

W.P. No. 1942 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 31.07.2025

CORAM

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P No. 1942 of 2016

K. Subramanian

..Petitioner

Vs

1.The Engineer in Chief,
Public Works Department,
Chepauk, Chennai – 600 005.

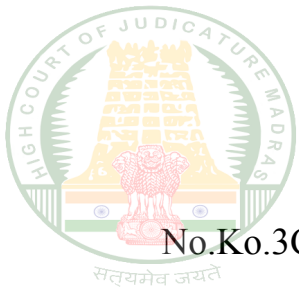
2.The Chief Engineer,
Water Resource Organisation,
Public Works Department,
Chepauk, Chennai – 600 005.

3.The Executive Engineer,
Water Resource Organisation,
Public Works Department,
Thirumurthy Sub Division,
Udumalaipettai, Thiruppur District.

4.The Assistant Executive Engineer,
Public Works Department/Water Resource Organisation,
Udumalaipettai Sub Division,
Udumalaipettai, Thiruppur District.

..Respondents

Writ petition is filed under Article 226 of Constitution of India, praying for issuance of writ of certiorarified mandamus, to call for the records in pursuant to the impugned letter issued by the 4th respondent in Letter



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No.Ko.3C/2487-3/2014 dated 19.12.2014 and quash the same and consequently

direct the respondents to extend the benefit of retrospective fixation of pay granted to the junior of the petitioner Smt.Sabirama by merging the cadres with effect from 02.08.1984 and to grant all consequential monetary and pensionary benefits.

For Petitioner : Mr. R. Prem Narayan

For Respondents : Mrs. R.L. Karthika,
Government Advocate

ORDER

The captioned Writ Petition has been filed for issuing a writ of certiorarified mandamus, assailing the communication dated 19.12.2014 issued by the fourth respondent, and consequently directing the respondents to extend the benefit of retrospective fixation of pay granted to his junior, namely Smt. Sabirama, by merging the cadres with effect from 02.08.1984 and to grant all consequential monetary and pensionary benefits.

2.1 The factual background of the case is that the petitioner, after having completed 10 years of service as Mazdoor on a temporary basis, had his services regularised on 23.04.1984 with effect from 01.01.1982. However, Smt. Sabirama, who was a junior and appointed on a temporary basis as Mazdoor,



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had her services regularised as Works Clerk Grade-II with effect from 01.01.1983 vide order dated 01.09.1984. Aggrieved by the same, the petitioner represented to the State to regularise his services as Works Clerk Grade-II with effect from 01.01.1982. The writ petitioner's request was not acceded to, prompting the petitioner to approach the jurisdictional Labour Court in I.D. No. 333 of 1990. The jurisdictional Labour Court, vide order dated 27.09.1994, held that the petitioner is entitled to the post of Works Clerk Grade-II and directed the State to extend all the benefits to the petitioner, and that the pay scale of the petitioner shall be fixed from the date of posting as Works Clerk Grade-II. Thereafter, the State passed an order dated 08.11.2006 in G.O.(2D) No.45 and another order dated 26.12.2007 in G.O.(2D) No.79. By the said Government Orders, the order passed by the Labour Court in favour of the petitioner was given effect from 16.06.1995.

2.2. Further, the petitioner asserts that the Government issued G.O.Ms.No.1574, Public Works Department, dated 02.08.1984, merging the category of Works Clerk with the category of Works Inspector, and subsequently, the said Government Order was withdrawn by G.O.Ms.No.71, Public Works Department, dated 16.03.2006, thereby withdrawing the merger of the said post. The order dated 16.03.2006 was assailed before this Court. The



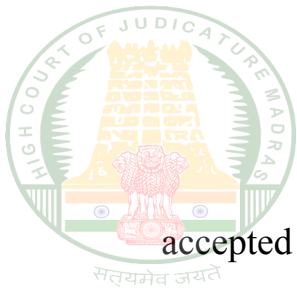
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Division Bench of this Court set aside the order dated 16.03.2006, by which the

WEB COPY merger of posts came to be cancelled, and the Government Order dated 02.08.1984 was restored. The petitioner submitted a representation to the State for merger of his post. However, the said request was rejected, stating that the petitioner was not working as Works Clerk Grade-II as on 02.08.1984. Taking exception to the same, the captioned writ petition has been filed.

3. Learned counsel for the petitioner submitted that the petitioner, who is eligible and entitled for regularisation of his services as Works Clerk Grade-II with effect from 01.01.1982 on par with the junior, namely Sabirama, is also entitled to the merger of his post with effect from 02.08.1984. Therefore, the impugned communication issued by the State rejecting the claim of the petitioner is arbitrary and discriminatory.

4. Learned counsel for the respondents submitted that G.O.Ms.No.1574, Public Works Department, dated 02.08.1984, is applicable only to persons who were working as Works Clerk Grade-II as on the said date, and the petitioner was appointed as Works Clerk Grade-II with effect from 16.06.1995 and therefore is not entitled to the merger of the post as per the Government Order dated 02.08.1984. Learned counsel further submitted that the petitioner, having



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accepted the Government Order posting him to the post of Works Clerk Grade-

II with effect from 16.06.1995, filed the writ petition after an inordinate delay of nearly 20 years, which is hit by delay and laches.

5. After considering the arguments of the learned counsel for the parties, the following points arise for consideration:

1. Whether the writ petition filed by the petitioner is hit by delay and laches?
2. Whether the petitioner is entitled to the merger of the post of Works Clerk Grade-II with the post of Works Inspector on par with Tmt. Sabirama?

6. Point No. 1

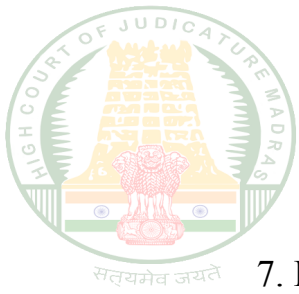
1. The Government Order merging the post of Works Clerk Grade-II with Works Inspector was passed on 02.08.1984. The petitioner's request for regularisation of services as Works Clerk Grade-II on par with Sabirama was rejected, prompting the petitioner to raise an Industrial Dispute before the jurisdictional Labour Court in the year 1990. The Labour Court, vide order dated 27.09.1994, allowed the dispute, holding that the petitioner is entitled to



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the post of Works Clerk Grade-II on par with Sabirama. Although the order was

passed by the Labour Court on 27.09.1994, the Government did not take any steps to implement the order, and pending implementation of the said order, the order dated 02.08.1984 was withdrawn by another Government Order dated 16.03.2006. The order dated 02.08.1984, which was withdrawn, was restored on 29.02.2012 vide G.O.Ms.No.49, Public Works (C2) Department. The order passed by the Labour Court was implemented on 08.11.2006 vide Government Order G.O.(2D) No.45, Public Works (C2) Department, by which time the Government Order dated 02.08.1984 was withdrawn. Therefore, immediately after the Government Order dated 02.08.1984 was restored on 29.02.2012, the petitioner made a representation to the State to merge the Works Clerk with that of Works Inspector. The petitioner's request was not considered, and the same came to be rejected on 19.12.2014. Immediately thereafter, the captioned writ petition was filed in the year 2016. Therefore, the contention of the State Government that the writ petition is hit by delay and laches is without any substance and is rejected.



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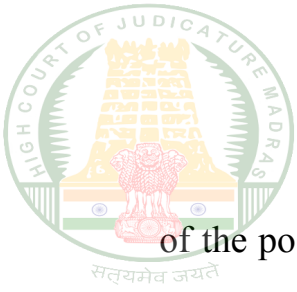
7. Point No. 2

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The petitioner was admittedly appointed as Mazdoor on a temporary basis in the year 1971. On completion of 10 years of service, his services were regularised as Mazdoor with effect from 01.01.1982. In the counter affidavit filed by the fourth respondent on behalf of all the respondents, it is stated that Sabirama was appointed as Women Mazdoor Class-II on 16.06.1972, which is subsequent to the appointment of the petitioner as Mazdoor. However, the services of Sabirama were regularised in the post of Works Clerk Grade-II with effect from 01.01.1983, which is evident from paragraph 4 of the counter affidavit filed by the fourth respondent on behalf of all the respondents. The petitioner, aggrieved by the same, approached the Government to extend the same benefit, which was not acceded to, prompting the petitioner to approach the Labour Court in Industrial Dispute No. I.D. No.333 of 1990.

The Labour Court, vide order dated 27.09.1994, allowed the dispute, holding that the petitioner is entitled to the post of Works Clerk Grade-II. The order passed by the Labour Court extending the said benefit to the petitioner was on the basis that Sabirama was junior to the petitioner.

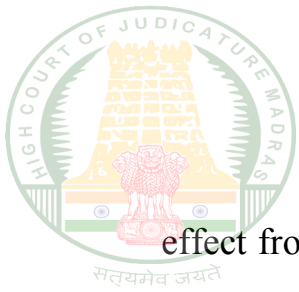
8. The State has contended that the petitioner is not entitled to the merger



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of the post with the post of Works Inspector since the Government Order dated 02.08.1984 is applicable only to persons who were working as Works Clerk Grade-II as on the said date. The petitioner is not challenging the validity of the Government Order dated 02.08.1984 but is only seeking to extend the benefits under the said Government Order on par with the junior Sabirama. The edifice of service jurisprudence is founded on the principles of equality, fairness, and justice. The petitioner, who is similarly situated and senior to Sabirama, has been deprived of regularisation of his services as Works Clerk Grade-II on par with Sabirama, which is arbitrary and discriminatory. The petitioner is also entitled for the benefit of merger of posts under the Government Order dated 02.08.1984.

9. The State, having extended the benefit of merger of post in favour of Sabirama, cannot contend that the petitioner is not entitled to the said benefit, citing that he was not working as Works Clerk Grade-II as on 02.08.1984. The petitioner retired from service in the year 2010, and subsequent to his retirement, the Government Order dated 02.08.1984 was restored with effect from 29.02.2012 vide G.O.Ms.No.49, Public Works (C2) Department. The petitioner is entitled to the merger of the post on par with his junior, Sabirama, and is entitled to notional fixation of pay in the post of Works Inspector with



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effect from 02.08.1984 till his retirement. However, he is not entitled to arrears of salary, as he had not actually worked in the said post, but he is entitled to all consequential benefits flowing from the notional fixation of pay in the post of Works Inspector.

10. The Apex Court in the case of ***Union of India and Another vs. Tarsem Singh*** reported in **2008 (8) SCC 648** ruled as follows: -

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it



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does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

11. The principles laid down in Tarsem Singh are applicable primarily to belated claims for recovery of arrears, where the cause of action is not immediately pursued. However, in the present case, the petitioner promptly submitted a representation seeking benefits under the Government Order dated 02.08.1984, as soon as it was restored.

12. Thus, the delay, if any, cannot be attributed to laches or inaction on the part of the petitioner. The claim is not belated but rather a direct consequence of a policy decision revived subsequently. Therefore, the bar of limitation or the doctrine of laches, as envisaged in Tarsem Singh, would not apply.

13. In view of the above, the petitioner's claim for arrears of pension



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based on notional fixation is not time-barred. Since the petitioner retired in the year 2010, and his claim arose directly upon restoration of the relevant Government Order, he is entitled to arrears of pension from the date of retirement, i.e., 2010.

14. In light of the foregoing discussion, this Court is of the considered view that the petitioner is entitled to the merger of the post with the post of Works Inspector with effect from 02.08.1984, on par with his junior, namely Sabirama, and is further entitled to notional fixation of pay and pension on par with the said junior, along with all consequential benefits arising from such notional fixation of pay, except for arrears of salary.

15. Accordingly, the following order is passed:-

- i) The captioned writ petition is allowed.
- ii) The impugned communication dated 19.12.2014 bearing Letter No.Ko.3C/2487-3/2014 issued by the fourth respondent is hereby quashed.
- iii) The respondents are hereby directed to fix the notional pay of the Petitioner in the post of works inspector w.e.f. 02.08.1984 and pay all consequential benefits including arrears of pensions except arrears of salary.
- iv) The said exercise shall be completed within a period of four months



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There shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

AT

To

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HEMANT CHANDANGOUDAR, J.

AT

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