



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A.[MD].No.1355 of 2013
and
M.P(MD).Nos.1 of 2013 and 3 of 2014

1. The Secretary to Government,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai 600 009.
 2. The Director of Rural Development and
Local Administration,
Panagal Building, Saidapet,
Chennai 600 015.
 3. The District Collector,
Theni District, Theni. : Appellants
- Vs.**
- M.Balasubramanian : Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 26.11.2013 made in W.P.(MD).No.9082 of 2013 on the file of this Court.

Prayer in WP(MD). 9082/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certioraraified Mandamus, calling for the records of the third respondent relating to Rc.No. 6345-2/2013.....2.....08/05/2013 and quash the remarks under serial No. 1 i.e. the petitioner alone and consequently direct the respondent to include the name of the petitioner in the approved list of Extension Officer of the ykear 2007-2008 and promote the petitioner as Deputy Block Development Officer on par with his junior with all service and monetary benefits within a specified time frame that may be fixed by this Honourable Court.

For Appellants : Mr.B.Pugalendhi
Assisted by N.S.Karthikeyan
Additional Government Pleader
For Respondent : Mr.S.Visvalingam

**JUDGMENT**

[Judgment of the Court was made by R.SUBBIAH, J.]

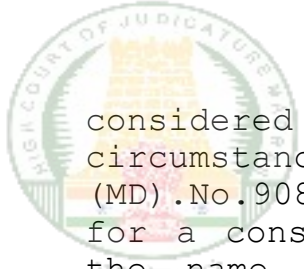
This Writ Appeal has been filed as against the order, dated 26.11.2013, made in W.P.(MD).No.9082 of 2013.

2. The case of the respondent before the learned Single Judge is that he was appointed as Night Watchman, through the District Employment Exchange of Composite Madurai District and joined duty on 08.07.1981 in the Panchayat Union, Chinnamanur. Thereafter, he was promoted as Road Roller Cleaner, Record Clerk, Junior Assistant and lastly as Assistant. At present, the respondent has been working as Accountant in the Panchayat Union Commission, Bodinaickanur, Theni District. While so, the District Collector, Theni, vide his proceedings dated 26.09.2007, reverted the respondent as Night Watchman and cancelled the promotion given to him and ordered for recovery also.

3. Aggrieved over the said order, the respondent filed W.P.(MD).No.8572 of 2007, along with five others. The learned Single Judge of this Court, by a Common Order dated 20.02.2008, allowed the said Writ Petition, thereby setting aside the order of reversion and also the order of recovery. By virtue of the said order, the respondent has been continuing as Assistant and no recovery was effected. Thus, the order dated 20.02.2008 has become final, as no appeal was filed by the appellants.

4. While so, similarly placed persons, like that of the respondent herein, were given selection grade in the post, in which they had worked lastly and they had received retirement benefits also. The respondent was not given the above benefits. Moreover, the name of the respondent was not included in the panel for promotion for Extension Officers for the year 2007 - 2008, even though the punishment of stoppage of increment for a period of six months imposed on the respondent was over on 30.06.2006. Therefore, the respondent was constrained to file W.P.(MD).No.4222 of 2008, seeking to quash the order of the third appellant herein dated 04.04.2008 and for a direction to promote him as Extension Officer as per his seniority in the feeder category of Assistant with all service and monetary benefits.

5. When the said Writ Petition came up for consideration, it was reported by the learned Additional Advocate General, on instructions from the District Collector, Theni, that the name of the respondent was deleted from the ineligible candidates for promotion as Extension Officers and recording the same, the Writ Petition was disposed of, on 06.11.2008. However, in spite of the above undertaking, the respondent was not given promotion as Extension Officer on par with his juniors. Thereafter, the District Collector, Theni, has passed an order on 08.05.2013, stating that even in the panel for promotion for the year 2013-2014, he cannot be



considered and his name cannot be included. Under the above stated circumstances, the respondent approached this Court, by filing W.P. (MD).No.9082 of 2013 seeking to quash the order dated 08.05.2013 and for a consequential direction to the appellants herein to include the name of the respondent in the approved list of Extension Officers for the year 2007 - 2008 and to promote him as Deputy Block Development Officer on par with his juniors, with all service and monetary benefits, as the post of Extension Officer was upgraded as Deputy Block Development Officer.

6. The learned Single Judge of this Court, by order dated 26.11.2013, set aside the order passed by the District Collector, Theni, dated 08.05.2013, and directed as follows:-

"1.The respondents shall include the name of the petitioner in the panel for promotion for the year 2007 - 2008 and promote him retrospectively from the date on which his junior was so promoted;

2. Such order of promotion shall be issued by the District Collector, Theni District, within a period of four weeks from the date of receipt of a copy of this order;

3. The District Collector, Theni District, shall also pay the arrears of salary to the petitioner, from the date on which his immediate junior had been promoted;

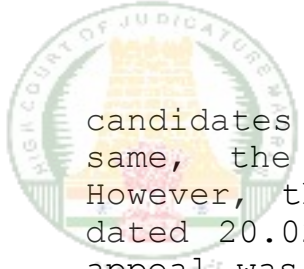
4. The District Collector, Theni District, shall pay a cost of Rs.20,000/- [Rupees Twenty Thousand only] to the petitioner within a period of four weeks from today; and

5. If the cost is not paid within four weeks from today, the petitioner would be at liberty to approach this Court, for necessary action for contempt".

7. Aggrieved over the said order, the appellants have come forward with the present Writ Appeal.

8. Mr.B.Pugalendhi, the learned Additional Advocate General appearing for the appellants, submitted that the respondent herein suffered a punishment of stoppage of increment for a period of six months. Thus, the right of the respondent to be considered for promotion was deferred on the ground of check period, by virtue of the Government Letter No.248, Personnel and Administrative Department, dated 20.10.1997. Hence, the third appellant has not considered the name of the respondent for inclusion in the panel for promotion in the approved list of Extension Officers for the year 2007 - 2008.

9. The learned Additional Advocate General further submitted that in fact, in the earlier round of litigation, in W.P.(MD). No.4222 of 2008, it was reported by the learned Additional Advocate General, on instructions from the District Collector, Theni, that the name of the respondent was deleted from the list of ineligible



candidates for promotion as Extension Officers and recording the same, the said Writ Petition was disposed of, on 06.11.2008. However, the Government has filed an appeal as against the order dated 20.02.2008, made in W.P.(MD).No.8572 of 2007. But, the said appeal was not numbered for a long time. That was the reason why, the third appellant has not included the name of the respondent in the panel for promotion for the year 2007 - 2008. Finally, the Writ Appeal papers were lost in the Registry. The said fact came to the knowledge of the appellants only in the year 2008. In fact, from 2008 to 2013, the respondent has not made any request with regard to his promotion. However, during the year 2013, he filed W.P.(MD).No.9082 of 2013 seeking to quash the order dated 08.05.2013 and for a consequential direction to the appellants herein to include the name of the respondent in the approved list of Extension Officers for the year 2007 - 2008 and to promote him as Deputy Block Development Officer on par with his juniors, with all service and monetary benefits. While concluding his arguments, the learned Additional Advocate General submitted that the third appellant is prepared to include the name of the respondent for promotion to the post of Deputy Block Development Officer for the year 2008 - 2009 with all service and monetary benefits.

10. Insofar as the other direction issued by the learned Single Judge, directing the appellants to pay arrears of salary to the respondent, from the date on which his immediate junior had been promoted, is concerned, the learned Additional Advocate General, by making reliance upon the decisions of the Hon'ble Supreme Court in **State of Haryana and others Vs. G.P.Gupta and others** reported in 1996 (7) SCC 533 and **A.K.Soumini Vs. State Bank of Travancore**, reported in 2003 (7) SCC 238, submitted that there has to be "no pay for no work". Hence, the respondent is not entitled for arrears of salary.

11. Now, turning to the cost of Rs.20,000/- imposed by the learned Single Judge on the District Collector, Theni District, the learned Additional Advocate General submitted that the non-inclusion of the name of the respondent in the panel for promotion as Deputy Block Development Officer, for the year 2007 - 2008 is neither wilful nor wanton. The third appellant was under the impression that the appeal filed by him as against the order dated 20.02.2008, made in W.P.(MD).No.8572 of 2007 was pending. Therefore, the learned Additional Advocate General prayed for setting aside the order, relating to imposition of cost of Rs.20,000/-.

12. We have heard the submissions made by the learned counsel appearing for the respondent also. Keeping in mind the said submissions made on either side, we have carefully gone through the materials available on record.

13. During the course of hearing, the learned Additional Advocate General submitted that the third appellant is prepared to include the name of the respondent for promotion to the post of

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Deputy Block Development Officer for the year 2008 - 2009. The learned counsel appearing for the respondent submitted that the respondent has no objection for inclusion of his name in the panel for promotion to the post of Deputy Block Development Officer, for the year 2008 - 2009, instead of 2007 - 2008.

14. Now, coming to the submission made by the learned Additional Advocate General with regard to the direction given by the learned Single Judge, directing the appellants to pay arrears of salary to the respondent, from the date on which his immediate junior had been promoted, in our considered view, there can be no doubt that there has to be "no pay for no work". However, in the case on hand, in the earlier round of litigation, in W.P.(MD). No.4222 of 2008, it was reported by the learned Additional Advocate General, on instructions from the District Collector, Theni, that the name of the respondent was deleted from the ineligible candidates for promotion as Extension Officer and recording the same, the Writ Petition was disposed of, on 06.11.2008. Thereafter, the third appellant has not chosen to consider the name of the respondent for promotion. Since the delay is only on the part of the appellants, we are of the considered view, the appellants are duty bound to pay arrears of salary to the respondent.

15. Insofar as the direction issued by the learned Single Judge relating to imposition of cost of 20,000/- [Rupees Twenty Thousand only] is concerned, it is liable to be set aside.

16. In the result, the Writ Appeal stands disposed of in the following terms:-

- The appellants shall include the name of the respondent in the panel for promotion for the year 2008 - 2009, as undertaken before this Court and promote him retrospectively from the date on which his junior was so promoted and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this Judgment.
- The District Collector, Theni District, shall also pay the arrears of salary to the respondent, from the date on which his immediate junior had been promoted.
- Insofar as the direction issued by the learned Single Judge relating to imposition of cost of 20,000/- [Rupees Twenty Thousand only] is concerned, it is set aside.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar



To

1. The Secretary to Government,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai 600 009.

2. The Director of Rural Development and Local Administration,
Panagal Building, Saidapet, Chennai 600 015.

3. The District Collector,
Theni District, Theni.

+ 1 CC TO Mr.S.VISVALINGAM, ADVOCATE IN SR No. 5124

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 5338

NB

TE/SKN-SAR-I : 09/02/2017 : 6P/6C

JUDGMENT MADE IN
W.A.[MD].No.1355 of 2013 and
M.P(MD).Nos.1 of 2013 and 3 of 2014
31.01.2017