decided to accept it. Accordingly, Government directs that employees stagnating in a post beyond 30 years i.e., employees stagnating in the Special Grade beyond 10 years be granted with one bonus increment as an incentive.”

2. The claim of the petitioner was initially not considered and accordingly the petitioner approached this court by filing the writ petition and thereafter the claim of the petitioner was rejected on the ground that the

petitioner has not continued in the very same post for 30 years as initially, the petitioner was appointed as Lorry Driver and now he has been working as Junior Assistant. At that stage once again the petitioner approached this court by filing W.P(MD).No.8919 of 2020 and this court by order dated 07.08.2020 disposed of the Writ Petition, directing reconsideration of the claim of the petitioner treating him as the one who had completed 30 years of service and to pass appropriate orders in terms of G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998. However, once again the claim of the petitioner was rejected by the 2nd respondent on the ground that the petitioner has not completed 30 years of service in the very same post. The very same ground was the subject matter for consideration before this court in W.P.(MD)No. 8919 of 2020. This Court has already recorded a finding to treat the petitioner as the one who completed 30 years of service in the very same post. The operative portion of the said order reads as under:

“ 13.In the result, the impugned order dated 05.03.2020 is quashed. This Writ Petition is allowed to the extent that the matter is remitted back to the second respondent, who shall reconsider the issue once again by applying import of G.O.Ms.No.562, Finance (Pay

Cell) Department, dated 28.10.1998 and also by taking in to account that, the petitioner has been in the same post for more than 30 years and have been in special grade for more than ten years and accordingly, whatever the benefit accrued on him under the provisions of G.O.Ms.No.562, shall be calculated and be paid to him within a period of eight (8) weeks from the date of receipt of a copy of this order. If there is no incumbent available in the second respondent office as Commissioner at Municipality, the aforesaid direction can be complied with by any higher official in the same department, otherwise the first respondent shall directly consider this and pass order, as indicated above, within the time frame. No costs. Consequently, connected Miscellaneous Petitions are closed. “

3. In spite of the specific direction issued by this Court the 2nd respondent issued the impugned order on the very same ground without application of mind. Questioning the said proceedings in Na.Ka.No.

1606/2017/C1 dated 05.10.2020, the present writ petition has been filed.

4. The 2nd respondent filed a counter affidavit reiterating the reason mentioned in the impugned order and also further stated that the petitioner himself relinquished the promotion for a period of 3 years and there is no stagnation in respect of the petitioner in the very same post for 30 years or for 10 years for grant of Special Grade and it is only because of the waiver of promotion by the petitioner on his own volition he could not be promoted and as such he is not entitled for the benefit under G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998. He also placed reliance on a order passed by the division bench of this Court in W.A. No.1383 of 2011 Dated 20.06.2014 in support of his contention to say that in the absence of any stagnation and in case of relinquishment of promotion by the employee he cannot be extended the benefit under G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998.

5. This court has thoroughly considered the submissions made by the counsel on either side.

6. The reason mentioned in the impugned order that the petitioner has not completed 30 years of service in the very same post and therefore he is not entitled for special bonus increment in terms of G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998, is totally unsustainable. Paragraph 2 of the G.O is very clear and completion of 30 years of service and the same was further clarified by saying that on completion of 10 years of service after awarding Special Grade one will be entitled for bonus increment if the stagnation continues.

7. Admittedly, the petitioner was awarded Special Grade on 23.04. 2007 and in the normal course, he could have completed 10 years of service after award of Special Grade on 23.04.2017 and he would be entitled for award of bonus increment. Once the service rendered in the post of Lorry Driver was considered for grant of Special Grade and he was granted Special Grade on 23.04.2007, it is not open for the respondents now to contend that the petitioner has not completed 30 years of service. Even otherwise, admittedly the petitioner has completed 10 years of service after award of Special Grade.

8. Coming to the next contention that petitioner has waived promotion on his own volition and the reliance placed in an order passed by a learned Division Bench of this court in W.A.No.1383 of 2011 is concerned, no doubt if an employee on his own volition declines promotion, the question of treating him as stagnated in the very same post and extending the benefit under G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998 does not arise. There is no quarrel on the issue decided by the learned Division Bench. But in the instant case, the petitioner in the normal course who had completed 10 years of service on 23.04.2007 was granted Special Grade. But as already noted above, the petitioner has relinquished promotion for a period of 3 years that is from 07.04.2014 to 06.04.2017, by virtue of proceedings in Na.ka.No. 4393/2013/C1 dated 07.04.2014. Therefore, the period during which the petitioner has relinquished/waived his right of promotion or opportunity of promotion is liable to be excluded and after excluding the said period also, if the petitioner completed 10 years of service after grant of Special Grade and is stagnated in the same post for a period of 10 years, then the right of the petitioner for bonus increments in terms of G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998 cannot be denied. Hence, this court is of the

considered view that the reasoning given in the impugned order is wholly unsustainable and the same is a result of non-application of mind by the respondents. It is not in dispute that the period of waiver of promotion is from 07.04.2014 to 06.04.2017. The petitioner is still continuing in the post of Junior Assistant only as on date that is almost after for a period of seven years and due for retirement in the month of June 2024. Admittedly, the petitioner has no opportunity for promotion after 06.04.2017 till date and he is continuing in the very same post as Junior Assistant. Therefore, the right of the petitioner for award of bonus increment in terms of G.O.Ms.No.562 Finance (Pay Cell) Dept dated 28.10.1998 cannot be denied.

9. In the circumstances, this Court declare that the petitioner is entitled to award of bonus increment after completion of 10 years period from the date of award of Special Grade i.e 23.04.2007 by duly excluding the period of waiver i.e from 07.04.2014 to 06.04.2017.

10. Accordingly, the Writ Petition is allowed, directing the respondents to extend the benefit of bonus increment in terms of G.O.Ms.No.

562 Finance (Pay Cell) Dept dated 28.10.1998 on completion of 10 years period from the date of award of Special Grade (23.04.2007) after excluding the period from 07.04.2014 to 06.04.2017 and to fix the pay of the petitioner and pay all the arrears as expeditiously as possible at any rate on or before 30.06.2024. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2024

NCC : Yes/No
Index : Yes/No
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To

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Chepauk
Chennai-600 005

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Kulithalai Municipality
Kulithalai-639 104
Karur District

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