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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.27262 of 2015

and

M.P.No.1 of 2015

A.Manjunathan (Deceased)

(*) C.Harihara Vigneshwari

(substituted as LR's of Deceased sole petitioner
vide order dated 04.01.2022 in
W.M.P.No.26494 of 2021 in
W.P.No.27262 of 2015)

...Petitioner

Vs

The District Collector,
Dharmapuri District,
Dharmapuri.

...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for entire records in connection with the impugned Cancellation Order issued by the respondent vide his proceedings in Na.Ka.No.9260/2013/K2 dated 17.12.2013 cancelling the promotion order promoting the petitioner to the post of Deputy Block Development Officer and quash the same and direct the respondent to pay all the consequential and attendant benefits to the petitioner from 03.09.2013 as if the petitioner performed his duties in the promoted post of Deputy Block Development Officer within a stipulated time.

For Petitioner : Ms.A.Pramila

For Respondent : Mr.P.Ganesan
Government Advocate

O R D E R

Thiru.A.Manjunathan, who was appointed to the post of Junior Assistant in the Rural Development department on 16.1.1999 and subsequently promoted as Assistant on 05.10.2005. Later his name was included in the Panel for Promotion for the post of Deputy Block Development Officer, through the proceedings of the



respondent dated 03.06.2013. The panel was upheld and he was issued with a Promotion order on 03.09.2013, promoting him to the post of Deputy Block Development Officer (Adi Dravida, Pennagaram).

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2. On 13.09.2013, the Government employee was issued with a charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'Rules'). By referring to the charges under Rule 17(b), the petitioner's Promotion order, dated 13.09.2013 was cancelled through an impugned order dated 17.12.2013. Pending the Writ Petition, the Government employee had expired and is now substituted by his widow, who is the petitioner herein.

3. Learned Counsel for the petitioner would submit that, since the petitioner's husband was promoted on 03.09.2013, the respondent has no authority to cancel the Promotion order, based on the subsequent disciplinary action. The learned Special Government Pleader on the other hand would submit that the petitioner's husband, though was promoted on 03.09.2013, was not relieved from the post of Bhoodan Inspector till 31.01.2015 and therefore, the respondent was justified in cancelling the Promotion order.

4. Under Tamil Nadu Civil Services (Discipline and Appeal) Rules, whenever departmental action is pending as against the Government employee, the authorities may be empowered to withhold any Promotions to an employee who is facing the charges. The authorities may also be empowered to place such a Government employee under suspension, pending disciplinary action or withhold inclusion of the delinquent's name in a Panel for Promotion. However, the Tamil Nadu Civil Services (Discipline and Appeal) Rules or any other Service Rules does not provide for cancellation of a Promotion, which has already been given, prior to the framing of charges under Rule 17(b). What would be relevant to determine a Promotion, would be the crucial date for consideration of a Government employee's candidature for Promotion. When admittedly, the petitioner was found to be fit for Promotion as on the crucial date and accordingly, a Promotion order that was also issued on 03.09.2013 itself, the authorities have no jurisdiction to retrospectively cancel such a Promotion order, based on the subsequent framing of charges.

5. In this background, it is seen from the counter affidavit filed by the respondent, that the name of the petitioner's husband was included in the Panel for Promotion, to the post of Deputy Block Development Officer, through the proceedings of the District Collector dated 03.06.2013. Apparently, his name was considered for Promotion, since there was no departmental action



pending against him on the crucial date. It is in this background, the Promotion order has also been given on 31.01.2003. In the absence of any provisions under the Service Rules, empowering the respondent to retrospectively cancel the Promotion given, the present impugned order cannot be sustained.

6. A mere reference that the petitioner was not relieved from the post, will not entitle the respondent to cancel a Promotion order, which has already been given. There are no Rules or Regulations governing such an action, to retrospectively cancel a Promotion, on the ground that the incumbent was not relieved from the post or that he had not joined the Promotional post.

7. For the reasons cited above, the proceedings of the respondent in Na.Ka.No.9260/2013/K2, dated 17.12.2013 is set aside. Consequently, there shall be a direction to the respondent herein, to disburse all the death cum retirement benefits, along with other pensionary benefits, including family pension, due to the Government employee namely A.Manjunathan, to the petitioner herein, together with continuity of service, by taking into account that the petitioner's husband was holding the post of Deputy Block Development Officer, with effect from 03.09.2013 onwards. Such an action of disbursing the monetary benefits shall be done atleast within a period of four (4) weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed, accordingly. The connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

Dated : 12.01.2022

**(*) Corrected as per Letter
dated 19.01.2022 made in
W.P.No.27262 of 2015**

Sd/-

Sub Assistant Registrar(CO II)

Dated : 19.01.2022

//True Copy//

Sub Assistant Registrar

gd



To

The District Collector,
Dharmapuri District,
Dharmapuri.

**To be Substituted
the order already
Despatched on
12.01.2022**

+1cc to Mr.P.Nethaji, Advocate, S.R.No.739
+1cc to the Government Pleader, S.R.No.1073

W.P.No.27262 of 2015

PVS[co]
NSK 12/01/2022
NSK 19/01/2022