
(2011) 01 MAD CK 0428

In the Madras High Court

Case No : Writ Petition No. 24880 of 2009 and M.P. No. 1 of 2009

K. Murugan

APPELLANT

Vs

The Government of Tamilnadu

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0428

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : N. Subramaniam, for the Appellant; A. Arumugham, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The Petitioner joined the office of the Respondents, as Assistant Engineer on 16.10.1989. Thereafter, he has been promoted as Assistant Executive Engineer in the year 2007. While he was working in the capacity of Assistant Engineer, he was deputed by the Respondent No. 1 in G.O. Ms. No. 523, Public Works (D1) Department, dated 03.11.1999 to study, Master of Engineering in Soil Mechanics and Foundation Engineering at Anna University in Government cost. It is seen that, Respondent No. 1 in the Government Order passed in G.O. Ms. No. 1195, Public Works Department, dated 11.07.1972 has taken a decision to grant two advance increments for such of those employees in the cadre of Assistant Engineers who have acquired the post-graduate degree in engineering.

2. The Government Order passed in G.O. Ms. No. 1195, Public Works Department, dated 11.07.1972 was subsequently modified by the Government order passed in G.O. Ms. No. 843, Personnel and Administrative Department, dated 05.09.1983, whereby the scheme was made applicable only to such of those officers who have not been deputed with the Government fund for the purpose of completing the Post-graduation. However, the said Government Order dated 05.09.1983 was again modified in the subsequent Government order dated

21.11.1984 passed in G.O. Ms. No. 1159, Personnel and Administrative Department, whereby the restriction imposed earlier has been removed to the effect that, all those officers who have completed the Post-Graduation either on their own or with the Government fund are eligible for the increment.

3. Thereafter, the Respondent No. 1, in and by their letter dated 24.06.1993 by way of a clarification has informed the subordinate officers that, the Government servants are not eligible for sanction of advance increments when they completed the Post-graduation at the Government cost. In pursuant to the proceedings dated 24.06.1993, the Respondent No. 2 has passed the impugned order. Therefore, challenging the above said proceedings, the present Writ Petition has been filed.

4. The learned Counsel for the Petitioner submitted that, the issue involved in the present Writ Petition is no longer res integra and the same has been considered by the decision of this Court in W.P. No. 22933 of 2007, dated 07.01.2009, wherein it has been held that, a clarification cannot take away the right accrued to the Government servant in pursuant to the Government Order passed by way of a policy decision. The learned Counsel further submitted that, the order passed by this Court has become final and binding between the parties.

5. The learned Special Government Pleader appearing for the Respondents submitted that, the said judgment has become final.

6. This Court in the order passed in W.P. No. 22933 of 2007, dated 07.01.2009, has held as follows:

3. It is contended by the learned Counsel for the Petitioner that the letter of clarification relied on in the impugned order is in the nature of overriding G.O. Ms. No. 1195, Public Works Department, dated 11.07.1972 and therefore, the same cannot have any legal force. He would submit that Clause 1(iii) of the clarification states that if the Government has spent money for a Government servant for acquiring higher qualification, he would not be eligible for such advance increment. In the case of the Petitioner, admittedly, he acquired M.E., qualification at the cost of the department. It is further contended by the Petitioner that though it is true that he acquired higher qualification on the money spent by the Government, still, as per G.O. Ms. No. 1195, Public Works Department, dated 11.07.1972, he is entitled for advance increments as there is no condition prescribed anywhere in the G.O., disqualifying a person from getting such advance increment, if he has acquired higher qualification at the cost of the department. The learned Counsel submits that the impugned order by way of clarification would amount to overriding the G.O. which cannot be sustained under law. Therefore, learned Counsel would pray for quashing the impugned order.

4. The learned Special Government Pleader would fairly concede that, no clarification can override the G.O., issued by the Government. She would further admit that, if any new condition is to be added to the G.O., it can be done only

by another G.O. To that extent, there can be no quarrel over the issue.

5. In view of the above position, I have to necessary conclude that, the letter of clarification relied on in the impugned order cannot be allowed to either overtake or override G.O. Ms. No. 1195. The said G.O., does not prescribe any condition that, the Government servant who has acquired higher qualification at the cost of the department is not entitled for such advance increment. Therefore, strictly going by the G.O., the Petitioner is entitled for the advance increment provided, he satisfies the other requirements. The condition added to the G.O., by means of clarification cannot be legally sustained.

6. In view of the above position, the impugned order of the first Respondent dated 14.11.2006 is quashed; the Writ Petition is allowed and the matter is remitted back to the first Respondent for fresh disposal according to law in the light of the observations made above. In any event, the final order shall be passed in the matter within a period of three months from the date of receipt of a copy of this order.

7. Considering the ratio laid down by this Court, this Court is of the view that, the Writ Petition will have to be allowed. Accordingly, the impugned order is set aside and the Respondents are directed to consider the Petitioner's case for the grant of two advance increments, within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.