

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2018

CORAM :

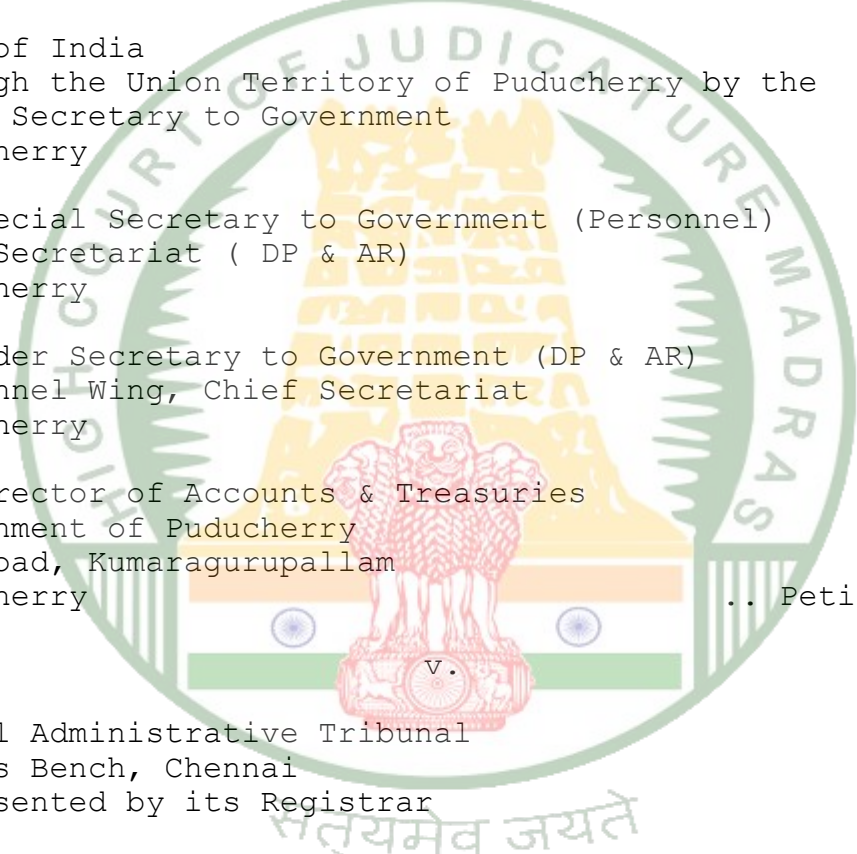
THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No. 8194 of 2017 &

W.M.P.No.8956 of 2017

- 
1. Union of India
Through the Union Territory of Puducherry by the
Chief Secretary to Government
Puducherry
2. The Special Secretary to Government (Personnel)
Chief Secretariat (DP & AR)
Puducherry
3. The Under Secretary to Government (DP & AR)
Personnel Wing, Chief Secretariat
Puducherry
4. The Director of Accounts & Treasuries
Government of Puducherry
DAT Road, Kumaragurupallam
Puducherry
- ... Petitioners
1. Central Administrative Tribunal
Madras Bench, Chennai
Represented by its Registrar
2. S.Murugesan
3. S.Balasoundary
4. A.Narendran
5. V.Aravindan
6. P.Savithri
7. K.Arunagirinathan
8. G.Sendhilnathan
9. U.Ilango
- 10.K.Candane @ Sivaradjane
- 11.A.Ravi
- 12.Sarodja
- .. Respondents
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Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records pertaining to the order passed in O.A.No.1107 of 2011, dated 02.07.2014, on the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For Petitioners : Mr.R.Syed Mustafa
Special Government Pleader
(Puducherry)

For Respondents : Mr.Menon Karthik
for R3 to R5 and R7 to R11

No appearance
for R2, R6 & R12

ORDER

(Order of the Court made by M.DURAI SWAMY, J)

The Union of India has filed the above Writ Petition to issue a Writ of Certiorari to call for the records pertaining to the order passed in O.A.No.1107 of 2011, dated 02.07.2014, on the file of the Central Administrative Tribunal, Madras Bench and to quash the same.

2. The respondents 2 to 12 have filed the Original Application in O.A.No.1107 of 2011 under section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

" to set aside the impugned orders in (i) Memorandum No.34014/3/2010-DPAR SS/.II(I) dated 12.8.2001 and (ii) Memorandum No.32016/3/2010-DPAR SS.II((I) dated 15.10.2010 of the third respondent in so far as it erroneously fixes the pay of the applicants in the pay scale of Rs.5500-9000 with effect from 4.9.2005.

and consequently appoint the applicants as Superintendents on regular basis and direct the respondents to fix the pay of the applicants in the pay scale of Rs.6500-10500 with effect from 4.9.2005 and on that basis re-fix their pay in the revised pay scale of Rs.9300-34800 with a Grade Pay of Rs.4600 with effect from 1.1.2006 with all consequential benefits including arrears of revised pay and allowances with effect from 4.9.2005 and as such further or other orders as this Hon'ble Court may deem fit and proper."

3.1 According to the respondents 2 to 12, there are two grade structure in the respondent's departments in cadre of Superintendents, viz., Superintendents Grade-II in the pay scale of Rs.5500-9000 and Grade-I in the pay scale of Rs.6500-10500. The respondents 2 to 12, who are working as Superintendents, have appeared for the Limited Departmental Competitive Examination conducted in the year 2005 for promotion to the post of Superintendents Grade-II. However, the said examination was cancelled before the results were announced due to certain irregularities in the conduct of the examination. The cancellation of the examination was challenged before the Tribunal in the Original Application in O.A.No.1107 of 2011. However, the Original Application was dismissed by the Tribunal. Against which, writ petitions were filed, wherein, this court held that the cancellation of the examination was arbitrary and illegal. This court also held that the answer scripts should be evaluated and a select list should be prepared and on that basis promotions should be made to those eligible candidates. Pursuant to the order passed in the writ petitions, the respondents 2 to 12 were appointed to the post of Superintendents Grade-II on regular basis with effect from 4.9.2005 by an order dated 12.08.2010.

3.2 According to the respondents 2 to 12, they should be placed in the pay scale of Rs.5500-9000 with effect from 4.9.2005 and in the revised pay scale of Rs.6500-34800 with Grade Pay of Rs.4600/- with effect from 1.1.2006. The respondents 2 to 12 further submitted that the post carrying the pay scale of Rs.6500-10500 may be merged with the higher scale of Rs.7450-11500 as per the recommendations of the 6th Pay Commission, with effect from 1.1.2006.

3.3 It is not in dispute that the revised pay scale applicable to the Superintendents with effect from 1.1.2006 was fixed at Rs.9300-34800 with Grade Pay of Rs.4600/-, which is the replacement pay scale for Rs.7450-11500. The respondents 2 to 12 have made representations for fixation of their pay in the pay scale of Rs.6500-10500 with effect from 4.9.2005 and on that basis to grant the revised pay scale of Rs.9300-34800 with grade Pay of Rs.4600/- with effect from 1.1.2006. The proposal for such fixation of pay of the respondents 2 to 12 was forwarded to the 4th petitioner, who has opined that the offer of appointment does not specifically mention that the respondents 2 to 12 have to be placed in the revised pay scale of Rs.6500-10500 and as such, those who are drawing the pre-revised scale of Rs.6500-10500 only are eligible for the replacement pay structure of Rs.9300-34800 with Grade Pay of Rs.4600/-. Aggrieved over the same, the respondents 2 to 12 have filed the Original Application before the Tribunal.

4. The applicants/respondents 2 to 12, who were all working as Superintendents in the Government of Puducherry had written the examination in the year 2005 for Superintendents Grade II and the same was subsequently cancelled by the respondents/petitioners and when the same was challenged, this court had given a direction to evaluate the answer sheets and appointments should be made on the basis of the merit list drawn. The Tribunal, taking into consideration the case of both sides, disposed of the Original Application by directing the respondents/petitioners to fix the pay of the applicants/respondents 2 to 12 in the pay scale of Rs.6500-10500 with effect from 1.1.2006 and consequently refix their pay in the revised pay scale of Rs.9300-34800 with Grade Pay of Rs.4600/- with effect from 1.1.2006 and the consequential benefits including arrears of revised pay and allowances with effect from 1.1.2006 as has been done in the case of the their juniors.

5. Mr.R.Syed Mustafa, learned Special Government Pleader (Puducherry), appearing for the petitioners, has confined his submission only with regard to the consequential benefits given to the respondents 2 to 12. The learned Special Government Pleader (Puducherry), submitted that the principle of "no work no pay" should be applied for the case on hand. The learned Special Government Pleader (Puducherry) further submitted that since the respondents 2 to 12 did not work in the promoted post from 01.01.2006 to 12.08.2010, they are not eligible for the arrears of salary during the said period.

6. Mr.Menon Karthik, appearing for the respondents 3 to 5 and 7 to 11 submitted that the principle of "no work no pay" will not be applied to the present case for the reason that the respondents 2 to 12 were always ready and willing to work in the higher post, however, they were prevented from joining the post for the reason that the Competitive Examination held on 04.09.2005 was cancelled. In support of his contention, the learned counsel relied upon a judgment reported in 2015(14) SCC 335 [Ramesh Kumari v. Union of India and others] wherein, the Apex Court held as follows:-

"14. 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 & Ors. vs. E.K. Bhaskaran Pillai, (2007) 6 SCC 524, 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 facets 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 has challenged 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."

15. 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 alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

7. On a reading of the above referred judgment, it could be seen that considering the petition dated 31.08.1992 submitted by the appellant therein against the order dated 03.06.1992 passed in the SCM, the Central Government, by its order dated 17.08.1994, commuted the punishment of reduction of rank and one year rigorous imprisonment to severe reprimand and remitted the sentence of dismissal directing reinstatement of the appellant. However, it was mentioned in the said order dated 17.08.1994 that the period between the date of dismissal and date of reinstatement in service will not be treated as duty and the appellant will not be paid pay and allowances due to him for the said period. The order dated 17.08.1994 does not specifically state the date from which the commutation of punishment shall take effect. The appellant therein rejoined the duty on 29.10.1994 and from that date he was taken to have been reinstated. In the ASC records (Sup.), letter dated 23.07.1997, it was clearly mentioned that the punishment was set aside by the Court and was reinstated into service and his name was again placed in the original place in the seniority list. It was further stated that the award of punishment for the second time for loss of temporary identity card will not affect the appellant's promotion to the rank of Naib Subedar. In the said circumstances, the Hon'ble Apex Court held that the principle of "no work no pay" cannot be applied to the said case.

8. In the case on hand, the respondents 2 to 12 have cleared the Superintendents Grade-II Limited Departmental Competitive Examination (LDCE) only pursuant to the order passed in W.P.Nos.28218 and 24048 of 2008, dated 11.03.2010. Only after passing of the order in the said writ petitions the answer sheets of the respondents 2 to 12 were evaluated and they have cleared their exams. Therefore, it is clear that the respondents 2 to 12 got eligible for the Superintendents Grade-II post only after clearing the examination. When the respondents 2 to 12 were not qualified for being considered for the post of Superintendents Grade-II till August 2010, they cannot claim the arrears of salary between the period from 01.01.2006 to 11.08.2010.

9. It is not in dispute that the respondents 2 to 12 are being paid the revised salary from August 2010. Therefore, in the case on hand, the principle of "no work no pay" would apply. In these circumstances, the judgment relied upon by the learned counsel for the respondents 3 to 5 and 7 to 11 is not applicable to the present case.

10. In the result, the order passed by the Tribunal in so far as the relief of consequential benefits including arrears of revised pay and allowances with effect from 1.1.2006 alone is

set aside. We make it clear that the respondents 2 to 12 are entitled to the revised salary from the date of their promotion in the year 2010. The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

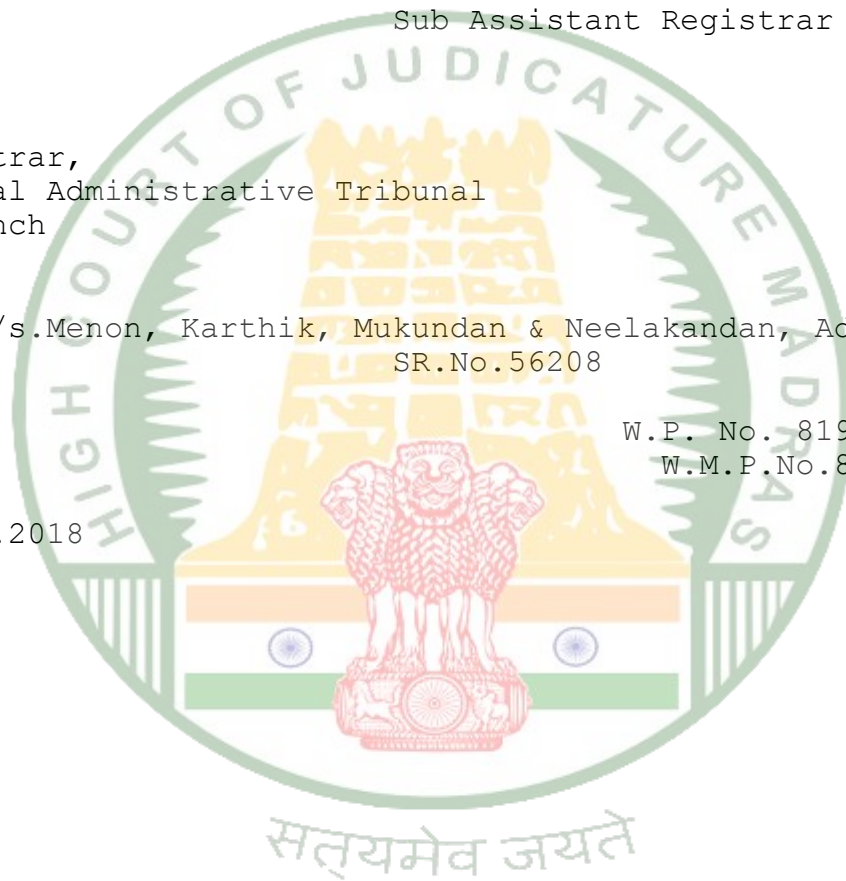
To

The Registrar,
The Central Administrative Tribunal
Madras Bench
Chennai

+1cc to M/s.Menon, Karthik, Mukundan & Neelakandan, Advocate
SR.No.56208

W.P. No. 8194 of 2017 &
W.M.P.No.8956 of 2017

SPD(CO)
SMI/30.08.2018



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