



W.P.No.21324 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.21324 of 2021

M.Chenthivel

/vs/

Petitioner

1. The Government of Tamil Nadu,
represented by its Secretary,
Revenue and Disaster Management Department,
Fort St. George,
Chennai – 600 009.
2. The Commissioner of Revenue Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Tuticorin District.
4. The District Collector,
Kancheepuram District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned order passed by the first respondent in G.O.(2D) No.199, Revenue and Disaster Management Department, Service Unit, Service 2(3) Section dated 11.11.2020



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and quash the same in so far as denying monetary benefits with retrospective effect in the post of Assistant, Deputy Tahsildar, Tahsildar and Deputy Collector and consequently direct the respondents to forthwith pay monetary benefits / arrears in the post of Assistant, Deputy Tahsildar, Tahsildar and Deputy Collector with retrospective effect from the date on which retrospective promotion was given to the petitioner and consequently enhance the pay and the retirement benefits of the petitioner including monthly pension.

For Petitioner	...	Mr.K.Raja
For Respondents	...	Mr. G.Nanmaran Special Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the impugned order passed by the first respondent in G.O.(2D) No.199, Revenue and Disaster Management Department, Service Unit, Service 2(3) Section dated 11.11.2020 and quash the same in so far as denying monetary benefits with retrospective effect in the post of Assistant, Deputy Tahsildar, Tahsildar and Deputy Collector is concerned and consequently direct the respondents to forthwith pay monetary benefits /



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arrears in the post of Assistant, Deputy Tahsildar, Tahsildar and Deputy Collector with retrospective effect from the date on which retrospective promotion was given to the petitioner and consequently enhance and pay the retirement benefits of the petitioner including monthly pension.

2. The learned counsel for the petitioner submitted that the petitioner was initially appointed as Jeep Driver on 20.06.1986 and later he was promoted as Junior Assistant on 16.09.1982; on 26.02.1993 he was reverted to his original post of Jeep Driver; hence the petitioner challenges the same by way of preferring an Original Application in O.A.No.1231 of 1993 before the Tamil Nadu Administrative Tribunal and the same was allowed on 12.03.2001 with all consequential benefits; in the meantime, his Juniors have been promoted to higher post and hence the petitioner filed a Writ Petition in W.P.No.23570 of 2006 and that has been allowed on 06.04.2010; in pursuant to that order the petitioner was given retrospective promotion and his seniority has also been set right; however when the petitioner retired on 30.04.2017 in the cadre of Deputy Collector, he was given with lesser pension than his juniors; as per the order passed in the Writ Petition in W.P.No.23570 of 2006,



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the petitioner is entitled to monetary benefits in all cadre for which notional promotion has been given; the petitioner understands that the lesser pension is due to the fact that of not giving the monetary benefits for his promotion to the respective post in pursuant to the order of the Court. The respective post held by the petitioner is tabulated hereunder:

<i>Sl.No.</i>	<i>Date of notional promotion</i>	<i>Date of actual promotion</i>	<i>Promoted post</i>
1	03.08.1995	03.11.2003	Assistant
2	14.02.2005	28.07.2011	Deputy Tahsildar
3	08.04.2009	16.11.2013	Tahsildar
4	26.07.2013	08.02.2016	Deputy Collector

2.1 The petitioner is entitled to get the monetary benefit in the post of Assistant, Deputy Tahsildar, Tahsildar and Deputy Collector on par with his junior from the date of his retrospective promotion; since the monetary benefits were not given to the respective promotions, the petitioner had filed this Writ Petition seeking appropriate orders.

3. The learned Special Government Pleader for the respondents has filed



counter by stating that the petitioner cannot claim monetary benefits in respect of notional promotions as a matter of right; as per Sub-rule 17 of Fundamental Rule 27 , the petitioner is entitled to the monetary benefit only during the period in which he actually work in the respective post. The said rule is extracted as under:

“ 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 restoration 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.”

3.1 The further contention of the learned Special Government Pleader is that since the petitioner did not work in the respective posts during the relevant period, the principle of “no work no pay” has to be invoked and the Government is right in denying the monetary benefits to the petitioner for the



period during which he did not actually worked in the respective posts.

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4. The learned counsel for the petitioner attracted the attention of this Court to the judgment of Hon'ble Supreme Court held in ***State of Kerala & others Vs. E.K.Bhaskaran Pillai*** reported in ***CDJ 2007 SC 476*** wherein it is held that if retrospective promotions have been given to some employees, in view of the administrative deficiencies, then the aggrieved person should not be deprived of getting the monetary benefits in respect of his retrospective promotional post. For the sake of convenience, the relevant portion of the said judgment is extracted hereunder:

“... 4. Learned counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15.6.1972. In support thereof, the learned counsel invited our attention to the decisions of this Court in Paluru Ramkrishnaiah & Ors. Vs. Union of India & Anr. [(1989) 2 SCC 541], Virender Kumar, G.M., Northern Railways Vs. Avinash Chandra Chadha & Ors. [(1990) 3 SCC 472], State of Haryana & Ors. Vs. O.P. Gupta & Ors. [(1996) 7 SCC 533], A.K. Soumini Vs. State Bank of Travancore & Anr. [(2003) 7 SCC 238] and Union of India & Anr. Vs. Tarsem Lal & Ors. [(2006) 10 SCC 145]. As against this, the learned counsel for the respondent has invited our attention to the decisions given by this Court in Union of India & Ors. Vs. K.V. Jankiraman & Ors. [(1991) 4 SCC 109], State of A.P. Vs.



K.V.L. Narasimha Rao & Ors.[(1999) 4 SCC 181], Vasant Rao Roman Vs. Union of India & Ors. [1993 Supp. (2) SCC 324] and State of U.P. & Anr. Vs. Vinod Kumar Srivastava [(2006) 9 SCC 621]. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

5. In the above judgment it has been clarified that though “no work no pay” is a general rule that has to be applicable whenever an employee has not worked in the relevant post for claiming pay benefit, but the same rule cannot be applied to all cases even if the fault is not on the part of employee but on



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the part of Government. Even according to the respondents, they did not challenge the order of this Court made in the Writ Petition in W.P.No.23570 of 2006 dated 06.04.2010.

6. Since the petitioner was reverted to the post of Jeep Driver from Junior Assistant for the reasons best known to the respondents and the same has resulted in filing an Original Application before the Administrative Tribunal, the petitioner was made to wait for at least eight years. Since the respondents have not produced any material to show that the delay in getting promotion was due to the fault on the petitioner and not on the part of the respondents, the petitioner shall not be deprived of monetary benefits attached to the retrospective promotions for which he is entitled to. The '*rationale*' in the judgment of the Hon'ble Supreme Court ***State of Kerala & others Vs. E.K.Bhaskaran Pillai*** reported in ***CDJ 2007 SC 476*** is squarely applicable to facts of the present case. Hence, I am inclined to allow this petition.

7. Accordingly, this Writ Petition is allowed and the impugned order passed by the first respondent in G.O.(2D) No.199, Revenue and Disaster



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Management Department, Service Unit, Service 2(3) Section dated 11.11.2020

is hereby quashed and the respondents are directed to forthwith pay monetary benefits / arrears in the post of Assistant, Deputy Tahsildar, Tahsildar and Deputy Collector with retrospective effect from the date on which retrospective promotion was given to the petitioner and consequently enhance the pay and the retirement benefits of the petitioner including monthly pension. No costs.

05.10.2023

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To:

1. The Secretary,
Government of Tamil Nadu,,
Revenue and Disaster Management Department,
Fort St. George, Chennai – 600 009.
2. The Commissioner of Revenue Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Tuticorin District.
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R.N.MANJULA ,J.

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