



W.P.(MD)No.7864 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.7864 of 2018

and

W.M.P(MD)No.7443 of 2018

K.S.Sivnathan

... Petitioner

Vs.

1.State of Tamil Nadu Rep. by its
Secretary to Government,
Forest Department,
Chennai.

2.The Principal Chief Conservator of Forest,
Panagal Maligai,
Saidapet,
Chennai.

3.The Conservator of Forest,
Tirunelveli Circle,
Tirunelveli District.

4.The District Forest Officer,
Tirunelveli District.

... Respondent

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandmus, calling for the records pertaining to the order passed by the second respondent in his proceedings in Ref.No.AB2/9007/2017 dated 28.09.2017 and



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consequential order passed by the third respondent in his proceedings in Pa.Aa.No.52/2017, dated 20.12.2017 and quash the same and direct the respondents to settle the retirement benefits in the cadre of Office Assistant with interest at the rate of 12% per annum to the petitioner.

For Petitioner	: Mr.V.Panneer Selvam
For Respondents	: Mr.S.R.A.Ramachandran, Additional Government Pleader

ORDER

This writ petition has been filed to quash the order passed by the second respondent in his proceedings in Ref.No.AB2/9007/2017, dated 28.09.2017 and the consequential order passed by the third respondent in his proceedings in Pa.Aa.No.52/2017, dated 20.12.2017 and to direct the respondents to settle the retirement benefits in the cadre of Office Assistant with interest at the rate of 12% per annum to the petitioner.

2. The case of the petitioner is that he was appointed as Watchman on 22.05.1981. Subsequently, no promotion was given to him. Hence, the petitioner repeatedly made representations for granting promotion. Thereafter, the petitioner was promoted as Office Assistant on 30.08.2013 and subsequently, on attaining the age of superannuation, he



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retired on 31.05.2017. While being so, the petitioner filed a writ petition before this Court in W.P(MD)No.1342 of 2017, seeking for a direction to consider his request for promotion, in which, this Court has passed an order directing to consider the representation of the petitioner on merits and in accordance with law. Pursuant to which, the second respondent has passed an order, dated 28.09.2017, rejecting the request of the petitioner. Later on, after retirement, the petitioner's promotion to the post of Office Assistant was cancelled vide the order, dated 20.12.2017. Hence, challenging the above said orders, dated 28.09.2017 and 20.12.2017, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that even a bare perusal of the counter affidavit would disclose that the post of Office Assistant given to the petitioner was transferable post. Once the post of Office Assistant is given to the petitioner either by way of promotion or transfer, it is not sustainable to cancel the said promotion or transfer and hence, prays for appropriate orders.



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4. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner's promotion to the post of Office Assistant was cancelled as per the order of the Chief Conservator of Forest vide order, dated 28.09.2017, due to non-eligibility to the post of Office Assistant. He would further submit that though the petitioner was transferred from the post of Office Assistant to Night Watchman, both the posts has the same scale of pay. There is no difference in pay scale. Further, all the pensionary benefits were settled in favour of the petitioner and hence, there is no merit in this writ petition and the same is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. Admittedly, the petitioner entered into service as Night Watchman in the year 1981. Thereafter, advertently or inadvertently, the petitioner was given promotion in the year 2013. The petitioner retired from service on 31.05.2017. After retirement, the petitioner has made a



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request for further promotion, the second respondent has rejected the said request, vide the impugned order, dated 28.09.2017. This Court is not inclined to interfere with the same. However, proceeding further, the third respondent has passed the impugned reversion order, dated 20.12.2017. However, unless the petitioner is retained in service, the third respondent has no power to pass a reversion order when there is no master-servant relationship. Hence, the impugned reversion order, dated 20.12.2017, passed by the third respondents is not sustainable one and the same is liable to be set aside.

7. In the result, this writ petition is partly allowed and the impugned order, dated 20.12.2017, is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

14.02.2023

PM
NCC:Yes/No
Index:Yes/No



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M.DHANDAPANI,J.

pm

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