

(2014) 01 MAD CK 0211
In the Madras High Court
Case No : Writ Petition No. 23772 of 2013

R. Lalitha

APPELLANT

Vs

The Accountant General (A and E) and The Assistant Director
of Survey and Land Records

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 39(gg)

Citation : (2014) 01 MAD CK 0211

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : P.R. Thiruneelakandan, for the Appellant; V. Vijayashankar for R1 and Mr. R. Govindasamy, AGP for R2, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—This Writ Petition has been filed by Mrs. R. Lalitha, seeking a prayer for issuance of a Writ of Mandamus, directing the respondents 1 and 2, namely, The Accountant General (A & E), Chennai and the Assistant Director of Survey and Land Records, Vellore District, to refix the petitioner's pension at the rate of her 50% of her last drawn salary as per the Tamilnadu Government G.O. No. 496 (Finance Department) dated 01.08.2006 with effect from the date of her retirement i.e. 30.06.2010 and pay the same to her. Learned counsel appearing for the petitioner submits that the petitioner was appointed as a Surveyor in the Department of Survey and Land Records, Thirupattur on 27.5.1993. On 28.11.1997, her category of service as Surveyor was changed into Draftsman. Thereafter, on 19.02.2001, her services in the post of Draftsman were regularised with effect from the date of her appointment. Subsequently, she was also temporarily promoted as Land Record Draftsman on 15.02.2010 and her scale of pay was also fixed on 30.04.2010 with effect from 17.02.2010. While she was working as Senior Draftsman, the scale of pay for the said post was also fixed on 9.6.2010 with effect from 23.03.2010. Later on, the petitioner was

superannuated on reaching the date of retirement on 30.06.2010.

2. After retirement, she pleaded, the second respondent issued an order dated 02.09.2011 regularising her services as Land Record Draftsman with effect from 25.4.2010, with a further direction for reduction of pay and recovery of excess payment. Therefore, the petitioner came before this Court, in W.P. No. 23797 of 2011 challenging the order of recovery and also with a consequential prayer to fix the pay of the petitioner, notionally, in the rank of senior draftsman. This Court by order dated 27.6.2012, although set aside the order of recovery, declined to regularise the services of the petitioner in the post of Senior Draftsman, for the purpose of post retirement benefits. Further, the petitioner filed an Appeal in W.A. No. 2662 of 2012 challenging the correctness of the order passed by the learned Single Judge. The said Writ Appeal was also dismissed confirming the order of the learned Single Judge. Thereafter, the respondents fixed the pensionary benefits in the post of Land Record Draftsman. Aggrieved by the same, the petitioner sent a representation to the respondents, requesting for fixation of pensionary benefits, taking into account the G.O.Ms. No. 496 Finance (Pension) Department dated 01.08.2006. When the respondents declined to consider the same, the petitioner was constrained to come before this Court again, with the present writ petition.

3. The only contention advanced by the learned counsel for the petitioner shows that instead of fixing the petitioner's pension, taking into account her last drawn salary, the respondents have wrongly fixed the pension on the basis of the post she held as Land Record Draftsman. Learned counsel further contended that, although the petitioner was temporarily promoted, she is entitled to draw the scale of pay fixed for the said post, as per Rule 39 (gg) of the Tamil Nadu State and Subordinate Service Rules. On that basis, prayed for allowing of the Writ Petition.

4. Per contra, learned counsel for the respondents 1 and 2, strongly opposing the prayer of the petitioner, submitted that the present writ petition is not maintainable as the same prayer was already considered and rejected by this Court in W.P. No. 23797 of 2011, by its order dated 27.6.2012, relying heavily on the submissions made by the respondents. In the earlier order dated 27.6.2012, learned counsel for the respondents drawing the attention of this court to paragraphs 6 and 7 of the order, stated that, when the very same prayer is made by the petitioner in the present writ petition, was neatly and clearly considered and a finding was given by the learned Single Judge stating that the prayer of the petitioner to fix the scale of pay in the post of senior draftsman cannot be granted, and the same was upheld by this Court in the W.A. No. 2662 of 2012, it is absolutely unfair for the petitioner to take out one another writ petition and this amounts to gross misuse of the Court and therefore the Writ Petition is liable to be set aside.

5. I find some force in the submission made by the learned counsel for the respondents. While comparing the prayer made in the present writ petition, with

the one made in the earlier W.P. No. 23797 of 2011, this Court finds that the petitioner has come to this Court, repeatedly, claiming to consider her fixation of terminal benefits, on the lines of G.O.Ms. No. 496 Finance (Pension) Department dated 01.08.2006., i.e., relating to the calculation of pension, on attending the age of superannuation. In fact, the writ petitioner, in her earlier petition, while challenging the recovery order dated 02.09.2011 passed by the Assistant Director, Survey and Land Records, Vellore, the second respondent herein, in Na.Ka. No. A2/797/2011(1) dated 02.09.2011 seeking to quash the same, sought for a consequential direction to the respondent to fix the pay of the petitioner in the rank of senior draftsman in the department of survey and land records, notionally, for the purpose of post retirement benefits. While finding favour with the petitioner, only in respect of the recovery order, this Court came to the conclusion that the temporary promotion given cannot enure any benefit to the petitioner. On that basis, the prayer of the petitioner that her claim should be considered on the basis of G.O.Ms. No. 496 Finance (Pension) Department dated 01.08.2006 was held not maintainable, as it was applicable only in respect of the persons occupying a permanent post. Paragraph 7 of the order reads as follows:

7. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondent, and on the perusal of the records available and on considering the decisions cited supra, this Court is of the considered view that it would not be open to the respondent to recover the amount paid to the petitioner, as salary, even though it was based on the higher scale of pay fixed, in respect of the post occupied by the petitioner, based on her temporary promotion to the said post. It is not the case of the respondent that the higher salary had been paid to the petitioner, due to the misrepresentation of fraud committed by the petitioner. However, with regard to the fixation of pensionary benefits, the prayer of the petitioner to fix the pension, based on the scale of pay received by her in the promoted post of Senior Draftsman, cannot be granted.

6. In view of the above, it is not known how the petitioner has come before this Court, when the case of the petitioner was neatly considered by this Court against the petitioner, both in the Writ Petition No. 23797 of 2011 and also in the Writ Appeal No. 2662 of 2012. In my view, the petitioner should not have filed this writ petition, which is only wasting the time of this Court. Since the present prayer of the petitioner was already refused by both the courts viz., learned Single Judge and the Hon'ble Division Bench as mentioned above, filing the present writ petition is an abuse of the process of the Court. For the reasons mentioned above, this Court is dismissing the Writ Petition, with a cost of Rs. 5000/- payable to the Tamil Nadu State Legal Services Authority, Chennai within a period of four weeks. Accordingly, this Writ Petition is dismissed with costs, as above.