



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD)No.25127 of 2019

and

W.M.P (MD)Nos.21725 and 21726 of 2019

V.Lakshmanan

:Petitioner

.vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.

3.The Superintendent of Police,
Ramanathapuram District,
District Police Office,
Ramanathapuram.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in para-11 of the Proceedings Rc.No.83576/NGB.VI(1)/2018 dated 31.07.2018 of the 1st respondent and the consequential order C No.K3/35388/2018 - D.O.No.593/2019 dated 21.05.2019 passed by the 3rd respondent and quash the same and consequently, direct the 1st respondent to grant monetary benefit to the petitioner in the post of Superintendent from 28.09.2015 (ie., the date of promotion of petitioner's immediate junior Tmt.M.Brinda-Sl.No.113(C)/2014-2015) and disburse the arrears for the period from 28.09.2015 to 19.09.2018 within the time limit to be fixed by this Court.

For Petitioner

:Mr.A.Thirumurthy

For Respondents

:Mr.M.Ramesh,
Government Advocate



O R D E R

The order rejection, rejecting the claim of the writ petitioner for grant of monetary benefit with retrospective effect on account of notional fixation is under challenge in the present writ petition.

2.The petitioner was appointed as Office Assistant on 25.10.1982 at the District Police Office, Ramanathapuram. He was promoted as Junior Assistant and presently working as Superintendent. On account of Registration of a criminal case under the Dowry Prohibition Act, at the instance of the daughter-in-law of the petitioner, departmental disciplinary proceedings were initiated and the punishment of stoppage of increment for a period of one year with cumulative effect was imposed. The writ petitioner challenged the order of punishment before this Court and filed W.P.(MD) Nos.22803 of 2015 and 20854 of 2016, the petitioner has sought for promotion also in the above writ petitions. This Court passed an order on 25.01.2018 setting aside the orders of punishment and the writ petitions were allowed. The first respondent therein was directed to issue appropriate orders in favour of the petitioner granting promotion to the post of Superintendent immediately above his erstwhile junior within 8 weeks. In compliance with the directions issued by this Court, an order impugned, dated 31.07.2018 has been passed.

3.The order impugned reveals that retrospective promotion on par with the junior to the petitioner was granted in favour of the petitioner and his seniority was also restored and pay fixation also done in accordance with the fundamental rules. But the grievance of the writ petitioner is that though he was retrospectively promoted on par with his junior, the arrears of pay for the period of notional promotion is not granted.

4.The authorities competent granted fixation of pay as per Ruling 17 under FR-27, i.e, notionally with effect from the date on which his immediate junior joined as Superintendent and the monetary benefit will be given effect only from the actual date of officiating as superintendent by him.

FR 27 Ruling 17 reads as follows:

"(17)In case where a Government Servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after rectoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower



post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date."

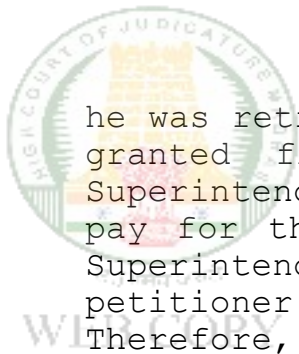
5.The above Ruling is unambiguous that, where a Government Servant has been overlooked for promotion/appointment to the next higher post, but subsequently, promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date assumption of charge in the higher post on par with the pay of his junior. The Ruling further states the arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post, in cases where seniority has been restored.

6.In the present case, the petitioner was already granted with retrospective promotion on par with his junior in the post of Superintendent. He was further granted pay fixation as per the Fundamental Rules. Rule 17 is unambiguous that in the event of overlooking of promotions, the arrears of pay must be granted from the date on which, the employee commenced officiating the post.

7.Even in FR54(1) unambiguously states that "when a Government Servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement on superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order-" Therefore, there is no absolute right of arrears of pay with retrospective effect. The authorities have to consider the cases based on its own merits and even sub-Rule 2 to FR54 says that if any opinion is formed by the competent authority on reinstatement of the Government Servant, who had been dismissed, removed or compulsorily retired. Therefore, in such circumstances, as contemplated in FR 54 would not be applicable to the case of the writ petitioner.

8.With reference to the pay fixation, the respondents have rightly fixed the pay of the writ petitioner, as per Ruling 17 under FR 27 and there is no infirmity beyond all these things.

9.This Court is of the opinion that an employee, who has not served any particular post, may not claim arrears of pay as the principles of 'no work no pay' is to be applied. Admittedly, the petitioner has not worked as Superintendent from the date on which



he was retrospectively promoted on notional basis. The actual pay is granted from the date on which he officiating the post of Superintendent and therefore, in the event of granting arrears of pay for the period during which the petitioner has not worked as Superintendent then it will result in unjust enrichment, as the petitioner admittedly has not performed his duty as Superintendent. Therefore, even under general principles, a public servant, who has not served in any particular post, is not eligible to get arrears of pay in the event of grant of retrospective promotion on notional basis.

10.This being the principles to be followed. I do not find any infirmity in respect of the reason citing in the impugned order. Hence, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (ADI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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Mylapore,
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2.The Deputy Inspector General of Police,
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3.The Superintendent of Police,
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District Police Office,
Ramanathapuram.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-8499[F] dated 24/02/2022)



+1 CC to M/s.SPL GP (SR-8304[F] dated 24/02/2022)

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ORDER MADE IN
W.P (MD) No.25127 of 2019
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23.02.2022

PP(12.03.2022) 5P 6C