



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.06.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.P.[MD].No.14563 of 2013

K.Mani

: Petitioner

Vs.

1.The Principal District Judge,
Virudhunagar District.

2.V.Nagaraj

(R2 is impleaded vide Court order dated
17.04.2017 in W.M.P.(MD)No.4529 of 2017)

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the respondent in D.No.2817 dated 18.04.2013 in so far as promoting the petitioner notionally as Assistant with effect from 24.03.2011 and denying the monetary benefits and the consequential rejection order of monetary benefits passed in D.No.3689 dated 24.05.2013 and quash the same and consequently direct the respondents to re-fix the petitioner's scale of pay with effect from 30.04.2006 in the post of Junior Assistant with all the due increments and to notionally promote the petitioner as Assistant and re-fix the petitioner's scale of pay in the post of Assistant with effect from 07.12.2007 and backwages.

For Petitioner : Mr. R.V.Rajkumar

For Respondent No.1 : Mr. N.Mohideen Basha

For Respondent No.2 : No appearance

O R D E R

[Order of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This writ petition has been filed by the petitioner challenging an order dated 18.04.2013 passed by the first respondent by which the first respondent has negatived the claim of the petitioner for grant of monetary benefits, consequent upon the revision of seniority in the cadre of Junior Assistant and denied further revision of seniority as in the promoted post of Assistant.

2.Heard Mr. R.V.Rajkumar, learned counsel appearing for the petitioner and Mr. N.Mohideen Basha, learned counsel appearing for the first respondent.

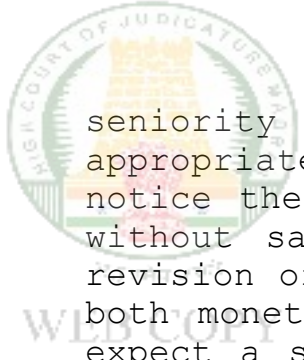


3.The petitioner was appointed as a Senior Bailiff on 03.02.1997 and in terms of the relevant rules, ought to have been promoted as Junior Assistant on 30.04.2006. However, in the seniority list which was drawn in the year 2006, the petitioner's immediate junior, V.Nagaraj, the second respondent herein, was placed above the petitioner. The petitioner objected to the same by representation dated 02.06.2006, which was kept pending and no orders were passed. In the mean time, the seniority list for the year 2007-2008 was drawn based on which the petitioner's junior was promoted. Once again, the petitioner submitted his objection on 12.07.2007 and the objection petition was kept pending without passing any orders.

4.Based on the combined seniority list for the year 2007-2008, the petitioner's junior was promoted to the post of Assistant on 07.12.2007. It is thereafter, on 03.02.2008, the petitioner was promoted as Junior Assistant. The petitioner filed an appeal before the High Court for re-fixing his seniority and consequential promotion from the date of promotion of the second respondent, ie. from 28.04.2006. The appeal was not considered and it was kept pending for nearly two years. Therefore, the petitioner approached this Court and filed W.P.(MD)No.7665 of 2011, in which a direction was issued to the Registrar General to pass orders on the appeal petition within a period of three months by order dated 19.07.2011. The appeal filed by the petitioner was allowed by order dated 01.03.2013 and since re-fixation on seniority had to be done and the petitioner's juniors were promoted ahead of him, as they were placed ahead of the petitioner in the combined seniority list drawn during 2006 as well as 2007 and 2008. The appellate authority directed that the order has to be implemented only after notice to the persons who are likely to be affected. The notices were issued and it appears that there was no objection and consequently, the petitioner's seniority in the post of Junior Assistant was correctly fixed above the second respondent.

5.Later, the petitioner submitted a representation on 25.04.2013, stating that he is entitled for monetary benefits as the denial of the correct position in the seniority list is not on account of his fault and therefore, he is entitled for all benefits which will accrue to him by promoting him to the post of Junior Assistant with effect from 30.04.2006. As a consequence of which, he is entitled to be promoted to the post of Assistant well ahead of the juniors. The first respondent has rejected these two requests for the only reason that there is no specific direction issued in the order dated 01.03.2013, to the said effect.

6.The order taken in the impugned order cannot be countenanced, as the High Court vide order dated 01.03.2013 has allowed the petitioners appeal in his entirety (ie) for his



seniority and claim for promotion as Junior Assistant at the appropriate time. This was directed to be implemented after notice the persons who are likely to be affected. Thus, it goes without saying that whatever benefits accrue, consequent to the revision of the petitioner's seniority, should accrue to him i.e., both monetary and service benefits. The first respondent cannot expect a specific direction for the same as it is consequential. Admittedly, if the petitioner's seniority is revised in the post of Junior Assistant, he is entitled for such benefits which accrue to him, while considering him for promotion to the post of Assistant and therefore, the reason given in the impugned order to deny the same is not tenable.

7. In the case of **Ramesh Kumar Vs. Union of India and others** reported in **(2015) 6 MLJ 243 (SC)**, the issue which arose for consideration was whether, the denial of pay and allowances to the appellant therein till his actual promotion was justified. While answering the said issue, the Court held that the Principal of "No Work No Pay" cannot be a thumb rule when the employee was not at fault for not considering the case of the appellant therein for promotion and not allowing the appellant to work in a higher scale of pay. The operative portion of the said judgment reads as follows:

"In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala and others Vs. E.K. Bhaskaran Pillai, AIR 2007 SC 2645: (2007) 6 SCC 524 : LNIND 2007 SC 489, this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:

"... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facts which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he challenges the same before court or tribunal and he succeeds in that and direction is given for



reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly, when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

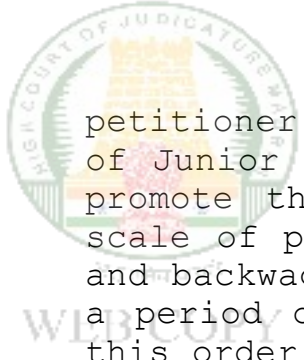
13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

14. The impugned orders passed by the High Court are set aside and this appeal is allowed. The respondents shall release the arrears of pay and allowances to the appellant for the period from 01.08.1997 till the date of his actual promotion that is 13.11.2000 in the promotional post of Naib Subedar within eight weeks from today. No order as to costs.

8. The above referred decision would apply with full force to the case on hand. As observed by us earlier, the petitioner is not at fault for not having been fixed in the appropriate place in the seniority. In fact, the objection petition given by the petitioner on 02.06.2006 and 12.07.2007 were not considered and were kept pending without passing any orders. That apart, the appeal petition filed was also kept pending for two years and only after the direction of this Court, the appeal petition was taken up. Thus, the principle of "No Work No Pay" can have no application to the facts and circumstances of the case.

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9. In the result, the Writ Petition is allowed and the impugned order is set aside. The respondents are directed to re-fix the



petitioner's scale of pay with effect from 30.04.2006 in the post of Junior Assistant with all the due increments and to notionally promote the petitioner as Assistant and re-fix the petitioner's scale of pay in the post of Assistant with effect from 07.12.2007 and backwages. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To:

The Principal District Judge,
Virudhunagar.

+1 CC to M/s.R.V.RAJKUMAR, Advocate, SR No. 59307.

KM/MR

PSM/SKN-RSK/SAR1/27.06.2017/5P/3C

ORDER MADE IN
W.P. [MD] .No.14563 of 2013
08.06.2017