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W.P.No.19134 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19134 of 2013

B.M.Devaraj

... Petitioner

-Vs-

1. The Director of Public Health and
Preventive Medicine,
DMS Compound,
Chennai-600 006.

2. The Deputy Director of Health Service,
Udhagamandalam,
The Nilgiris District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in his proceedings R.No.101272/MP.1/SI/2012 dated 19.10.2012 quash the same and consequently direct the respondents to promote the petitioner to the post of Health Inspector Grade II from the date on which his junior was given such promotion with all consequential service and monetary benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.M.Muthusamy
Government Advocate



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ORDER

This Writ Petition has been filed challenging the order dated 19.10.2012 passed by the first respondent, thereby rejected the request made by the petitioner for his promotion to the post of Health Inspector Grade II.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioner was appointed as an Office Assistant on 14.09.1990 in the office of the District Health Office, Udthagamandalam. His service was regularized and probation was also declared. He had also underwent six months condensed training course for multi purpose health worker, which is one of the requisite qualification for basic servants for promotion to the post of Health Inspector Grade II and he had completed the training on 30.04.2011. Thereafter, he was transferred to the office of the Deputy Director, Health Services, Coimbatore. By an order dated 08.06.2011, it was challenged by the petitioner in W.P.No.14323 of 2011 and it was stayed by this Court by an order dated 28.07.2011. While being so, the petitioner was served with charge memo dated 28.08.2011 under Rule 17(a) of the Tamil Nadu Government Servant Conduct (Discipline and Appeal) Rules.



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4. The crux of the charges are as follows:-

(i) The petitioner left the Headquarters without prior permission on 01.06.2011.

(ii) The petitioner left the Headquarters on 29.05.2011 without prior permission even though 29.05.2011 is a holiday.

(iii) The petitioner had taken unearned leave for 20 days on medical grounds without mentioning the address in the application.

5. On the strength of the charges, the petitioner was called upon to submit his explanation. He submitted his detailed explanation on 12.09.2011. According to the petitioner, there was no violation of any of the conduct Rules especially when there are no Rules prohibiting a Government servant from leaving the headquarters without prior permission. Pending the charges against the petitioner, the first respondent published a list of eligible persons for promotion to the post of Health Inspector Grade II. In the said list, the petitioner name was included in Serial No.41. His junior, one Rajendran was placed in Serial No.58. Based on the same, a counseling was conducted on 12.12.2011 for filling up 99 vacancies. Out of 99 vacancies, only 85 persons were selected as they alone possessed the qualification. The petitioner also attended the counseling and he was selected for promotion to the post of Health



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Inspector Grade II. However, the petitioner was not issued any order of promotion to the post of Health Inspector Grade II, on the ground that the charges were pending against the petitioner.

6. As per G.O.Ms.No.368, Personnel and Administrative Department dated 18.10.1993, the disciplinary proceedings initiated under Rule 17(a) is not a bar for promotion. Mere calling for explanation under Rule 17(a) of the Tamil Nadu Government Servant Conduct (Discipline and Appeal) Rules need not be treated as a bar for promotion. It will equally apply to promotion to ordinary posts and Selection Category posts, as well as to recruitment by transfer from one service to another. Therefore, the petitioner had submitted a detailed representation seeking promotion to the post of Health Inspector Grade II, pending charges under Rule 17(a) of the Tamil Nadu Government Servant Conduct (Discipline and Appeal) Rules. It was rejected on the ground that pendency of disciplinary proceedings, he cannot be promoted.

7. The enquiry was conducted and the petitioner was imposed punishment of stoppage of increment for a period of three years without cumulative effect, by an order dated 16.04.2012. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. The first respondent



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by an order dated 01.12.2016, set aside the punishment imposed on the petitioner and the petitioner was exonerated from all the charges. Therefore, once again the petitioner made a representation for his promotion before the first respondent. It was considered and promoted the petitioner to the post of Multi Purpose Health Worker (Male) equivalent to the post of Health Inspector Grade II. By an order dated 23.09.2017, the petitioner was notionally promoted with effect from 12.12.2011 and the monetary benefit only with effect from the date of joining as Multipurpose Health Worker (Male)).

8. Therefore, the petitioner ought to have been promoted from 12.12.2011 itself, when the charges were pending against the petitioner under Rule 17(a) of the Tamil Nadu Government Servant Conduct (Discipline and Appeal) Rules, since pendency of the proceedings under Rule 17(a) of the Tamil Nadu Government Servant Conduct (Discipline and Appeal) Rules is not a bar to promote the petitioner as per G.O.Ms.No.368, Personnel and Administrative Department dated 18.10.1993. When the petitioner was very much ready to work in the post of Health Inspector Grade II, the petitioner was not promoted to the said post. It was not the petitioner's fault. Therefore, the petitioner is entitled to get monetary benefit also from the date of his notional promotion dated 12.12.2011.



9. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1991 4 SCC 109** in the case of ***Union of India and others Vs K.V.Jankiraman and others***, in which the Hon'ble Supreme Court of India held as follows:-

“ 25. We are not much impressed by the contentions advanced on behalf of the authorities. 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.

26. We are, therefore, broadly in agreement with the -finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings.'”

Thus, it is clear that the normal rule of “no work no pay” is not applicable to cases, where an employee although is willing to work is kept away from work by the authorities for no fault of him.

10. In the case on hand also, the petitioner was willing to work in the post of Health Inspector Grade II. He was denied promotion, on the ground that the proceedings under Rule 17(a) of the Tamil Nadu Government Servant Conduct (Discipline and Appeal) Rules was pending. Therefore, the petitioner is entitled to the benefit of salary of higher post from the date of his notional



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promotion i.e., 12.12.2011. In fact, the petitioner also succeeded in his appeal filed against the order of punishment of stoppage of increment for a period of three years without cumulative effect. Though the first respondent considered the case of the petitioner for his promotion from 12.12.2011, he was not granted monetary benefit.

11. Therefore, now the impugned order in this writ petition become infructuous, since the petitioner was promoted to the post of Multipurpose Health Worker from 12.12.2011.

12. However, in view of the above, the petitioner is entitled for monetary benefits from the date of his promotion i.e. 12.12.2011 and entitled to be promoted to the next higher post on par with his juniors. The first respondent is directed to disburse all the monetary benefits and other promotions if any, after adjusting the amount which was already paid to the petitioner and also promote him to the next higher post, within a period of twelve weeks from the date of receipt of a copy of this order.



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13. With the above directions, this Writ petition is disposed of. No costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
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To

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2. The Deputy Director of Health Service,
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