



W.P.No.31095 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31095 of 2017

S.Sekar

... Petitioner

Vs.

1.The Director,
Department of Social Welfare,
Saidapet,
Chennai.

2.The District Social Welfare Officer,
Nagapattinam.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in S.M.N.K.No.13958/NR.2 (1)/2015 and to quash the order dated 04.01.2017 made therein and consequently to direct the 1st respondent to pay all the salary and other benefits due to the petitioner during his service period pursuant to the notional promotion ordered on 04.01.2017 with interest thereon @ 18% per annum.



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For Petitioner : Mr.T.M.Hariharan
For Respondents : Mrs.S.Anitha
Special Government Pleader

ORDER

The writ on hand has been instituted, questioning the validity of the order dated 04.01.2017, rejecting the claim of the writ petitioner for grant of salary for the period in which he was notionally promoted to the post of Superintendent.

2. The petitioner was working as Assistant and a Criminal Case was registered against him in Crime No.3 of 1997 under Sections 381, 467, 468 and 471 of I.P.C. The petitioner was acquitted in the Criminal Case by the Competent Criminal Court of Law. Departmental disciplinary proceeding was initiated against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. A Charge memorandum was issued and subsequently, after the acquittal in the Criminal Case, the departmental disciplinary proceedings was dropped against him.



3. It is not in dispute that the authorities have granted notional promotion of the writ petitioner to the post of Superintendent from the date on which his junior was promoted as superintendent. The petitioner submitted an application seeking monetary benefits from the date on which he was notionally promoted to the post of Superintendent. The said monetary benefit was declined by the authorities on the ground that no work no pay is to be adopted in such circumstances.

4. The learned counsel for the petitioner contended that the petitioner was acquitted in the Criminal Case and exonerated from the departmental disciplinary proceedings. Therefore, he must be paid salary from the date of notional promotion granted to him in the post of Superintendent.

5. This Court is of the considered opinion that an employee, who is facing disciplinary proceedings and Criminal Case is not entitled for promotion. The pendency of a Criminal Case and departmental disciplinary proceedings is bar for promotion as per the rules in force. Thus, the authorities have not committed any mistake in not promoting the petitioner



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to the post of Superintendent during the pendency of the departmental disciplinary proceedings and the Criminal Case. When the petitioner was exonerated from the departmental disciplinary proceedings and acquitted in the Criminal Case, thereafter, the respondents have granted notional promotion to the petitioner from the date on which his junior was promoted. Thus, the authorities have acted in accordance with the rules in force and not committed any error in the matter of granting notional promotion to the writ petitioner.

6. As far as the monetary benefits are concerned, the petitioner cannot claim the same, since he had not performed the duties and responsibilities attached to the post of Superintendent. An employee, who had not performed the duties and responsibilities to the particular post, is not entitled to claim salary attached to the said post and in the event of granting such monetary benefits it will result in financial loss to the State Exchequer and more so, the employee had not performed the duties and responsibilities attached to the post. That is the reason why, the notional promotion concept was accepted by the Courts and in order to restore the seniority of the



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employee and put him back in the original position enabling him to get further promotions in accordance with the rules in force. This being the factum established, this Court do not find any infirmity in respect of the reasons stated in the order impugned.

7. Accordingly, the Writ Petition stands dismissed. No costs.

14.10.2022

Jeni
Index : Yes
Speaking order

To

- 1.The Director,
Department of Social Welfare,
Saidapet,
Chennai.
- 2.The District Social Welfare Officer,
Nagapattinam.



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S.M.SUBRAMANIAM, J.

Jeni

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