



WEB COPY

WA(MD)No.1217 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD]No.1217 of 2015

and

M.P.[MD]No.2 of 2015

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Health and Family Welfare (AA1) Department,
Secretariat, Chennai - 600 009.

2.The Director of Medical and Rural Health Services,
Chennai - 6, Teynampet.

: Appellants / Respondents

Vs.

S.Nithyanandam

: Respondent / Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 27.06.2014 passed in W.P(MD)No.9459 of 2011.

Prayer in WP(MD). 9459/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records relating to the order passed by the 1st Respondent in her proceedings Letter No.12258/AA1/2011-2 dated 05-07-2011 and quash the same as illegal and consequently direct the 1st Respondent to notionally promote the Petitioner as Deputy Director (Administration) in the light of the panel drawn by the 2nd Respondent for the year 2010-11 along with all monetary and retirement benefits within the period that may be stipulated by this Court.

For Appellants	: Mr.V.R.Shanmuganathan Special Government Pleader
For Respondent	: Mr.M.Jerin Mathew

JUDGMENT

[Judgment of the Court was delivered by
THE HONOURABLE CHIEF JUSTICE]

Heard learned counsel for the appellants / State. This appeal questions the correctness of the impugned judgment dated 27.06.2014 of the learned Single Judge.



2.The impugned Judgment extends the benefit of notional promotion to the respondent / writ petitioner on the post of Deputy Director, Health and Family Welfare, on the ground that inspite of the respondent / writ petitioner having been considered in the panel and placed at Serial No.2 and inspite of the second vacancy being available, his promotion had been erroneously withheld and hence, he was entitled to all such benefits.

3.Learned counsel for the appellants / State contends that since no junior to the respondent / writ petitioner had been considered, there was no occasion for the respondent / writ petitioner to have been extended the said benefit and he has invited the attention of the Court to the order passed by the authority, dated 05.07.2011, that was impugned in the writ petition before the learned Single Judge.

4.We have considered the submissions raised and having heard the learned counsel for the respondent / writ petitioner, who was seeking an adjournment, we find that the aforesaid reason of no junior having been promoted, is no valid reason for not considering the claim of the respondent / writ petitioner. Secondly, the recital that the respondent / writ petitioner had not reached zone of consideration also appears to be incorrect, inasmuch as it is undisputed that the respondent / writ petitioner had been considered and placed in the panel that was drawn by the appellants themselves. Thirdly, we find that the second post, which has been claimed by the respondent / writ petitioner was available and the appellants failed to consider the claim of the respondent/ writ petitioner against the said post. Thus, on all three grounds and for the additional reasons already given by the learned single Judge, the order rejecting the claim of the respondent / writ petitioner, dated 05.07.2011 was rightly quashed.

5.Learned counsel for the appellants then contends that the respondent / writ petitioner cannot seek any consequential benefits as extended by the learned single Judge on the ground that the respondent / writ petitioner was not actually promoted nor did he work on the promoted post.

6.On this, learned counsel for the respondent / writ petitioner submits that the respondent / writ petitioner may be extended the benefits of notional promotion only and he will not be claiming any arrears of salary, but his other consequential benefits may be saved. We consider it appropriate to mention that respondent was never unwilling to perform duties on being granted promotion. It was the appellant employer that created the impediment through the order that was under challenge. The offer made by the learned counsel for the respondent petitioner, therefore, deserves acceptance.



7. Accordingly, we partly allow the appeal confirming the impugned Judgment, dated 27.06.2014 subject to the modification that the respondent / writ petitioner will be entitled to the notional benefits of promotion which shall also be available to him for the purpose of pay fixation and other consequential post retirement benefits, except arrears of salary. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

rj2/pjl

+1cc to Mr.M.E.Ilango, Advocate, Sr.No.105864

+1cc to SPL Gp SR.No.105585

JUDGMENT MADE IN
W.A. [MD]No.1217 of 2015
and
M.P. [MD]No.2 of 2015
17.12.2019

VB(02.01.2020) 3P 3C