



W.P.No.15615 of 2018

and

W.M.P.Nos.18533 and 18534 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:15.12.2022

Coram:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.15615 of 2018

and

W.M.P.Nos.18533 and 18534 of 2018

Tmt.M.Senthamil Selvi,  
Section Officer,  
School Education Department,  
Secretariat, Chennai 600 009.

.. Petitioner

/versus/

1.The Secretary to Government,  
Personnel and Administrative Reforms  
Department,  
Secretariat, Chennai-600 009.

2.The Secretary to Government,  
School Education Department,  
Secretariat, Chennai 600 009.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 1<sup>st</sup> respondent issued in G.O.(D) No.9, Personnel and Administrative Reforms (H) Department,



WEB COPY

W.P.No.15615 of 2018

and

W.M.P.Nos.18533 and 18534 of 2018

dated 23.02.2015 and also the letter No.29113/H1/2016-1, dated 28.12.2016 and quash the same and consequently, direct the 1<sup>st</sup> respondent to sanction the monetary benefits from the date of her junior Thiru.K.Venkatesan was promoted as Section Officer (i.e. on 31.12.2010) as it was given to others, within a reasonable period as may be fixed by this Hon'ble Court .

For Petitioner :Mr.T.R.Ranganathan

For Respondents :Mr.T.Chezhiyan, AGP for R1 & R2

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### ORDER

When the promotional panel as on 01.06.2010 was drawn for the post of Section Officer, the name of the petitioner, who was serving as Assistant Section Officer, was omitted to be included on the ground that a charge memo against her was pending at the relevant point of time. Subsequently, on 25.11.2014 the charge against the petitioner came to be dropped.



WEB COPY

W.P.No.15615 of 2018  
and  
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2. Section 7 of the Tamil Nadu Government Servant (Conditions of Service), Act 2016 (in short “the Act”) provides for the mode in which approved promotion list should be drawn and the manner of such preparation is provided in Schedule XI of the Act. As per Schedule XI (II) (1), in case, where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion.

3. In accordance with this provision, the petitioner was granted retrospective promotion on par with his junior with effect from 31.12.2010 through G.O.(4D), No.9, Personnel and Administrative Reforms Department, dated 23.02.2015. However, the Government Order



WEB COPY

W.P.No.15615 of 2018  
and  
W.M.P.Nos.18533 and 18534 of 2018

directed for fixation of her notional pay under Fundamental Rule 27 Ruling 17 from the date of appointment of her junior. In consequence to the Government Order, the first respondent herein had passed an order dated 28.12.2016, holding that the petitioner was entitled for notional fixation, with effect from 31.12.2010 and the monetary benefits from the date of assumption of charge in the post of Section Officer. The petitioner now questions the denial of the monetary benefits from the date on which she was notionally promoted.

4. Mr. T.Ranganathan, learned counsel appearing for the petitioner placed reliance on certain decisions of this Court and submitted that the principle of “No work No pay” will not be applicable in the cases where the denial of promotion was not due to the fault of the petitioner.

5. Per contra, Mr.T.Chezhiyan, learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that when Fundamental Rules 27 Ruling 17 specifically provides for



W.P.No.15615 of 2018

and

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WEB COPY

fixation of pay from the date of assumption of the charges in the higher post, where the seniority has been restored, there is no illegality in the impugned order, restricting the monetary benefits from the date of the Government Order.

6. The reasoning adopted by the respondents in denying the arrears of monetary benefits from the date on which the notional promotion was granted, cannot be sustained, in view of various decisions of the Hon'ble Supreme Court, as well as this Court, particularly in the case of *Union of India and others v. K.V.Jankiraman and others reported in [1991 SCR (3) 790]*, wherein it was held that where the employer has not permitted the employee to do the work either in the name of proceedings against the employee or other terms, 'No work No pay' principle cannot be applied and the employee is entitled for the benefits retrospectively from the date of restoration of her seniority on par with the junior. Following the decision in *K.V.Janakiraman case(cited supra)*, a learned Single Judge in the case of *V.Mani v. The Secretary to Government, State of Tamil Nadu, Revenue Department,*



WEB COPY

W.P.No.15615 of 2018

and

W.M.P.Nos.18533 and 18534 of 2018

***Fort St.George, Chennai-9 in W.P.No.21229 of 2006 dated 29.11.2007,***

held as follows:-

“11.The decisions relied on by the learned counsel for the petitioner are briefly dealt with hereunder:-

(i)The Supreme Court in Union of India v. K.V.Janakiraman, reported in 1991 SC 2010, in paragraph 7 of the judgment held as follows:

“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”.

(vi) A Division Bench of this Court in Munivenkatappa v. State Bank of India reported in 2007 (2) CTC 135, considered a case where the request of the appellant therein for voluntary retirement was unilaterally treated as resignation and by applying the principle of “No work No pay”, the employer refused to give him the monetary benefits. The Division Bench of this Court at Paragraph 12, held as follows:

“Once it is found that the decision of the respondents is illegal, it has to be held that the respondents have illegally prevented the petitioner from discharging his duties from 01.10.1999 and if the respondent's illegally prevented the petitioner from attending to the duties, respondents are bound to pay salary for the period for which the petitioner was not allowed to perform his duties.”

**15.** Having accepted that date of birth of the petitioner as 18.04.1939 and directed the authorities to make necessary correction, the department instead of merely applying the principle of “No work No pay” ought to have considered, whether the delay on their part in considering the application dated 21.05.1991, the ultimate



WEB COPY



W.P.No.15615 of 2018

and

W.M.P.Nos.18533 and 18534 of 2018

decision taken by them, had prevented the government servant from discharging his duties. On consideration of the facts and circumstances of this case, I am of the considered view that though the petitioner was willing to work, he was kept away by the department by erroneously approaching the issue of alteration of date of birth, which has been held proved by the decision of the Tribunal and confirmed by this Court and thereby he was prevented from working till 31.05.1998. The respondent cannot take advantage of this error and deny the legitimate salary and other emoluments.”

7. The aforesaid extract is self-explanatory. Hence, placing reliance on Ruling 17 FR 27 for the purpose of denying the monetary benefits from the date of the promotion, is contrary to the aforesaid ratio laid down.

8. This apart, the proviso to Fundamental Rule 27 Ruling 17 states that in case of Government servant, whose name is deferred for being included in the panel for promotion to a higher post due to pendency of the charge, but subsequently the employee was exonerated of charge, even after the date of retirement or superannuation, on appeal or review, the pay shall be fixed notionally on appointment of higher post



W.P.No.15615 of 2018

and

W.M.P.Nos.18533 and 18534 of 2018

WEB COPY

on par with the junior for the purpose of fixation of monetary benefits.

This analogy will be relevant and applicable to the government servant, who have been exonerated from the charges and who was also in service at the relevant point of time. Strictly speaking, Ruling 17 does not refer to the cases of exoneration of charges but rather than only speaks of the cases where the government servant has been overlooked for promotion and not his legal entitlement owing to drop of departmental charges against him. On this ground also, the decision of the Government to restrict the monetary benefits from the date of the government order, cannot be sustained.

9. In the light of the above findings, the impugned order dated 28.12.2016 on the file of the first respondent is quashed. Consequently, there shall be a direction to the first respondent herein to sanction all the monetary benefits to the petitioner, from the date on which the petitioner's junior namely, Thiru. K.Venkatesan was promoted as Section Officer i.e. 31.12.2010 onwards, within a period of eight weeks, from the date of receipt of a copy of this order and thereby, disburse such



W.P.No.15615 of 2018

and

W.M.P.Nos.18533 and 18534 of 2018

WEB COPY

monetary benefits to the petitioner. Accordingly, ***this Writ Petition stands allowed.*** No costs. Consequently, connected Miscellaneous Petitions are closed.

15.12.2022

Index:yes  
Speaking order  
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To  
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Personnel and Administrative Reforms  
Department,  
Secretariat, Chennai-600 009.

2.The Secretary to Government,  
School Education Department,  
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WEB COPY



W.P.No.15615 of 2018  
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W.P.No.15615 of 2018  
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W.M.P.Nos.18533 and 18534 of 2018

15.12.2022