



W.P.(MD).No.11020 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.11020 of 2015
and
M.P.(MD).Nos.1 and 2 of 2015

V.Leela

Vs

... Petitioner

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Municipal Administration Department,
Fort St.George,
Chennai – 9.

2.The Director of Municipal Administration,
Ezhilaga Inaivagam,
Chepauk,
Chennai – 5.

3.The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli – 1,
Tirunelveli District.

4.S.Subramanian

5.R.Lakshmi

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.Si1/3304/2014 dated 17.06.2015 on the file of the third respondent and quash the same as illegal and consequently to direct the third respondent to promote the petitioner to the post of Superintendent by refixing the seniority of the petitioner in the cadre of Assistant within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathiroy

For R-1 and R-2 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

For R-3 : Mr.Aayiram K.Selvakumar

For R-4 : Mr.G.Prabhu Rajadurai

ORDER

This Writ Petition has been filed for Certiorarified Mandamus to quash the impugned order dated 17.06.2015 and consequently direct the third respondent to promote the petitioner in the post of Superintendent by refixing the seniority of the petitioner in the cadre of Assistant.



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2. The brief facts as stated in the affidavit are that the petitioner was appointed as Junior Assistant on 16.12.1989 in the third respondent Municipality. As per the seniority list in the cadre of Junior Assistant, eligible persons for promotion to the post of Assistant is published vide proceedings dated 09.02.2001, wherein, the petitioner was placed next to one S.R.Mallika and above one R.Jeyalakshmi. While giving promotion to the post of Assistant, the petitioner was left out as ineligible on account of charges of misappropriation and recovery proceedings. The misappropriation and recovery proceedings were initiated against the petitioner and other few co-delinquents. One of the co-delinquent Gnanasamuthram died on 01.04.2000 and the said deceased wife had acknowledged that her husband was guilty of misappropriation of the entire amount of Rs.65,428.50/- and the said amount was deposited. The Assistant Commissioner (Administration), Main Office, Tirunelveli Municipal Corporation passed an order vide proceedings dated 07.03.2002 exonerating the petitioner and others from the charges of misappropriation and recovered amounts also reimbursed to the petitioner and others. It was also mentioned in the said order that withheld promotions shall be awarded by the appropriate seniority. In spite of the order of exoneration, the petitioner was given promotion only on 18.09.2006, though the petitioner was included in the panel of promotion much



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prior to that date. The petitioner submitted a representation dated 13.10.2006 to the third respondent stating that the promotion to the post of Assistant should have been provided with effect from 30.05.2001 on which the petitioner's junior was promoted to the post of Assistant. In the meanwhile, the third respondent issued seniority in the cadre of Assistant as eligible for promotion to the next promotional cadre of Superintendent, in which the petitioner's name was placed much below the juniors. The petitioner submitted a representation dated 05.11.2012 and later another representation dated 08.11.2012 objecting the seniority panel and prayed to refix the seniority. The petitioner filed W.P. (MD) No.14812 of 2012 directing the third respondent therein to refix the seniority by advancing the date of promotion to the post of Assistant from 18.09.2006 to 30.05.2001. In the meanwhile, the third respondent refused the promotion by citing an order dated 08.12.2012 which is one line order, unmindful of the fact that the charges have been withdrawn and recovered amount to the tune of Rs. 11,050/- is also returned to the petitioner. Again, the petitioner preferred another Writ Petition in W.P.(MD)No.19459 of 2013 challenging the subsequent order of rejection and this Court vide order dated 03.04.2014 directed the third respondent to take a decision upon the orders passed by the Assistant Commissioner of Tirunelveli Municipal Corporation. The contention of the petitioner is that the third respondent passed an order dated 24.07.2014 stating that the requested



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promotion to the post of Superintendent by refixing the petitioner's seniority in the cadre of Assistant was rejected, since as on the date, there was a punishment against the petitioner. But the same was later on cancelled as early as on 2002 itself vide proceedings dated 16.08.2002 and even the recovered amount was paid back to the petitioner as recorded by the proceedings of the Assistant Commissioner on 28.08.2002. Again the petitioner filed one more Writ Petition in W.P.(MD)No.16814 of 2014 challenging the rejection order dated 24.07.2014 and this Court has allowed the Writ Petition by setting aside the order of rejection and directed the respondents to grant promotion by placing the petitioner in between R.Malliga and R.Jeyalakshmi within a stipulated time. The Writ Petitioner filed Contempt Petition in Cont.P. (MD) No.204 of 2014 and in the meanwhile, the third respondent had passed the present impugned order dated 17.06.2015 promoting the fourth respondent to the post of Superintendent in utter violation of the order and also committed contempt of this Court vide order dated 20.10.2014. The fourth respondent was arrayed as tenth respondent in earlier proceedings and she averred that she was much junior to the petitioner and it was admitted before the Hon'ble Court and a specific order was passed that the petitioner should be placed above one Jeyalakshmi, who was the fourth respondent therein. Aggrieved over the same, the petitioner has filed this Writ

Petition.

<https://www.mhc.tn.gov.in/judis>



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3. The third respondent has filed a counter stating that the recovery proceeding was initiated against the petitioner vide order dated 08.07.2000. Later on, the entire misappropriation amount was remitted in the Corporation Treasury by the wife of the deceased Revenue Assistant. Hence, the amount recovered from the petitioner was refunded vide order dated 28.08.2002. But the petitioner was not exonerated from the charges which would be evident from the proceedings dated 07.03.2002. Audit clarification was sought for regarding the petitioner's objection for inclusion of the petitioner's name in the panel, wherein, the Local Fund Audit vide letter dated 09.05.2001 has issued clarification stating that the penalties mentioned in item (V) of the Tamil Nadu Civil Services (D&A) rules, wherein, the recovery from pay of the whole or part of any pecuniary loss caused to the Government funds or local body shall be deemed as penalty. Hence the petitioner's name was left out in the 2001 panel and also mentioned that the individual was not exonerated from the charges in the proceedings dated 07.03.2002. Even though the Assistant Commissioner has recommended for exonerating the petitioner from charges, but the recommendation was not accepted by the disciplinary authority. The Commissioner vide proceedings dated 28.08.2002 ordered to refund the recovery amount only and the petitioner was not exonerated from the charges. Hence the petitioner is not eligible for promotion.



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The respondents preferred Writ Appeal in W.A.(MD).No.713 of 2015 as against the order dated 24.07.2014 passed in W.P.(MD).No.16814 of 2014 and the said Writ Appeal is pending. Therefore, the respondents submitted that the petitioner is not entitled to consider for promotion.

4. Heard Mr.T.Lajapathi Roy, the learned counsel for the petitioner, Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the first and second respondents, Mr.Aayiram K.Selvakumar, the learned Counsel appearing for the third respondent and Mr.G.Prabhu Rajadurai, the learned Counsel appearing fourth respondent and perused the records.

5. When this case was taken up for hearing, it was submitted by the petitioner as well as the respondents that the Writ Appeal No.713 of 2015 was taken up for final hearing and vide order dated 15.11.2018, this Court has held as under:

“5. It is seen that the first respondent was aged 55 years at the time of filing the Writ Petition. She must have attained the age of superannuation by now. Though the disciplinary proceedings were initiated against the Writ Petitioner, the fact remains that the first respondent was not visited with any order of punishment. In fact, proceedings dated 07.03.2002 was issued exonerating the first respondent. The Corporation is now taking a stand that the authority



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who exonerated the first respondent was not competent to do so. It is however not denied that on account of deposit of the entire amount by the wife of Ganansamuthram, the loss that occurred to the Corporation had been made good. In these circumstances, we are of the view that the interest of justice will be better served by directing the appellants to extend the monetary benefits alone to the first respondent/Writ petitioner. In other words, the relief granted in favour of the first respondent by the order impugned in this writ appeal will not result in redrawing of any seniority or any other consequence. The first respondent will however be entitled to revised pensionary benefits, as if she was granted promotion to the post of Assistant on 30.05.2001. The first respondent cannot claim any difference in salary or other increments for the period from 30.05.2001 to 18.09.2006. This period will be counted only for granting her revised and enhanced pensionary benefits”.

6. The Hon'ble Division Bench has held since the petitioner has attained the age of 55 years at the time of filing the Writ Petition, the petitioner would have been attained superannuation and it was also taken note that the disciplinary proceedings were pending, but pending disciplinary proceedings, the amount was deposited and the recovery amount from the petitioner also repaid to the petitioner. The only defence that was taken by the respondents is that authority who had exonerated the petitioner is not the competent authority. But the fact remains that the amount was repaid by the person who had misappropriated. After taking all these factors into consideration, the Hon'ble Division Bench had directed to grant promotion to the post of Assistant on 30.05.2001 itself and it



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was also clarified that the petitioner is entitled only for pensionary benefits and specifically the monetary benefits were declined for period from 30.05.2001 to 18.09.2006. When the matter was pending, the respondents have promoted another Junior declining promotion to the petitioner. Aggrieved over the same, the present Writ Petition is filed challenging the promotion granted to one more junior. But the fact remains that the petitioner has already attained superannuation, since already, the petitioner's claim was considered by the Division Bench and the Division Bench granted notional promotion with pensionary benefits and has declined monetary benefits and other increments.

7. Therefore this Court is of the considered opinion that the present Writ Petition is filed to cancel the promotion granted to one Subramanian and R.Lakshmi is not sustainable. Following the order passed in the writ appeal, this Court is of the considered opinion that the petitioner is entitled to notional promotion from 30.05.2001 itself and the petitioner is entitled to pensionary benefits alone. It is made clear that the petitioner is not entitled to any monetary benefits. Therefore, the respondents are directed to grant promotion from 30.05.2001 and also grant pensionary benefits within a period of six (6) weeks from the date of receipt of a copy of this order.



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8. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes

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Fort St.George,
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- 2.The Director of Municipal Administration,
Ezhilaga Inaivagam,
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S.SRIMATHY, J

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