

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 4.12.2018

CORAM:

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

W.P. No. 9174 of 2017
and
W.M.P. No. 10099 of 2017

The Divisional Personnel Officer,
Tiruchirappalli Division,
D.R.M. Office Complex, Southern Railway,
Trichirapalli - 620 001 ...Petitioner

Vs.

1. R. Selvaraj
2. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104. ...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to O.A.No:310/01462 of 2014 on the file of Central Administrative Tribunal, Madras Bench and quash the order dated 27.06.2016.

For Petitioner : M/s. T. P. Savitha

For Respondents : R1 - No appearance
R2 - Tribunal

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ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The Respondent no.1, on an earlier occasion, filed O.A. No.1144 of 2002 in which an order was passed on 29.08.2003 directing the petitioner to redraw the panel for the post of Technician Grade III. Challenging the aforesaid order, a writ petition was filed, which was also dismissed. The Special Leave

Petition filed has also received the same fate. Thereafter, an order was passed in purported compliance of the orders passed by this Court. Though, notional promotion was given, the difference in salary was not granted and hence the subsequent original application was filed in O.A. No. 310 of 2014, which was once again allowed by placing reliance upon the judgment of the Apex Court. Challenging the same, the present writ petition has been filed.

2. The learned counsel appearing for the petitioner submitted that when the Respondent No.1 did not shoulder the responsibility of the higher post, he is not entitled to the corresponding pay. Reliance has been made on the Railways Fundamental Rules - Pay and Increments with specific reference to FR 17-1 which is extracted hereunder:-

"Subject to any exceptions specifically made in these rules and to the provision of sub-rule(2) a railway servant shall begin to draw the pay and allowances attached to his tenure of post with effect from the date he assumed the duties of the post and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

Thus, it is submitted that the writ petition will have to be allowed.

3. There was no representation on behalf of the first respondent and therefore, we are proceeding with the matter on merits.

4. The fact remains that the Respondent No.1 was inclined to work in the promotional post which was denied by the petitioner. Notwithstanding the order passed by this Court, the same was not implemented in time and only pursuant to the contempt petition filed, the order was passed. That is the reason why the promotion was given notionally. Now, the only question for consideration is as to whether the Respondent No.1 is entitled to the difference in pay in the promoted post, though not actually worked.

5. We are not dealing with the case in which the principle of "no work no pay" would be made applicable automatically. The Respondent No.1 was always ready and willing to work in the promotional post. It was denied due to the conduct of the petitioner. The Tribunal has rightly relied upon the decision

of the Apex Court in Ramesh Kumar v. Union of India (2016) 1 SCC (L&S) 781. The operative portion of the said decision reads thus:-

"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 are concerned that depends upon case to case. In State of Kerala & Ors v. 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:-

"4..... 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.

16. The impugned orders passed by the High Court are set aside and this appeal is allowed. The respondents shall release the arrears of pay and allowances to the appellant for the period from 01.08.1997 till the date of his actual promotion that is 13.11.2000 in the promotional post of Naib Subedar within eight weeks from today. No order as to costs."

6. In the light of the above, we are of the considered view that the reliance made by the learned counsel appearing for the petitioner to the Rule has got no application. The aforesaid Rule will have an application when the officer is not working in a higher post which he is supposed to do. Therefore, the same will have no application when the first respondent was not responsible for the same. In such view of the matter, we do not find any error in the order of the Tribunal granting relief to the first respondent placing reliance on the law laid down in case of Ramesh Kumar (supra).

7. In view of the above, the writ petition stands dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.

+lcc to M/s. T. P. Savitha, Advocate sr.no.83280

W.P. No. 9174 of 2017

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