



W.A.(MD) No.1543 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) No.1543 of 2023
and
C.M.P.(MD) No.11989 of 2023**

1.The Secretary to Government
Social Welfare and Nutritious
Meal Programme Department
Secretariat, Chennai-600 009

2.The Commissioner of Social Welfare
and Nutritious Meal Programme
SIDCO Complex, 2nd Floor
Thiru Vi.Ka.Industrial Estate
Guindy, Chennai-600 032

... Appellants

-vs-

M.Jeyam

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 12.04.2022, passed in W.P.(MD) No.18695 of 2016, on the file of this Court.



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For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.J.Ashok
Additional Government Pleader

For Respondent : Mr.S.Visvalingam

J U D G M E N T

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This writ appeal is directed against the order of the learned Single Judge, dated 12.04.2022, passed in W.P.(MD) No.18695 of 2016.

2. By the said order, the writ petition in W.P.(MD) No.18695 of 2016 filed by the respondent praying for issuance of a writ of certiorarified mandamus to quash the order dated 10.08.2016, passed by the second appellant and to consequently direct the appellants to promote her notionally as Child Development Project Officer on par with her juniors and send revised pension proposals to the Accountant General, Chennai, within a stipulated time, was allowed by the learned Single Judge, on the following terms:

“11. Therefore, this Court is of the considered opinion that the petitioner is entitled to promotion. Therefore, the respondents are directed to place the petitioner's name above the said Valliammal and grant promotion on the same date when the said Valliammal was granted promotion, thereafter, confer



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all monetary benefits and pensionary benefits from that date onwards. The petitioner has attained superannuation and has retired from service. The first respondent is directed to submit the proposal for pensionary benefits after granting promotion. The petitioner is directed to submit the entire service records to the first and second respondents along with a copy of this order. Thereafter, the second respondent is directed to pass orders within a period of 8 weeks from the date of receipt of a copy of this order. Thereafter, the first respondent shall pass an order within a period of eight weeks.”

3. The case of the respondent / writ petitioner is that she was working as Grade-I Supervisor in the office of the Integrated Child Development Service, Kangeyam and retired from service upon superannuation on 28.02.2015. The seniority number of the respondent was 373 in the Grade-I Supervisor. The seniority number of one Valliammal was 388. While so, vide G.O.(3D) No.03, Social Welfare and Nutritious Meal Programme, Chennai, dated 28.02.2011, the said Valliammal and other juniors were promoted to the next higher post of Child Development Project Officer, while the candidature of the respondent was overlooked and omitted. Therefore, the respondent preferred an appeal to the first appellant on 03.03.2011 through proper channel. By a communication dated 03.03.2011,



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the District Project Officer, Tiruppur, forwarded the said appeal to the Director of Social Welfare, Chennai.

4. Since the appeal was not considered by the appellants in time, the respondent filed W.P.(MD) No.11716 of 2016 before this Court for issuance of a writ of mandamus directing the appellants to pass appropriate orders on her appeal dated 03.03.2011. By order dated 01.07.2016, the said writ petition was disposed of with a direction to the appellants to pass orders on the appeal filed by the respondent on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of the order.

5. Thereafter, by a communication dated 05.08.2016, the appellants stated that in view of the fire accident that took place in the office, the records are not available and therefore, directed the respondent to furnish fresh copies of the same through proper channel. Accordingly, when the respondent submitted a fresh representation, the order impugned in the writ petition dated 10.08.2016 was passed by the second appellant denying promotion to the respondent.



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6. It is stated in the impugned order that promotion was granted in the year 2011 and the appeal papers were not available and only after disposal of the writ petition in W.P.(MD) No.11716 of 2016, belatedly, the appeal papers were again resubmitted and therefore, since the appeal and claim of the respondent were belated, her request for promotion was rejected. Challenging the same, the respondent filed W.P.(MD) No.18695 of 2016.

7. The said writ petition was resisted by the appellants by filing a counter affidavit. In the counter affidavit, the only ground raised by the appellant was that the claim of the respondent is belated.

8. The learned Single Judge, by order dated 12.04.2022, considered the issue and after holding that when the appeal preferred by the respondent has been directed to be disposed of by the earlier order of this Court, the claim of the respondent cannot be rejected, merely because appeal papers were not available. The learned Single Judge also held that the respondent had not approached the Court belatedly and allowed the writ petition on the terms extracted above.



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9. Aggrieved by the same, the Department has filed this writ appeal.

10. Mr.Veera Kathiravan, learned Additional Advocate General appearing for the appellants would submit that when the writ petition is filed claiming the benefit of promotion, it cannot be entertained belatedly. He would further submit that the present attempt of the respondent is a post-retirement attempt and therefore, the prayer of the respondent is hit by delay and laches. He would further submit that in any event, the learned Single Judge has directed payment of all the arrears, which is not even the prayer of the respondent in her writ petition. He would also submit that when the impugned order rejects the prayer of the respondent only on the ground of delay and when the learned Single Judge found that the same untenable, the matter should be remanded back to the appellants to consider the issue afresh and straightaway promotion ought not to have been ordered.

11. Per contra, Mr.S.Visvalingam, learned counsel appearing for the respondent, would submit that it is not a case of filing a writ petition after retirement upon attaining superannuation. As a matter of fact, promotion was granted to the said Valliammal and other juniors on 28.02.2011 and



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immediately thereof, within three days, an appeal was preferred by the respondent through proper channel. The communication dated 03.03.2011 of the District Project Officer, Tiruppur, forwarded the appeal to the Director of Social Welfare, Chennai, would itself show that the respondent did not sleep over her rights. Therefore, when no action has been taken, the respondent earlier filed a writ petition before this Court, in which the appeal preferred by her was directed to be considered on merits and in accordance with law. Even then, the appeal was dismissed only on the technical ground of non-availability of appeal papers due to the fire accident and also on the ground of delay. Therefore, the learned Single Judge has rightly allowed the writ petition filed by the respondent.

12. We have considered the rival submissions of either side and perused the materials available on record.

13. Firstly, it can be seen that the respondent has filed the appeal within the time i.e., within three days from the date of promotion. The said fact is fortified by the letter dated 03.03.2011 sent by the District Project Officer, Tiruppur, to the Director of Social Welfare, Chennai. The appeal was not considered in time and not considered at all because of the fire accident,



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which happened in the office of the appellants and therefore, the delay is only on account of the same and it cannot be attributed on the part of the respondent. In any event, non-filing of appeal within the time or the delay in approaching the Court was never canvassed by the appellants when the respondent earlier filed W.P.(MD) No.11716 of 2016 and when the appeal filed by the respondent was directed to be considered within a period fixed by this Court, thereafter, it was not open for the appellants to again turn down the appeal on the very same ground of non-availability of appeal papers or on the ground of delay. When the appeal was filed within the time, there was no question of rejecting the same on the ground of delay. When the appeal was ultimately decided only by the order dated 10.08.2016, filing of the writ petition in W.P.(MD) No.18695 of 2016 was on 24.09.2016, it cannot be hit by delay and laches.

14. The next submission of the learned Additional Advocate General that the matter could only have been remanded back to the appellants also deserves no consideration in the instant case, because even though the respondent has raised a specific ground that the said Valliammal is junior to the respondent and she has also given the seniority numbers in the post of Supervisor and when the same are all absolutely not in dispute and even in



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the counter affidavit when the said allegations were not denied and nothing has been stated about the availability of other grounds etc., for consideration, there was absolutely no occasion for this Court to remand the matter back to the appellants. Suffice to state that the only ground on which the appellants have rejected the claim of the respondent is that delay and laches and therefore, once the learned Single Judge found that there was no delay and laches, the writ petition shall stand automatically allowed. Therefore, we reject the submission of the learned Additional Advocate General that the matter should have been remanded back to the appellants. Even before us neither in the grounds of the writ appeal nor by way of any affidavit, any other disqualification or error in the claim of the respondent is brought to light.

15. Finally, we find merit in the third contention of the learned Additional Advocate General that the learned Single Judge has allowed the writ petition on the terms as extracted above, whereby the appellants are liable to pay the entire arrears to the respondent. As a matter of fact, in the writ petition itself, the respondent had claimed only notional promotion and for sending revised pension proposals to the Accountant General. Therefore, to that extent, we allow this writ appeal and hold that the writ petition in W.P. (MD) No.18695 of 2016 shall be allowed as prayed for by the respondent.



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16. In the result, this writ appeal is partly allowed. The order dated 12.04.2022, passed by the learned Single Judge in W.P.(MD) No.18695 of 2016, is modified to the effect that W.P.(MD) No.18695 of 2016 is allowed as prayed for. However, the appellants herein will be liable to pay the arrears of pension alone to the respondent. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

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NCC : Yes / No

Index : Yes / No

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