

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.2238 of 2012

and M.P.No.1 of 2012

1.The State of Tamil Nadu
Rep. by its Commissioner and
Secretary to Government
Education Department
Fort St.George, Chennai 600 009.

2.The Director of Public Libraries
Mount Road, Chennai 600 002.

3.The District Library Officer
Thanjavur District, Thanjavur.

Appellants

Vs.

P.Subbaiyan

Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 14.11.2011 made in W.P.No.13713 of 2006, on the file of this Court.

For Appellants : Mr.K.Karthikeyan
Government Advocate

For Respondent : No appearance

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

The respondent was initially appointed as a Record Clerk in 1966. Thereafter, he was promoted as Assistant Librarian in 1970. He was also given promotion to the post of Grade-II Librarian. He was promoted to the post of Grade-I Librarian in the year 2002. The respondent initially filed Original Application in O.A.No.6202 of 2002 to direct the appellants to promote him to the post of Grade-I Librarian and fix his seniority at the appropriate place.

The Original Application was transferred to this Court, consequent to the abolition of the Tribunal and it was renumbered as W.P.No.13713 of 2006.

2. The learned Single Judge having found that the persons junior to the respondent were promoted on 08 June, 1999 and 19 April, 1999 and that there was no impediment for considering his case for promotion when others were promoted, issued a Mandamus directing the appellants to promote him to the post of Grade-I Librarian from 19 April, 1999 and pay him all the terminal benefits. The said order is under challenge at the instance of the State.

3. Heard the learned Government Advocate on behalf of the appellants. None appears on behalf of the respondent.

4. The respondent was punished for a misconduct by the employer. The punishment imposed originally by the Disciplinary Authority on 04 December, 1997 was modified into one of stoppage of increment for six months without cumulative effect by order dated 22 October, 1998. The crucial date for promotion to the post of Grade-I Librarian was on 08 June, 1999. There was no currency of the punishment on the crucial date. Even though the name of the respondent was not considered for promotion, other persons were promoted. It was only under such circumstances, the respondent filed the Original Application.

5. The appellants have no case that other than the misconduct in respect of which punishment was imposed on the respondent, he was involved in other cases. There was no other misconduct within the cut off period of five years, prior to which the panel was drawn. The punishment imposed on the respondent got expired even before the cut off date prescribed for drawing the list for promotion to the post of Grade-I Librarian. We are therefore, of the view that the learned Single Judge was correct in directing the appellants to promote the respondent as Grade-I Librarian from 19 April 1999, the date on which his immediate junior was promoted.

6. The learned Single Judge directed the appellants to pay the wages for the entire period to the respondent, taking into account the promotion given to his junior. We are not in a position to support the direction given by the learned Single Judge. Even though his immediate junior was promoted on 19 April, 1999, the fact remains that the respondent has not taken up the issue with the authorities. There was no challenge either to the promotion given to his immediate juniors or the denial of promotion to him. The respondent appears to have filed the Original Application only during the verge of his retirement. We are, therefore, of the view that the learned Single Judge was not justified in giving direction to the appellants to pay back wages to the respondent.

7. While confirming the order passed by the learned Single Judge to promote the respondent as Grade-I Librarian with effect from 19 April, 1999, we set aside the direction given to pay him

back wages. In short, the period from 19 April, 1999 in the post of Grade-I Librarian would be taken into account for fixation of pension and other terminal benefits without any liability to pay him back wages for the said period.

The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

gms

To

1.The Commissioner and
Secretary to Government
State of Tamil Nadu
Education Department
Fort St.George, Chennai 600 009.

2.The Director of Public Libraries
Mount Road, Chennai 600 002.

3.The District Library Officer
Thanjavur District, Thanjavur.

+1 cc to the Government Pleader, High Court, Chennai SR.NO. 14507

GP(CO)
JK 02/04/18

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