

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A. No. 484 of 2013

1. The Managing Director
National Film Development Corporation
6th Floor, Nehru Centre,
Dr. Annie Besant Road, Worli,
Mumbai - 400 018
2. The Deputy General Manager
National Film Development Corporation
(Regional Office), 350, Co-optex Warehouse Building
1st Floor, Pantheon Road,
Egmore, Chennai - 600 008

...Appellants / Respondents

Vs.

K.K.A. Seshadri ...Respondent / Petitioner

Prayer: Appeal filed under Clause 15 of the Letters Patent
praying to set aside the order dated 01.11.2012 in W.P. No. 3784
of 2012 on the file of this Court.

WP No.3784/2012:-

Writ of Certiorarified Mandamus calling for the records
of the second respondent comprising of the letter dated 5th
December 2011 bearing Ref: NFDC/ LEGAL-KKAS/ 2011-2012/8173 and
quash the same as illegal and arbitrary and consequently issue a
Mandamus directing the respondents to treat the petitioner as
having been promoted to the post of Junior Officer on 1.8.1992
for the purpose of seniority, including for the purpose of all
consequential promotions, and to determine the position that
the petitioner would have held on 1.4.2009 had he been so duly
promoted and treat the petitioner as having retired while
holding such position for the purpose of all future payment of
pension and all other benefits and to pay the petitioner such
amount of money that is equal to the difference between the sums
that would have been payable as retirement benefits, including

pension benefits, back wages, earned leave, arrears of salary, gratuity, provident fund and any difference in the sum payable under the VRS scheme and other such similar benefits had he retired holding such position and the sums actually paid to him with interest.

For Appellants : Mr. AR.L. Sundaresan, Senior Counsel
assisted by Mr. T. Sai Krishnan

For Respondents : Mr. R. Parthasarathy

J U D G M E N T

(Delivered by M.M.Sundresh, J.)

This appeal is filed against the order of the learned Single Judge, by which, the respondent/petitioner was given the following relief:-

"35. For the aforesaid reasons, I am inclined to allow the writ petition and the impugned order is quashed.

36. The respondents are directed:

(1) to grant the petitioner 10% as special pay of next higher grade for shouldering additional responsibilities as junior officer with effect from 1.8.1992 instead of from 2.6.1994 until he was granted regular promotion as junior officer.

(2) to grant Time Bound Promotion to the petitioner as Assistant Manager on completion of 10 years of service as Junior Officer and to pay the difference of pay and other benefits payable to the petitioner pursuant to promotion as Assistant Manager with effect from 16.09.2006, until his date of voluntary retirement.

(3) to pay the petitioner the balance of benefits on Voluntary Retirement Scheme and pension and other benefits treating him as Assistant Manager, as applicable to the said post."

2. The respondent filed the writ petition, inter alia, contending that he should be given promotion from the year 1992 as against actual promotion given in the year 1996. It was sought for on the premise that in the month of August, 1992 the then Junior Officer by name S. Govindrajan opted for VRS.

Thereafter, the respondent was holding the post of Junior Officer. The respondent also contended that he should be given time bound promotion on completion of 10 years of service. Resultantly, he sought for the consequential benefits.

3. The learned Single Judge while declining the relief of granting promotion from the year 1992 onwards, was pleased to grant the other relief. It was accordingly held that notwithstanding the fact that the respondent's name was shown in the seniority list, he was not promoted as Assistant Manager without any basis. The finding was given that the ACR of the respondent was sufficient enough to be considered for the promotional post, especially when he has completed 10 years of service as Junior Officer.

4. The learned Senior Counsel for the appellants would submit that the writ petition ought to have been dismissed for the delay and laches, as the respondent opted for VRS. Therefore, the appeal will have to be allowed.

5. We do not find any merit in this appeal. The findings recorded by the learned Single Judge could not be assailed. The delay and laches are one of practice and procedure and not of law. The respondent raised the issue even in the year 1996. The request made by him was also pending consideration. The order under challenge itself was passed only pursuant to the orders passed by this Court. The learned single Judge has rightly recorded that the object of time bound promotion itself was to grant such promotion when there was no other impediment. The contention with respect to Voluntary Retirement was not raised either in the counter affidavit or shown in the order rejecting the request of the respondent. In such view of the matter, we do not find any error warranting interference.

Accordingly, the writ appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm

To

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+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.79097

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CA (CO)
SSM(07/12/2018)



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