



WEB COPY



WA No.2780 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2780 of 2022
and
C.M.P. No. 22565 of 2022

1. State of Tamil Nadu
Rep., by its Secretary to Government
Rural Development Department
Secretariat, Chennai – 600 009.
2. The Director of Rural Development
Panagal Building, Saidapet
Chennai – 600 015.
3. The District Collector
Thiruvallur District, Thiruvallur.
4. The District Collector
Kancheepuram District
Kancheepuram.

.. Appellants

Versus

D. Ekanatha Naidu

.. Respondent

Appeal filed under Clause 15 of Letters Patent Act praying to set aside the order dated 22.02.2022 made in W.P. No. 25407 of 2007 and allow this Writ Appeal.

For Appellants

:

Mr. C. Kathiravan
Special Government Pleader



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For Respondent : Mr. V.R. Rajasekaran

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J U D G M E N T

[Judgment of the Court was delivered by R. MAHADEVAN, J]

This Writ Appeal has been filed to set aside the order of the learned Judge dated 22.02.2022 passed in W.P. No.25407 of 2007.

2. The respondents in WP No. 25407 of 2007 are the appellants in this appeal. The Writ Petition was filed by the respondent herein seeking to forthwith pay notional benefits viz., difference in salary in the post of Assistant, Extension Officer, Deputy Block Development Officer, Block Development Officer, Assistant Director and Joint Director, based on the order dated 05.01.2005 passed by the Division Bench of this Court, with due interest till the date of actual payment. The learned Judge allowed the Writ Petition by order dated 22.02.2022 granting liberty to the respondent/writ petitioner to submit a representation to the appellants herein seeking the relief sought for in the Writ Petition and on receipt of the same, the appellants were directed to consider it and pass orders within a period of three months from the date of receipt of such representation. It was also directed that the appellants, while passing an order, shall also take into account the decisions cited in the order



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for the purpose of payment of interest. Challenging the said order, this Writ Appeal has been filed.

3. According to the learned Special Government Pleader appearing for the appellants, during the course of employment of the respondent, an anomaly arose in the matter of fixation of his seniority along with other employees. This led to filing of Original Application before the Tamil Nadu Administrative Tribunal and it culminated in passing the order dated 19.04.2005 by the Division Bench of this Court in WP Nos. 19960 to 19962 of 1998 etc., On the basis of the direction issued by the Division Bench of this Court, the re-fixation of seniority of the respondent was under process. At this stage, the respondent herein has filed WP No. 25407 of 2007 praying to forthwith pay notional benefits viz., difference in salary in the post of Assistant, Extension Officer, Deputy Block Development Officer, Block Development Officer, Assistant Director and as Joint Director. During the pendency of the writ petition, the respondent reached the age of superannuation and he was permitted to retire on 31.05.2009 while he was holding the post of Block Development Officer. After his retirement, the seniority of the respondent was revised and re-fixed by a proceeding dated 24.01.2011 of the third appellant herein and he was conferred with notional



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promotion in the posts of Assistant, Extension Officer, Deputy Block Development Officer, Block Development Officer, Assistant Director and as Joint Director. However, the respondent claimed that he was not paid the difference in salary in the aforesaid posts. It is the contention of the learned Special Government Pleader appearing for the appellants that as per Rule 27 (17) of the Fundamental Rules, the respondent had not physically assumed charge in the notionally promoted posts. The notional promotion was conferred to the respondent only after his retirement and therefore, he is not entitled for the difference in pay and allowances. The learned Judge, instead of dismissing the writ petition filed by the respondent, has granted liberty to him to submit a representation seeking difference in salary and allowance in the notionally promoted post. When the respondent was conferred with notional promotion, the question of paying the difference in salaries and allowance in the notionally promoted posts will not arise. While so, the learned Judge ought not to have granted liberty to the respondent to submit a representation to the appellants with a consequential direction to the appellants to consider it within a specified time limit.

4. On the other hand, the learned counsel for the respondent/writ petitioner submitted that the learned Judge has observed that reliance on



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Ruling 17 under the Fundamental Rules, vide G.O.Ms.No.977, Personnel and Administrative Reforms (FR.III) dated 06.10.1986, cannot be made, since the notional promotion, together with benefits, was directed to be paid on the basis of the order passed by the Division Bench of this Court. Further, the learned counsel for the respondent/writ petitioner submitted that the appellants failed to pay the difference of wages, which the respondent/petitioner is entitled to. The appellants are bound to pay interest on the due amount as per the decision of the Division Bench of this Court in ***The Collector, Dharmapuri District Vs. N.Murugan [W.A.No.3024 of 2003 dated 05.01.2005]*** and as per the decision of the Hon'ble Supreme Court in ***D.D.Tewari Vs. Uttar Haryana Bijli Vitran Nigam Limited and others [(2014) 8 SCC 894]***. Hence, the learned Judge has rightly allowed the Writ Petition and it does not warrant any interference by this Court.

5. Heard the learned Special Government Pleader appearing for the appellants and the learned counsel for the respondent and also perused the materials available on record.

6. It is an admitted fact that the respondent/petitioner was granted notional promotion in the posts of Assistant, Extension Officer, Deputy Block



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Development Officer, Block Development Officer, Assistant Director and Joint

Director by revising the Seniority list and the pay scales in accordance with law with retrospective effect from the date on which his seniority ought to have been fixed. However, the objection of the learned Special Government Pleader appearing for the appellants is that as per Rule 27 (17) of the Fundamental Rules, the respondent/writ petitioner had not physically assumed charge in the notionally promoted posts, therefore, he would not be entitled for the difference in pay and allowances. This was taken note of by the learned Judge to conclude that the Fundamental Rules cannot supersede the directions issued by this Court, which has become final and which was also given effect to by permitting the respondent/writ petitioner to get promotion notionally with revision of his pay scales. Further, it has also been observed by the learned Judge that as per the decisions of the Division Bench of this Court in the case of **The District Collector, Dharmapuri District vs. Murugan** as well as the decision of the Hon'ble Supreme Court in the case of D.D. Tewari vs. Uttar Haryana Bijli Vitran Nigam Limited and others, mentioned supra, the respondent is entitled to the benefits claimed for. Considering all these aspects, the learned Judge has rightly allowed the writ petition filed by the respondent/writ petitioner, which, in the opinion of this court, does not call for any interference.



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7. In the result, this Writ Appeal fails and is accordingly, dismissed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

(R.M.D.,J) (M.S.Q.,J)

23.02.2023

ay/rsh

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

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