



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.15634 of 2013

R.Krishnasamy

.. Petitioner

Vs.

1.The Principal Secretary to
Government Rural Development
and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Rural Development
and Panchayat Raj, Panagal Building,
Saidapet, Chennai - 600 015.

3.The Principal Accountant General (A & E),
Tamil Nadu, Teynampet,
Chennai - 600 018.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to G.O.(D). No.165 RD & PR (E1) Department dated 16.04.2013 and quash the para No.5 of the said G.O. insofar as it relates to the notional fixation of pay of the petitioner is concerned and consequently direct the respondents to sanction the pay and other allowances with attendant monetary benefits with effect from 12.10.1998 on par with his junior and also to refix the pensionary benefits of the petitioner with effect from 01.04.2008 with 18% composite interest.

For petitioner : Mr.Veera Kathiravan,
Senior Counsel for
M/s.Veera Associates

For respondents 1 & 2 : Mr.S.Dhayalan,
Government Advocate

For 3rd respondent : Mr.P.Gunasekaran



ORDER

This writ petition has been filed by the petitioner challenging paragraph No.5 of G.O.(D).No.165 RD & PR (E1) Department dated 16.04.2013, insofar as it relates to the notional fixation of pay of the petitioner is concerned and consequently direct the respondents to sanction the pay and other allowances with attendant monetary benefits with effect from 12.10.1998 on par with his junior and also to refix the pensionary benefits of the petitioner with effect from 01.04.2008 with 18% composite interest.

2.It is the case of the petitioner that while he was working as P.A. (Development) to the District Collector, Perambalur District, he was issued with a charge memo for certain panchayat level audit objections and subsequently, the District Collector, as per his letter dated 20.07.1998, forwarded all the relevant documents to the first respondent recommending for inclusion of the name of the petitioner in the panel for promotion to the post of Joint Director for the year 1998-99. But, the first respondent has not considered the said letter and not included the name of the petitioner in the panel. Hence, the petitioner filed O.A.No.259 of 2000. The Administrative Tribunal has, by order dated 24.01.2000, directed the authorities to include the name of the petitioner in the panel for the year 1999-2000 without reference to the charges framed and to give promotion to the petitioner and such promotion will be subject to the result of the O.A. The said order was implemented only on 08.03.2002 and he was promoted as Joint Director. In the meanwhile, the Government imposed punishment of stoppage of increment for one year without cumulative effect for the charges framed, against which the petitioner filed a review petition before the Government. The Government, by order dated 25.03.2008, set aside the above punishment and dropped further action on the charges framed.

3. It is the further case of the petitioner that as the charges have been dropped, the petitioner has submitted a representation on 20.05.2008 requesting for inclusion of his name in the panel for the year 1998-99 for the post of Joint Director by giving retrospective promotion on par with his immediate junior and for monetary benefits. As there was no response to the same, the petitioner had filed W.P.(MD).No.5528 of 2010 and it was disposed of by this Court by order dated 22.04.2010 directing the respondents to consider the representation of the petitioner dated 20.05.2008. After filing of a contempt petition, on 16.04.2013, the Government has passed the impugned order. But, in the impugned order, there is no mentioning about refixation of the pensionary and monetary benefits from 12.10.1998, the date on which his immediate junior was promoted. Hence, the petitioner has come up with this writ petition for the aforesaid prayer.



4. The learned senior counsel appearing for the petitioner submitted that if the Government included the name of the petitioner in the panel for the year 1998-1999, based on the recommendation of the District Collector, dated 20.07.1998, the petitioner could have got promotion in time and availed monetary benefits from the date of promotion of his immediate junior. As the same was not done and now the petitioner retired from service, he is entitled to get notional promotion on bar with his immediate junior and monetary benefits with 18% composite interest from 12.10.1998 and refixation of his pensionary benefits with effect from 01.04.2008 with 18% interest as provided in G.O.No.173, Finance (Pension) Department, dated 01.04.2004. He would further submit that as the charges against the petitioner is dropped, he is entitled to salary of the promotional post with interest. Thus, he prayed to allow this petition.

5. The learned Government Advocate submitted that during the relevant period, charges were pending against the petitioner and therefore, he was not considered for promotion and that the petitioner has not worked in the said post and therefore, as per the normal rule of "No work - No pay" he is not eligible for monetary benefits in retrospective effect ie., from 12.10.1998, that too with interest. Thus, he prayed to dismiss this writ petition.

6. Heard the learned senior counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

7. When the issue arises as to whether an employee is entitled to arrears of pay for the period of notional promotion preceding the date of actual promotion after the quashing/dropping of the charges framed against him, a Full Bench of the Hon'ble Supreme Court in the decision in **Union of India Vs. K.V.Janakiraman** reported in **AIR 1991 SC 2010** has held as follows:

"7..... 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 be promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether the 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 from 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 the place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled 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 authorities by taking into consideration of 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."

8. The above decision makes it clear that the authority concerned has right to decide as to what extent the employee will be entitled to arrears of pay for the period of notional promotion preceding the date of actual promotion.

9. Admittedly, in this case, the charges were framed against the petitioner on 08.05.1997 for the irregularities in the purchase of electrical goods from Panchayat Funds. However, the District Collector has sent a letter, dated 22.07.1998, to the first respondent for early action in respect of inclusion of the petitioner's name in the panel for promotion to the post of Joint Director for the year 1998-99. But, the letter of the District



panel for the year 1998-99, the name of the petitioner was not included. If the letter of the District Collector dated 22.07.1998 was considered by the first respondent, the petitioner could have got included in the panel for promotion and promoted on par with his junior. In the meantime, his junior was stated to be promoted to the said post on 12.10.1998. Thereafter, the petitioner filed O.A.No.259 of 2000 before the Administrative Tribunal. By order dated 24.01.2000, the Tribunal directed the respondents to include the name of the petitioner in the panel for the year 1999-2000 without reference to the charge memo dated 08.05.1997 and give him promotion, subject to the result of the O.A. But, the said order was given effect belatedly on 08.03.2002. The delay was caused only by the respondents. If the order dated 24.01.2000 had been implemented in letter and spirit, the petitioner could have got promotion earlier. But, the respondents have not done so.

10. Considering the peculiar facts and circumstances of this case and also considering the fact that the delay in giving promotion was caused only by the respondents, paragraph No.5 of the impugned order dated 16.04.2013 is set aside and this Court directs the respondents to notionally fix the pay scale of the petitioner as Joint Director from 12.10.1998, the date on which his immediate junior was promoted and pay the difference amount of pay and other allowance till the date of his retirement. Consequently, the petitioner is also entitled to refixation of pensionary benefits with effect from 01.04.2008 the date on which he retired from service and the arrears amount, if any, with interest at the rate of 18% p.a., as per the decision of this Court in **P.V.Mahadevan Vs. The Secretary to Government, Housing and Urban Development Department, Chennai and another**, reported in **2011 (2) CWC 401**. The above exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. This Writ Petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

gcg



To

1.The Principal Secretary to
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and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Rural Development
and Panchayat Raj, Panagal Building,
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3.The Principal Accountant General (A & E),
Tamil Nadu, Teynampet,
Chennai - 600 018.

+1 CC to M/s.SPL GP (SR-103263[F] dated 04/12/2019)

+1 CC to M/s.VEERA ASSOCIATES, (SR-103357[F] dated 04/12/2019)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-103568[F] dated 05/12/2019

Order made in
W.P (MD) No.15634 of 2013
03.12.2019

JMN(19.12.2019) 6P : 7C