

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.228 of 2016
and CMP No.3600 of 2016

1. State of Tamil Nadu
Rep by its Secretary to Government
Government of Tamil Nadu,
Environment and Forest Department,
Fort St. George, Chennai 600 009.
 2. The Principal Chief Conservator of Forests
Panagal Maaligai,
Saidapet, Chennai 600 015. Appellants/Respondents
- versus
- D. Sudhakarrasu Respondent/Petitioner

Appeal filed against the order passed by this Court dated 18.04.2013 passed in W.P.No. 3093 of 2012.

W.P.No.3093 of 2012 Prayer: Writ of mandamus directing the respondents to include the name of the petitioner for promotion to the post of Forester in the panel drawn for the year 2006-2007 or 2007-2008 or atleast in the panel for the year 2008-2009 in the appropriate place and further direct the respondents to promote the petitioner notionally in the post of Forester with all consequential service and monetary benefits so as to enable (him to get enhance) pensionary benefits in the category of Forester.

For Appellants : Mr.M.Santhanaraman
Special Government Pleader (F)
For Respondent : Mr.T.Sellapandi
for Mr.S.Mani

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Intra Court Appeal has been filed by the respondents in WP 3093 of 2012, challenging the order made in the said Writ Petition dated 18.04.2013, directing the respondent to promote the petitioner notionally in the post of the Forester by including his name in the panel drawn for the year 2007-2008, with all consequential service and monetary benefits.

2. The facts that led to the filing of the Writ Petition are as follows:

The respondent was working as a Forest Guard from 04.04.1991. A charge memo was issued to him on 02.05.2005, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for certain delinquencies. On the completion of the enquiry, the Enquiry Officer submitted a report on 31.12.2006, holding that a portion of the charge was made out. On receipt of the Enquiry Report, the second appellant, viz. The Principal Chief Conservator of Forest imposed a punishment of stoppage of increment for a period of two years, without cumulative effect.

3. Aggrieved by the said punishment, the respondent had filed an appeal before the 1st appellant. The 1st appellant confirmed the order of the 2nd appellant, by an order dated 19.01.2009. The said order dated 19.01.2009 was put in issue in WP No.6409 of 2009, before this Court. This Court by an order dated 16.11.2009, set aside the punishment imposed and remitted the matter to the Appellate Authority, viz. 1st appellant, for reconsideration. In the meantime, the respondent herein, retired from service on 30.01.2010, despite his retirement, no order was passed by the 1st appellant. In the above back drop, the respondent filed another Writ Petition in W.P.No.3093 of 2012, seeking issuance of a Writ of Mandamus, directing the respondents to include his name for promotion to the post of Forester in the panel drawn for the year 2006-2007, 2007-2008 or at least in the panel for the year 2008-2009, and direct the respondents to promote the petitioner, notionally in the post of Forester, with all consequential service and monetary benefits so as to enable him to get enhanced pensionary benefits in the category of Forester.

4. The said Writ Petition was disposed of by this Court, as stated earlier, with the following direction:

"5. Hence, for the reasons stated above, this Court, to meet the ends of justice, deems fit to direct the second respondent to promote the petitioner notionally in the post of Forester by including his name in the panel drawn for the year 2007-2008, with all consequential service and monetary benefits. The second respondent is directed to complete the said exercise within a period of 10 weeks from the date of

receipt of a copy of this order. No Costs."

5. The said order came to be passed on 18.04.2013. In the meantime, on 07.05.2013, the 1st appellant considering the appeal filed by the respondent against the order imposing punishment allowed the said Appeal concluding that the charges against the respondent have not been established. In view of the said finding, the first appellant exonerated the respondent from the charges and set aside the punishment imposed on the respondent. Thereafter, the 2nd appellant in his proceedings in P.No.AA1/20150/2013 dated 14.08.2013, directed the respondent to be notionally promoted to the post of Forester. In the said order, taking into account the fact that the respondent had retired on 31.01.2010 on attaining superannuation, the 2nd appellant had directed that the respondent should be deemed to have been notionally promoted as a Forester, from the date on which, his Junior Thiru.P.Vajram, who was in Sl. No.82, in the promotion panel, was promoted as Forester and his notional pay will be fixed as per the Fundamental Rules 27 (17) for the purposes of calculating his retirement benefits and pension.

6. This proceeding of the 2nd appellant dated 14.08.2013 has not been challenged by the respondent. Pursuant to the proceeding dated 14.08.2013, the District Forest Officer, Thiruvannamalai, had issued proceedings in P.No.2326/13-E2 dated 23.09.2013 fixing the basic salary of the respondent notionally with effect from 15.08.2007, viz. the date on which, his junior Thiru.P.Vajram, was promoted as a Forester. This proceeding of the District Forest Officer is also not challenged. While things stood thus, the respondent had filed a Contempt Petition in Contempt Petition No.600 of 2015 before this Court, complaining that the order of this Court dated 18.04.2013 made in WP No.3093 of 2012, has not been fully implemented, in as much as, he has not been paid salary payable in the post of Forester, with effect from the date of the notional promotion i.e. from 15.08.2007. सत्यमेव जयते

7. This Court had passed an interim direction in the Contempt Application on 17.06.2015, directing the respondents in the Contempt Petition/appellants herein, to settle the monetary benefits from the date on which, the petitioner's immediate junior Vajram was promoted. It is in the above circumstances, this Writ Appeal has been filed by the respondents in WP No.3093 of 2012, contending that the learned Single Judge was not justified in directing payment of the salary, based on the notional promotion granted to the respondent.

8. We have heard Mr.M.Santhanaraman, learned Special Government Pleader (Forest) appearing for the appellants and Mr.T.Sellapandian, learned counsel appearing for Mr.S.Mani, learned counsel for the respondent.

9. The learned Special Government Pleader would contend that on the date, when the junior was promoted, the disciplinary proceedings against the respondent were pending and hence his name was not considered for promotion. Eventually, the disciplinary proceedings ended into an order imposing punishment. Of course, the order imposing punishment was set aside by this Court, in the Writ Petition in WP No.6409 of 2009 on 16.11.2009 and the matter was remitted to the respondents/appellants herein for fresh consideration in accordance with law. Even, before the matter could be reconsidered by the Appellate Authority, viz. the 1st appellant, the respondent retired from service on attaining superannuation on 31.01.2010. Thereafter, on 07.05.2013, the 1st appellant passed the order in the Appeal filed by the respondent, challenging the punishment imposed on him, by the order of the 2nd appellant dated 28.11.2007, allowing the said Appeal and setting aside the punishment. The question that arises for consideration in this Appeal is: Whether a delinquent official who was not promoted due to the pendency of disciplinary proceedings is notionally promoted, after the completion of the disciplinary proceedings, for the purposes of calculating his retirement benefits and pension, would claim payment of salary in the promoted post, without actually working in the said post.

10. Mr. T. Sellapandian, learned counsel appearing for the respondent would rely upon the Judgment of the Hon'ble Supreme Court in Union of India etc., v. K.V.Jankiraman etc., reported in AIR 1991 SCC 2010 (1), and contend that if the employee is exonerated from the charges, he would be entitled to, the salary in the promoted post also, even he had not worked in the promoted post. The said proceedings before the Hon'ble Supreme Court arose against an order passed by the Full Bench of the Central Administrative Tribunal. One of the questions that were considered by the Hon'ble Supreme Court in the said Union of India etc., v. K.V.Jankiraman etc.'s case as framed by the Hon'ble Supreme Court reads as follows:

"3. To what benefits an employee who is completely or partially exonerated is entitled to and from which date?"

11. While answering the said question, the Hon'ble Supreme Court had observed as follows:

"We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it."

The Hon'ble Supreme Court had further observed as follows:

"We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first subparagraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

To this extent we set aside the conclusion of the Tribunal on the said point."

12. While dealing with one of the Civil Appeals viz. Civil Appeal No.3083 of 1990, in which, the delinquent employee's case was considered for promotion, by the Departmental Promotion Committee in August 1982 and the result was kept in a sealed

cover, in view of the pendency of the disciplinary proceedings against him. In October 1985, the disciplinary proceedings ended in complete exoneration. Thereafter, a Departmental Promotion Committee was again constituted in March 1986, which, after consideration of the employee's case, recommended him for promotion with effect from July 26, 1986. Since, the action of the Departmental Promotion Committee in recommending him for promotion, with effect from July 26, 1986 was against the instructions contained in the memorandum of proceeding, the Hon'ble Supreme Court held that the employee would be entitled to promotion, from the date his junior was promoted. While approving the action of the Central Administrative Tribunal in directing the appellants to open the sealed cover and if the Departmental Promotion Committee in 1982 had found him fit for promotion, to give him promotion from the date on which his immediate junior was promoted. On the question of payment of salary in the promoted post, the Hon'ble Supreme Court has observed as follows:

"However, while doing so, the Tribunal has also directed arrears of salary to be paid for intervening period along with all consequential benefits. Since we have held disagreeing with the decision of the Full Bench of the Tribunal that the benefit of the arrears of salary will not flow automatically but will depend upon the circumstances in each case, we modify the said order to the extent it directs the payment of arrears of salary, and direct the appellant authority to consider whether the employee in the circumstances of the case was entitled to any arrears of salary and to what extent. The authority will, of course, give reasons for denial of the whole or part of the arrears of salary."

13. From the observations of the Hon'ble Supreme Court, extracted above, it is clear that payment of salary in the promoted post is not automatic upon the disciplinary proceedings ending in favour of the employee in complete exoneration. It is for the authorities to consider, as to whether the employee would be entitled to salary or not. Such an exercise has been carried out, in the case on hand, when the 2nd appellant by its proceedings dated 14.08.2013 directed notional promotion to be granted to the respondent, with effect from 15.08.2007. And the second appellant has also made it clear that the respondent would be entitled to notional pay fixation and receive his retirement and pensionary benefits on the basis of such notional re-fixation. The respondent has not challenged the said proceedings and the said proceeding has become final.

14. The 2nd appellant while concluding that the respondent would be entitled to notional promotion with effect from 15.08.2007, viz. the date on which his immediate junior was promoted, had taken into account the fact that the punishment has been set aside by the 1st appellant in the proceedings dated 07.05.2013. Therefore, it is clear that the 2nd appellant had considered the question of entitlement of salary in the promoted post and concluded that the respondent would be entitled to only the retirement benefits, based on the notional promotion. There was no claim in fact for payment of salary, which will be evident from the prayer in WP No.3093 of 2012, which reads as follows:

"For the reasons stated in the accompanying affidavit, it is prayed by the petitioner that this Hon'ble Court may be pleased to issue a writ, direction or Order in the nature of Writ of Mandamus directing the respondents to include the name of the petitioner for promotion to the post of Forester in the panel drawn for the year 2006-2007 or 2007-2008 or atleast in the panel for the year 2008-2009 in the appropriate place and further direct the respondents to promote the petitioner notionally in the post of Forester with all consequential service and monetary benefits so as to enable the petitioner to get enhanced pensionary benefits in the category of Forester".

The respondent even in the Writ Petition had only claimed the benefit of notional promotion with all consequential service and monetary benefits, so as to get enhanced pensionary benefits in the category of the Forester.

15. Considering the above, we are of the considered opinion, the learned Single Judge was not right in directing payment of all consequential service and monetary benefits including salary in the promoted post. The question of payment of salary in the notionally promoted post is within the domain of the Authorities and it is for them to decide, of course subject to reason, as to whether such salary should be paid to the delinquent employee, who has been completely exonerated, or not. Hence, we are constrained to interfere with the order of the learned Single Judge, in as much as, it relates to direction for payment of all consequential service and monetary benefits to the respondent.

16. In the result the appeal is partly allowed. The

direction of the learned Single Judge to confer consequential service and monetary benefits to the respondent is set aside. It is, however, made clear that the respondent would be deemed to have been promoted as a Forester with effect from 15.08.2007, viz. the date on which his immediate junior was promoted for the purposes of fixing his last drawn wages to calculate his retirement benefits and pension alone. The respondent cannot claim salary as a Forester, for the period between 15.08.2007 to the date of his retirement i.e. on 31.01.2010. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

jv

To

1. The Secretary to Government
Government of Tamil Nadu,
Environment and Forest Department,
Fort St. George, Chennai 600 009.
2. The Principal Chief Conservator of Forests
Panagal Maaligai,
Saidapet, Chennai 600 015.

+1cc to Special Government Pleader (F) SR.No.28646

W.A.No.228 of 2016
and CMP No.3600 of 2016

RV (CO)
GN (16/05/2018)

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