

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.1357 of 2013

R.Selvamani

.. Petitioner

Vs.

1. The Tamil Nadu Civil Supplies Corporation,
Rep by its Chairman Cum Managing Director,
42, Thambuswamy Road, Chennai 10.

2. The Tamil Nadu Civil Supplies Corporation,
Rep by its Regional Manager (ic),
Dharmapuri Region, Dharmapuri.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings AE 13/20880/2012 dated 20.06.2012 of the 1st respondent along with the consequential proceedings Na Ka No E1/77/2009 dated 14.08.2012 of the 2nd respondent, quash both the orders in so far as it has restricted the monetary benefits only to the retirement benefits and consequently direct the respondents to release the difference of pay and allowance due between the lower post of Deputy Manager (Quality Control) and the promoted post of Manager (Quality Control) from 01.07.2002 to 31.05.2009.

For Petitioner : Mr.S.Venkataraman

For Respondent : Mr.L.P.Shanmugasundaram, (for R1&R2)
Spl.GP (Co-op)

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O R D E R

This instant writ petition is one for a certiorarified mandamus, calling for the records relating to the proceedings AE 13/20880/2012 dated 20.06.2012 of the Chairman cum Managing Director, Tamil Nadu Civil Supplies Corporation, along with the consequential proceedings Na Ka No E1/77/2009 dated 14.08.2012 of the Regional Manager, Tamil Nadu Civil Supplies Corporation, quash both the orders in so far as it has restricted the monetary benefits only to the retirement benefits and consequently direct the respondents to release

the difference of pay and allowance due between the lower post of Deputy Manager (QC) and the promoted post of Manager (QC) from 01.07.2002 to 31.05.2009.

2. The petitioner was working as Deputy Manager (QC). When the panel was drawn for promotion as Manager (QC) on 10.12.2002 for the year 2002, his name was not included in the panel stating that he was suffering penalty for stoppage of increment for 3 years which had been imposed on him earlier. He was also facing for certain other charges which ended in stoppage of increment for 5 years with cumulative effect. The petitioner was therefore not given any promotion from 2002 to 2009 and resultantly, he had to retire as Deputy Manager (QC).

3. The petitioner states that the punishments are which were imposed on him were set aside by this Court by the orders in W.P.No.32013 of 2003, dated 29.08.2009 and in WP.No.29756 of 2004, dated 03.07.2009. The two penalties imposed on the petitioner were set aside. The result was that the petitioner had been wrongly not been included for the panel of Manager (QC). The petitioner therefore filed WP.No.17257 of 2011, for a direction to include the petitioner in the panel of Manager (QC) for the year 2002. This Court by an order dated 31.01.2012 in WP.No.17257 of 2011, allowed the writ petition. This Court observed as under:-

"9. Be that as it may, what is important for the grant of promotion is suitability of the person at the relevant point of time. This is something which the respondents are obliged to consider. The only reason why the petitioner was not even considered for inclusion in the panel at the relevant point of time was that he was undergoing two sets of penalties. Now that impediment has been removed. It is always open to the respondents to take up the case of the petitioner and assess whether he was suitable at the relevant point of time for promotion at all. Ultimately, it depends upon the suitability of the person for promotion.

10. Therefore, the writ petition is disposed of directing the respondents to consider whether the petitioner was otherwise suitable for promotion to the post of Manager (Quality Control) at the relevant point of time, having regard to his record of service and pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of copy of this order. Consequently, connected MP is closed. No Costs."

4. In compliance of the order of this Court the Chairman cum Managing Director, Tamil Nadu Civil Supplies Corporation, by an order dated 20.06.2012, instructed the Regional Manager, to fix the pay of the petitioner in the cadre of Manager (QC)

as per the instructions in G.O.Ms.No.120 Personnel and Administrative Reforms (FR.VI) Department, dated 06.07.2001, notionally for the purpose of pension, gratuity (subject to eligibility) and encashment of Earned Leave, Unearned Leave on private affairs to the petitioner. The said letter dated 20.06.2012, reads as under:-

By virtue of the above directions of the Hon'ble High Court, the name of Thiru. R.Selvamani. Deputy Manager (Quality Control) retired on 31.05.2009. Dharmapuri Region is ordered to be included in the final list of panel of Manager (Quality Control) for 2002 at Serial No.4-A in between Thiru. S.Vijayaraghavan. Manager (Quality Control) at Serial No.4 and Thiru. P.Shanmuganandavadivelu, Manager (Quality Control) at Serial No.5 already published vide Head Office Procs. 112/104982/2002 ch. 27.06.2003. The Regional Manager, Dharmapuri is instructed to fix the pay in the cadre of Manager (Quality Control) (as per the instructions of the G.O.Ms.No. 120P & AR Dept, dt. 06.07.2001) notionally for the purpose of pension, gratuity (Subject to eligibility) and encashment of Earned Leave. Unearned Leave on private affairs to Thiru. R.Selvamani. Deputy Manager (Quality Control), retired on 31.05.2009. Dharmapuri Region. The Regional Manager, Dharmapuri Region is requested to make necessary entries in the Service Register of Thiru. R.Selvamani. Deputy Manager (Quality Control), retired on 31.05.2009, Dharmapuri Region and send the revised gratuity proposal to Head Office."

5. The consequential orders were passed and by an order dated 14.08.2012. The petitioner was paid the amount as directed in the order dated 20.06.2012. Since these orders restricted the payment of retirement benefits, the instant writ petition has been filed. The respondents have not filed their counter.

6. Heard the counsel for the parties.

7. The other issue which arises in this case is as to whether the petitioner would be entitled to arrears of salary for the post of Manager (QC) between 01.07.2002 to 31.05.2009 or not. Neither the petitioner nor the respondents have filed the orders of this Court dated 29.08.2009 in W.P.No.32013 of 2003, and order dated 03.07.2009 in WP.No.29756 of 2004, by which the punishment given to the petitioner has been set aside.

8. A perusal of the order dated 31.01.2012 in WP.No. 17257 of 2011, shows that the order in WP.No.29756 of 2004 was

set aside on the ground of technicalities. The matter was not remitted back to the authorities for the reason that the petitioner had reached the superannuation on 31.05.2009 and the petitioner was permitted to retire. The said order also states that pursuant to the two orders exonerating the petitioner from punishments, the increments which has been stipulated were also released by an order dated 22.07.2010 by the Managing Director, Tamil Nadu Civil Supplies Corporation. The retirement portion of the order dated 31.01.2012, reads as under:-

"In pursuance to the directions of the Hon'ble High Court, Madras in W.P. No. 32013 of 2003 dated 19.8.2009 and based on the legal opinion letter dated 13.7.2010 received from the standing counsel, Tamil Nadu Civil Supplies Corporation, the Regional Manager/. Dharmapuri Region is instructed to release the stoppage of increment for 3 years with held vide G.M. (A) procs. G6/ 86704/ 2001 dated 18.9.2002. After giving effect to the above release of increments for 8 years (release of increments for 5 years ordered in WP.No. 29756 of 2004 dated 3.7.2009 and release of increments for 3 years ordered in W.P.No. 32013 of 2003 dated, 19.8.2009)/- the R.M. Dharmapuri is instructed to send suitability reports/ and Service Register of Thiru.R.Selvamani/ Deputy Manager (Quality Control) retired on 31.5.2009, Dharmopur.i Region to Head Office for considering hie name tor inclusion in the panel of Manager (Quality Control) subject to eligibility. "

9. This Court in the order dated 31.01.2012 therefore directed the respondents to consider as to whether the petitioner should be given promotion on the ground that the petitioner had been exonerated from the charges. A perusal of the impugned order passed by the respondents would show that they have relied on G.O.Ms.No.120 Personnel and Administrative Reforms (FR.VI) Department, dated 06.07.2001, to consider the issue as to whether the petitioner would be entitled for promotion to the post of Manager (QC), at the relevant point of time, regard to his record on service. In the impugned order, the respondents have included the petitioner in the panel list of Manager (QC) at Sl.No.4-A in between Thiru.S.Vijayaraghavan, Manager (QC) at Sl.No.4 and Thiru.P.Shanmuganandavadivelu, Manager (QC) at Sl.No.5. The respondents have found that the petitioner is entitled for promotion and have given the benefits on pension and gratuity to the petitioner as if he was Manager (QC) on the date of the retirement.

10. The question that arises is as to whether the petitioner is entitled to the arrears of salary also. In the absence of two orders W.P.No.32013 of 2003, dated 29.08.2009 and WP.No.29756 of 2004, dated 03.07.2009, this Court cannot arrive at conclusion as to what is the nature of exoneration. G.O.Ms.No.120 Personnel and Administrative Reforms (FR.VI) Department, dated 06.07.2001, only talks of the notional fixation of pay on the date of retirement for the purpose of pension and other monetary terminal benefits. G.O.Ms.No.120 Personnel and Administrative Reforms (FR.VI) Department, dated 06.07.2001, does not talk of grant of arrears of pay. The impugned order does not have any discussion as to whether the petitioner is entitled to arrears of pay at all or not.

11. The Hon'ble Supreme Court of India, in the case of Union of India & Others Vs. K.V.Jankiraman & Others, (1991) 4 SCC 109, held as under:-

"23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1) of the Fundamental Rules and Supplementary Rules which reads as follows:

"F.R. 17. (1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that 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."

24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and

the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension, When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. 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. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. 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 sub-paragraph 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."

12. A perusal of the aforesaid judgment would show that the payment of salary arrears is not automatic and it depends on the facts of each case and depends on the order exonerating the delinquent Officers. If the absence of any discussion in the impugned order, this Court finds that the order dated 31.01.2012 in WP.No.17257 of 2011, quoted supra, has not fully complied with. In view of the same, the matter is once again remitted back to the respondent to look in to the nature of allegations, the order exonerating the petitioner to come to a conclusion as to whether the petitioner is entitled to arrears of salary between 01.07.2002 to 31.05.2009 or not. Keeping in mind, the order of this Court dated 31.01.2012, allowing the writ petition in WP.No.17257 of 2011 setting aside the punishment, this Court remit the matter back to the respondent 1 to consider the issue and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order. Writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Pkn.

To

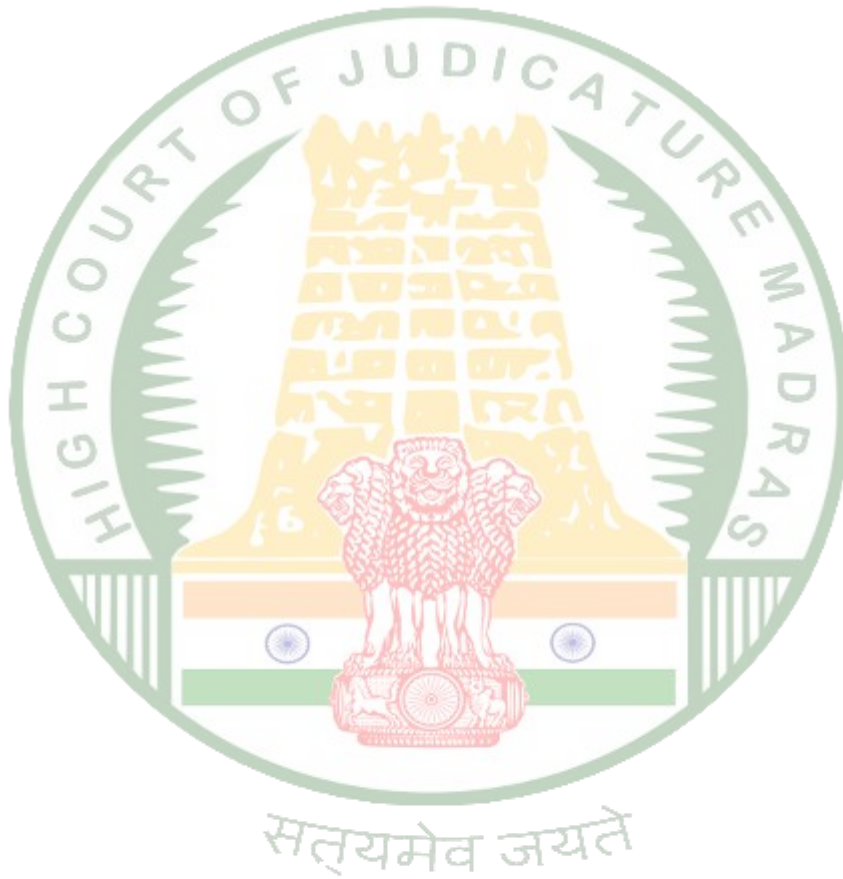
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+1cc to Mr.S.Venkataraman, Advocate SR.88922
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W.P.No.1357 of 2013

BR(CO)
CB(29/11/2019)



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