

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.162 of 2018
and C.M.P.No.922 of 2018

- 1.The Director of Social Welfare,
Chepauk, Chennai-5.
- 2.The Child Development Project Officer,
Morapur, Dharmapuri District. Appellants

-vs-

- 1.K.Tamil Selvi
- 2.S.Jayanthi Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.8431 of 2006 dated 13.10.2009.

Prayer in W.P.No.8431 of 2006:-

Writ Petition under Article 226 of the Constitution of India by way of transfer of O.A.No.536 of 2002 from the file of Tamil Nadu Administrative Tribunal with a prayer to direct the Respondents 1 and 2 to promote the applicant to the post of Community Nutrition Supervisor / Women Rural Welfare Officer retrospectively with effect from 19.7.93, the date on which the 3rd Respondent was promoted with all monetary benefits, arrears of pay and other consequential service benefits.

For Appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondents : Mr.Bala Murali Krishnan for
Mr.R.Prem Narayan for R1

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The first respondent herein was working as Anganwadi worker from 13.04.1978 in Morapur Integrated Child Development Scheme Office, Chinnamurukanpatti Centre, Dharmapuri District. Her grievance is that her juniors, who joined subsequently in the service, were promoted as Community Nutrition Supervisor, but she was still continuing as Anganwadi Worker. It is the case of the first respondent that the second appellant, by proceedings dated 30.07.1999, requested the first appellant to include her name in the approved panel for promotion to the post of Community Nutrition Supervisor, but no action was taken by the first appellant. She made a representation dated 25.08.2000 to the first appellant, to include her name in the panel, but nothing was done by the first appellant. Hence the first respondent filed Original Application in O.A.No.536 of 2002 before the Tamil Nadu Administrative Tribunal praying to promote her to the post of Community Nutrition Supervisor retrospectively with effect from 19.07.1993, the date on which, her junior viz., the second respondent was promoted, with all monetary benefits. On the abolition of the Tribunal, the application stood transferred to this Court and re-numbered as W.P.No.8431 of 2006.

2.The learned single Judge, considering the facts and circumstances of the case, allowed the writ petition by order dated 13.10.2009 on the ground that only due to administrative reasons the first respondent's name was not included in the panel, when her juniors were included and that it is not the case of the second appellant that disciplinary action was initiated against the first respondent for unauthorised absence; that once she was granted leave, it cannot be stated that she was unauthorisedly absent and hence the second appellant could not cite the same as a reason for not including the first respondent herein in the panel.

3.Challenging the order passed in the writ petition, the present writ appeal has been filed by the State.

4.The learned Special Government Pleader appearing for the appellants/State has submitted that the second appellant never recommended the first respondent's name for promotion and the alleged letter dated 30.07.1999 said to have been issued recommending for inclusion of the name of the first respondent in the panel, is not a genuine one, but a fabricated one. Further, the letter sent by the Project Officer itself will not be sufficient to include the name of the first respondent in the panel for promotion as Community Nutrition Supervisor / Rural

Welfare Officer (Women). Further, the post held by the first respondent was purely on temporary basis and hence service rules constituted for a regular Government servant does not apply to the said post. It is submitted that the first respondent is eligible for only one day casual leave as paid leave per month and no other leave is permitted. Hence, she is not qualified to get promotion with retrospective effect on par with his juniors who were in regular service. Finally, it has been submitted that the first respondent was absented from duty for 32 months which was settled as 'stayed away from duty' on 'No work no pay' basis and subsequently she was taken back to duty on re-employment as a fresh candidate on 14.05.1991. In these circumstances, according to the learned Special Government Pleader, the question of considering her name for inclusion in the panel as prayed for by her, does not arise. Above all, the learned Special Government Pleader has submitted that proceedings under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules has been initiated against the first respondent for unauthorised absence.

5.The learned counsel for the first respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.It appears that the first respondent was appointed as Anganwadi Worker on temporary basis in the year 1978. Thereafter, there were several breaks in service and she was re-employed in the year 1991. It also appears that the first respondent has unauthorisedly absented from duty for 32 months, for which proceedings under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules has been initiated. Further, after the breaks in service, she was re-appointed on 14.05.1991 afresh. It is also seen that thereafter, the first respondent was promoted as Supervisor Grade-II in Karimangalam Project, Dharmapuri District as per the proceedings of the Commissioner of Social Welfare, Chennai, dated 18.08.2008. Further, it is seen that from 23.11.2009, the first respondent absconded from service and a letter dated 08.02.2010 has been issued to her by the Child Development Project Office, Karimangalam to join duty and a notice dated 19.02.2010 was also sent to her to join duty, but even then she has not reported for duty.

8.In view of the above stated circumstances, the prayer sought for by the first respondent in the writ petition, to

promote her to the post of Community Nutrition Supervisor retrospectively with effect from 19.07.1993, the date on which the second respondent was promoted, with all monetary benefits, does not deserve any consideration. The appellants are directed to conclude the disciplinary proceedings and any monetary benefits that the first respondent is entitled to, shall be settled, within a period of six months from the date of receipt of a copy of this judgment. Accordingly, the impugned order passed by the learned single Judge is set aside and the writ appeal is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM

To

- 1.The Director of Social Welfare,
Chepauk, Chennai-5.
- 2.The Child Development Project Officer,
Morapur, Dharmapuri District.

+1 cc to The Government Pleader, Sr.No.74349

+1 cc to M/s.R.Prem Narayan, Advocate Sr.No.73346

W.A.No.162 of 2018
and C.M.P.No.922 of 2018

KAN (CO)
CSL/28.11.2018

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