



W.P.(MD)No.23917 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.23917 of 2018

and

W.M.P.(MD)Nos.21631 of 2018

A.Muthukrishnan

... Petitioner

Vs.

The Registrar General,
High Court of Madras,
Madras.

...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent in his order: R.O.C.No.25535/2016/C1, dated 20.09.2018 and quash the same as illegal and consequently, direct the respondent to notionally / temporarily promote the petitioner as Chief Administrative Officer with effect from 02.03.2015 and grant the petitioner consequential monetary as well as retirement benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Jerin Mathew

For Respondent : Mr.T.S.Mohammed Mohideen



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ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The order of rejection dated 20.09.2018, rejecting the claim of the writ petitioner to pay salary attached to the post of Chief Administrative Officer, is under challenge in the present Writ Petition.

2.The writ petitioner was initially appointed as Senior Bailiff (Amin) with effect from 06.09.1984 in the Judicial Department. He was promoted to the level of Sherishtadar and was working with effect from 04.05.2012. While so, the petitioner was posted as in-charge Chief Administrative Officer, since the post of Chief Administrative Officer was vacant during the relevant point of time. The petitioner, who was posted as in-charge Chief Administrative Officer, was allowed to retire from service on attaining the age of superannuation on 30.04.2015. The petitioner, after a lapse of one year from the date of retirement, submitted a representation on 23.03.2016, claiming salary attached to the post of Chief Administrative Officer. The Registrar General, High Court of Madras / respondent had considered the issues and passed the present impugned order dated 20.09.2018, rejecting the claim of the petitioner.



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3.The learned counsel appearing for the petitioner mainly contended that the respondent recommended the case of the writ petitioner for payment of salary, which was not considered. In support of the said recommendation, the learned counsel for the petitioner relied on the judgment of the Division Bench of the Principal Seat of this Court dated 08.02.2013 in W.A.No.912 of 2011, wherein, the following observations are made:-

“9.Even though the learned Special Government Pleader has made substantial submission on Rule 49 of the Tamil Nadu Government Fundamental Rules, we are of the view that the said Rule cannot be made applicable to the case on hand. Chapter VI of the Tamil Nadu Government Fundamental Rules deals with Combination of Appointments. It specifically deals with the case of the Government Servants holding additional charge whether permanent or officiating. However, it does not deal with the case of the employee holding the charge in a higher promotional post. Therefore, we are of the view that Rule 49 of the Tamil Nadu Government Fundamental Rules cannot stand in the way of the first respondent getting appropriate salary in the post of Assistant Director of Survey and Land Records.”



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4.Relying on the above judgment, the learned counsel for the petitioner reiterated that the petitioner is entitled atleast for the salary for the period during which the petitioner served as Chief Administrative Officer in the District Judiciary.

5.The learned counsel appearing for the respondent objected the said contention by stating that the learned Principal District Judge, Virudhunagar District at Srivilliputhur vide letter dated 18.04.2015 has stated that in view of Unearned Leave on Medical Certificate being availed by one K.Thaiyalrani, Chief Administrative Officer of Virudhunagar District at Srivilliputhur, the post of Chief Administrative Officer fell vacant on 02.03.2015 onwards.

6.The Rule 39(a) of Tamil Nadu State and Subordinate Service Rules (hereinafter referred to as 'the Rules') states that where it is necessary in the public interest owing to an emergency, which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and there would be undue delay in making such promotion in accordance with rules, the appointing authority may temporarily promote a person,



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who possesses the qualifications prescribed for the post, otherwise than in accordance with the rules.

7.The Rule 39(b) of the Rules states that where it is necessary to fill a short vacancy in a post borne on the cadre of a higher category in service or class by promotion from lower category and the appointment of the person, who is entitled to such promotion under the rules, would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may promote any other person who possesses the qualification if any prescribed for the higher category.

8.Admittedly, the writ petitioner was not promoted to the post of Chief Administrative Officer. Even temporary promotion was not granted under Rule 39(a) of the Rules. Since the petitioner was not promoted to the post of Chief Administrative Officer and he was permitted to hold additional charge of the post of Chief Administrative Officer, he is not entitled to claim salary attached to the post of Chief Administrative Officer.



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9.It is not in dispute that the petitioner was allowed to retire from service on attaining the age of superannuation and he is receiving pension as applicable to the post of Sherishtadar. That being the factum, the petitioner is not entitled for the relief as such sought for in the present Writ Petition. We do not find any infirmity in respect of the decision arrived by the respondent. Therefore, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (V.L.N., J.)

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NCC : Yes / No

Index : Yes / No

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