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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	18.08.2021
PRONOUNCED ON	15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29703 of 2018

(Through Video Conferencing)

M.Umasankari

...Petitioner

Vs

1. The Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Chairman and Managing Director,
Tamil Nadu Tourism Development
Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai - 600 002.
3. The General Manager,
Tamil Nadu Tourism Development
Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai - 600 002.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records relating to order vide Proc.No.1519/A2/2018 dated 07.07.2018 passed by the second respondent and quash the same and direct the respondents to grant arrears of pay and allowances and pension with interest thereon at the rate of 18% per annum upon notional fixation of Pay at Rs.16,100/- with grade pay of Rs.4400/- in the pay band of Rs.9300-34800 + GP Rs.4400/- for the post of Assistant Manager, w.e.f. 01.06.2012 and at Rs.18700/- with grade pay of Rs.4600/- in the pay band of Rs.9300-34800 + GP Rs.4600/- for the post of Deputy Manager w.e.f. 14.07.2015.



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For Petitioner : M/s.N.Alagu Narayanan
For Respondents :
For R1 : Mr.V.P.R.Elamparithi
Government Advocate
For R2 & R3 : Mr.Vinay Datha

ORDER

The present writ petition has been filed to quash the impugned order dated 07.07.2018 bearing reference No.1519/A2/2018 passed by the second respondent and to direct the respondents to grant arrears to pay and allowances and pension with interest thereon at the rate of 18% per annum upon notional fixation of pay at Rs.16100/- with grade pay of Rs.4400/- for the post of Assistant Manager w.e.f. 01.06.2012 and at Rs.18700/- with grade pay of Rs.4600/- for the post of Deputy Manager w.e.f. 14.07.2015.

2. The petitioner has already retired from the service of the respondent on 28.02.2017. Earlier, the petitioner was subjected to a disciplinary proceedings. A punishment order was passed on 18.07.2008, whereby the petitioner was downgraded to the post of Junior Grade Assistant from the post of Selection Grade Assistant.

3. The petitioner had challenged the said punishment order in W.P.No.11253 of 2009. By an order dated 02.11.2010, the aforesaid order was set aside and fresh disciplinary proceedings was directed to be initiated against the petitioner. The petitioner was thereafter imposed with the punishment of censure by the Disciplinary Authority on 29.09.2014. Further, the appeal of the petitioner was allowed by the Appellate Authority. While allowing the appeal the Appellate Authority dropped all the charges but at the same time the petitioner was warned to not to give any room of such complaint in future. Meanwhile, the petitioner's junior was promoted as a Deputy Manager. Thereafter, on 11.01.2018 after the petitioner was normally promoted on 18.07.2018 the respondent also decided to implement G.O.Ms.No.22 dated 24.02.2014 in the case of petitioner and granted notional benefit to the petitioner. It is submitted that the respondent has not paid the arrears of pay to the petitioner, which the petitioner would have got, if she had actually been promoted in time. On behalf of the petitioner, the following decisions were cited:-

1. Union of India ETC.ETC. Vs. K.V.Jankiraman
ETC. ETC. (1991 AIR 2010, 1991 SCR (3) 790)



2. Madras High Court

R. Sooriaprebha Vs. The Under Secretary to Government

4. In this connection, the learned counsel for the petitioner place reliance on the decision of the Hon'ble Supreme Court in Ramesh Kumar Vs Union of India and others AIR 2015 SC 2904, subsequent reference was made in para 12 and para 13 which reads as under:

"12. 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 is concerned that depends upon case to case.. In State of Kerala & Ors. vs. 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:-

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.



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The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

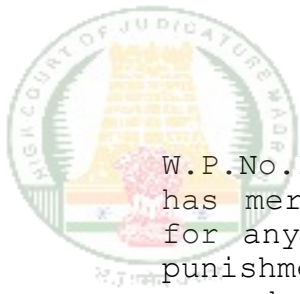
13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work in 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."

5. The learned counsel for the respondent submits that the petitioner was subjected to a disciplinary proceedings. It is submitted that though the earlier proceeding was dropped vide order dated 29.09.2014, the Appellate Authority while dropping the charges against the petitioner nevertheless observed that the petitioner should not give any room for such complaint in future. It is therefore submitted that the petitioner was responsible for the delay in her getting promotion in time since the petitioner has not served either in the capacity of an Assistant Manager and as a Deputy Manager during the period, the petitioner is not entitled for any arrears of pay on par with her immediate Junior Grade who was promoted, as the petitioner was not promoted.

6. The learned counsel for the respondent submits that in the Post of Junior Grade Assistant it was held that in appropriate case arrears need not be paid as the petitioner conduct invited Disciplinary Proceedings and the Disciplinary Proceedings was not on account of any fault of the respondent.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents. Perused the impugned orders.

8. Though the petitioner was subjected to a disciplinary proceedings which culminated in a punishment order dated 18.07.2008, bearing reference in H.O.Procs.No.4641/A1/07, the order of punishment was dropped by the Appellate Authority by an order dated 10.07.2015, pursuant to an order passed in



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W.P.No.11253 of 2009 dated 02.11.2010. The Appellate Authority has merely warned the petitioner to not to give scope or room for any complaints in future. That being the case, the previous punishment imposed against the petitioner stands completely erased.

9. Under these circumstances, the petitioner should have been given promotion with retrospective effect together with monetary arrears, had she been promoted earlier. The Hon'ble Supreme Court in Ramesh Kumar vs. Union of India and others AIR 2015 SC 2904, relied by both the learned counsel for the petitioner and the respondents indicates that even in absence of any statutory provisions, normal rule is "no work no pay". However, in appropriate case, The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the petitioner for promotion and not allowing the petitioner to work in a post of Assistant Manager and Deputy Manager carrying higher pay scale.

10. Therefore, there is no justification in not granting the arrears to the petitioner which the petitioner would have been otherwise entitled to had she been promoted in time. There is no merits in the stand of the respondents in this writ petition. Consequently, the impugned order dated 07.07.2018, passed by the second respondent stands quashed and the respondents are directed to pay arrears of pay / allowances and send a revised proposal for grant of higher pension based on the above observations.

11. Since there is a considerable delay the respondents shall also pay interest at 7.5% on the delayed payment of arrears. This exercise shall be carried out by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

12. The writ petition stands allowed with the above directions/observations. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

rgm/drl



To

1. The Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2. The Chairman and Managing Director,
Tamil Nadu Tourism Development
Corporation Limited.,
Tourism Complex, No.2, Wallajah Road,
Chennai - 600 002.

3. The General Manager,
Tamil Nadu Tourism Development
Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai - 600 002.

+3cc to M/s.N.Alagu Narayanan, Advocate, S.R.No.58469

+1cc to the Government Pleader, S.R.No.58885

W.P.No.29703 of 2018

GSM(CO)
RGA(03/01/2022)