

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.No.1265 of 2012 &

M.P.No.1 of 2012

The Superintendent of Police,
Dindigul District, Dindigul.

... Appellant

-vs-

M.Muthu, SSI,
(Head Constable 739)
Dindigul Town South Police Station,
Dindigul District.

... Respondent

Prayer: Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order of the learned Single Judge dated 22.12.2010 made in W.P.No.17246 of 2007.To call for the records relating to the proceedings Na.Ka.No.A1/31914/2001 and Ma.Aa.No.1219/2001 dt 29.10.2001 of the respondent to the extent of the (3) எந்த தேதியிலிருந்து அவர் நிலை உயர்வ் செய்யப்பட்ட பதவியில் அமர்கின்றாரோ, அந்த தேதியிலிருந்து இவருக்கு பணிப்பயன் வழங்க ஆணையிடுபடுகிறது, and quash the same as null and void and direct the respondent to fix a scale of pay as Rs.4600/- for the post of Head Constable from 5.12.1999 onwards with arrears of salary payable to him with increment.

For Appellant : Mr.K.V.Dhanapalan
Special Government Pleader
For Respondent : Mr.N.Anand Venkatesh

J U D G M E N T

[Judgment of the Court was made by N.AUTHINATHAN, J.]

M.Muthu, the respondent herein was enlisted as Grade-II Police Constable on 11.01.1978. On completion of 10 years as Grade-II Police Constable, his name was considered for inclusion in the panel for promotion as Grade-I Police Constable with effect from 05.12.1994. However, his name was not included in the above panel for the reason that he was facing a criminal case in Crime No.110 of 1992 on the file of Viruveedu Police Station, for the offences under Sections 323 and 324 of IPC. The criminal case ended in acquittal.

2.The respondent approached the Tamilnadu Administrative Tribunal, Chennai, by way of Original Application in O.A.No.5504 of 2001 seeking promotion as Grade-I Police Constable and Head Constable with reference to the date of promotion of his juniors. In pursuance of the directions of the Tamilnadu Administrative Tribunal, Chennai, in O.A.No.5504 of 2001 and the directions contained in the Chief Office Memo issued by the Director General of Police, Tamil Nadu, Chennai in D.Dis.No.64782/NGB III(2)/2001 dated 29.08.2001, the appellant, by his order dated 29.10.2001 notionally promoted the respondent as Grade-I Police Constable with effect from 05.12.1994 and as Head Constable with effect from 05.12.1999. His pay was fixed as applicable to the post of Grade-I Police Constable with effect from 05.12.1994. Subsequent increments were also sanctioned. Again his pay was fixed as applicable to the post of Head Constable with effect from 05.12.1999. Subsequent increments were also sanctioned to him. However, the monetary benefits have been ordered to be paid to the respondent on and from the date he assumed charge in the promoted post.

3.Aggrieved by the order dated 29.10.2001, the respondent approached Tamilnadu Administrative Tribunal, Chennai, by way of O.A.No.456 of 2003. Consequent to abolition of the Tribunal, the matter was transferred to this Court and renumbered as W.P.No.17246 of 2007. The respondent seeks the following relief: "to call for the records relating to the proceedings of Na.Ka.No.A1/31914/2001 and Ma.Aa.No.1219/2001 dated 29.10.2001 of the respondent, quash the same in so far as it relates to the order directing payment of monetary benefits from the date of actual assumption of the charge in the (higher) promoted post. He has also prayed for a direction to fix the scale of pay as Rs.4,600/- as applicable to the post of Head Constable with effect from 05.12.1999. He further claimed the arrears of salary payable to him with increments with effect from 05.12.1999."

4.The learned Single Judge of this Court allowed the Writ Petition. It has been held that the respondent is entitled to the benefit from the date of notional promotion. The appellant was directed to pay arrears of salary to the respondent from the date of notional promotion.

5.Challenging the said order dated 22.12.2010 passed by the learned Single Judge in W.P.No.17246 of 2007, the present Writ Appeal has been filed.

6.The learned Special Government Pleader appearing for the appellant would submit that the impugned order was passed on the principle of no pay for no work, as the respondent has not worked in the promoted post during the relevant period.

7.The learned counsel appearing for the respondent would submit that the respondent is entitled to hold the post of Head Constable on 05.12.1999 in accordance with the service rules and there was a delay on the part of the appellant to give effect to the actual promotion and therefore, the respondent is entitled to arrears of salary from the date of notional promotion.

8.In UNION OF INDIA AND OTHERS vs. K.V.JANKIRAMAN AND OTHERS [(1991) 4 SCC 109], the Supreme Court has laid down the law relating to the claim of arrears of salary where the notional promotions are given with retrospective effect from notional dates. The relevant portion reads thus: "26..... However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

9.Admittedly, on the conclusion of the criminal prosecution against the respondent, he was promoted notionally with reference to the date of promotion of his junior with effect from 05.12.1994 as Grade-I Police Constable and as Head Constable with effect from 05.12.1999. In the impugned order, the appellant made it clear that as notional promotion was given with retrospective effect, monetary benefits should be given from the date of actual assumption of charge in the promoted post. Admittedly, the respondent did not work during the said period in the promotional post.

10.In BABU LAL vs. HARYANA STATE AGRICULTURAL MKTG. BOARD [(2009) 4 SCC 287], applying the law laid down in

JANKIRAMAN's case, the Supreme Court has held that "the employer has a right to decide whether or not an employee deserves any salary for the intervening period after he is exonerated from criminal case." The Supreme Court upheld the order of the employer that no arrears of pay would be made for the period for which he had actually not worked.

11. In a similar situation, the Supreme Court in STATE OF HARYANA vs. S.K.KHOSLA [(2007) 15 SCC 777] has held that "the question of payment of arrears with retrospective effect from the notional dates does not arise where the employee had never worked during that period in the promotional post. This is on the basis of the principle of "no work, no pay".

12. The learned Single Judge has pointed out that in the impugned order, the respondent has not disclosed the Rule, under which, he has denied the arrears of pay. Admittedly, the respondent has never worked during the relevant period in the promoted post. His promotion was deferred on account of the pendency of criminal proceedings against him. The pendency of criminal prosecution against an employee is a reasonable ground for withholding promotion until the criminal proceedings are over. In the facts and circumstances at hand, it cannot be said that the deferment of promotion to the respondent was improper. A close consideration of the materials available on record and a careful reading of the impugned order 29.10.2001 would clearly show that the appellant, keeping in view, the principle of 'no pay for no work', directed payment of monetary benefits to the respondent from the date of his actual assumption of the charge in the promoted post. In our considered view, the impugned order does not suffer from any legal infirmity.

13. The law laid down by the Supreme Court in UNION OF INDIA AND OTHERS vs. K.V.JANKIRAMAN AND OTHERS [(1991) 4 SCC 109]; BABU LAL vs. HARYANA STATE AGRICULTURAL MKTG. BOARD [(2009) 4 SCC 287]; and STATE OF HARYANA vs. S.K.KHOSLA [(2007) 15 SCC 777] was not brought to the notice of the learned Single Judge. We are of the considered view, that the conclusion arrived at by the learned Single Judge cannot be sustained in view of the dictum laid down by the Supreme Court in the aforementioned cases.

14. For the reasons stated supra, we hold that the impugned order dated 22.12.2010 in W.P.No.17246 of 2007 is liable to be set aside and accordingly, the same is set aside.

15.The Writ Appeal is allowed. No costs. Consequently,
connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri



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To

The Superintendent of Police,
Dindigul District, Dindigul.

+1cc to Mr.N. Anand Venkatesh, Advocate, S.R.No.66581

ksj (CO)
md(10/12/2016)

W.A.No.1265 of 2012



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