



W.P.(MD).Nos.27672 & 27673 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 14.12.2023

ORDER PRONOUNCED ON : 19.12.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).Nos.27672 & 27673 of 2023
and
W.M.P(MD).Nos.23782, 23783,
23784 & 23785 of 2023**

1.K.Jayachandra BabuPetitioner in WP(MD).No.27672 of 2023
2.R.Mohan RajPetitioner in WP(MD).No.27673 of 2023

Vs

1.The State of Tamil Nadu
Represented by its Secretary to Government
Health and Family Welfare Department
Fort St.George
Secretariat, Chennai -9

2.The Director of Public Health Preventive Medicine
Public Health Preventive Medicine Department
Theynampet
Chennai – 6

3.The Deputy Director of Health Service
Nagercoil
Kanyakumari DistrictRespondents 1 to 3 in both petitions

4.The Block Medical Officer
Government Primary Health Centre
Muttam Block



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Nagercoil Health Unit District (HUD)

Kanyakumari District

....4th Respondent in WP.27672 of 2023

5.The Block Medical Officer

Government Primary Health Centre

Kuttakuzhi

Nagercoil Health Unit District (HUD)

Kanyakumari District

....4th Respondent in WP.No.27673 of 2023

Prayer in WP(MD).No.27672 of 2023: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in his proceedings in R.Dis.No.1318/A2/2022 dated 15.02.2022 insofar as extending the monetary benefits with effect from the date of joining duty in the promoted post on 20.10.2021 and quash the same as illegal and consequentially to direct the respondents to pay arrears of monetary benefits w.e.f 26.07.2016 ie. from the date on which the petitioner was promoted notionally as Health Inspector Grade-I (Multi Purpose Health Supervisor) within the period that may be stipulated by this Court.

Prayer in WP(MD).No.27673 of 2023: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in R.No.8197/MP1/S3/2016 dated 13.09.2021 insofar as extending the monetary benefits with effect from the date of joining duty in the promoted post and quash the same as illegal and consequentially to direct the respondents to pay arrears of monetary benefits w.e.f 26.07.2016 ie. from the date on which the petitioner was promoted notionally as Health Inspector Grade-I (Multi Purpose Health Supervisor) within the period that may be stipulated by this Court.



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For Petitioner : Mr.C.Venkatesh Kumar
For M/s.Ajmal Associates
in both petitions

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader
in both petitions

COMMON ORDER

The present writ petitions have been filed by the Health Inspector Grade-I challenging the orders of the respondents 2 and 3 wherein their request for grant of pay arrears from the date of notional promotion has been rejected.

2.(A).The admitted facts are as follows:

(i)The petitioners herein were appointed as Health Inspector Grade-II on 13.01.2011. On 31.07.2012, a show cause notice was issued to the petitioners along with some other employees as to why their services should not be terminated on that ground that their names were not sponsored by Employment Exchange. The petitioners and others had challenged their notices in W.P.No.24685 of 2012. The said writ petitions were dismissed on 01.03.2013 with an observation that as and when adverse orders are passed, it is open to the petitioners to challenge the same in a manner known to law.



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(ii)The third respondent by his proceedings dated 10.04.2013 cancelled the appointment order. The said order was challenged by the writ petitioners in WP(MD).Nos.7092 & 7093 of 2013. This Hon'ble Court was pleased to allow the writ petitions on 23.10.2019. While the writ petitions are pending, the second respondent had published a panel for promotion to the post of Health Inspector Grade-I for the year 2016-2017.

(iii)Though the name of the petitioners were reflected in Sl.Nos.29 & 31 in the said panel, they were not recommended on the ground that they had already been terminated.

(iv)The first respondent herein by his proceedings dated 20.12.2019 had directed the second respondent to regularise the services of the writ petitioners and others with all consequential benefits. In compliance with the said order, the respondents had passed the impugned orders on 13.09.2021 and 15.02.2022 notionally promoting the writ petitioners with effect from 26.07.2016. However, the monetary benefits were directed to be disbursed only from 20.10.2021 the date on which the petitioners had assumed office as Health Inspectors Grade-I. The grievance of the writ petitioners is that when the notional promotion has been granted from 26.07.2016, the monetary benefits should also been granted from the said date. Challenging the same, the present writ petitions have been filed.



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3(B).Contentions of the learned counsel appearing on either side:

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(i)According to the learned counsel for the writ petitioners, the petitioners were erroneously terminated from service. Later, they were reinstated with all consequential benefits. Their names were also included in the panel. However, it was not recommended due to the pendency of the writ petitions, challenging the termination. The order of termination has been set aside and they have been reinstated. Therefore, the petitioners were kept out of employment for no fault on their part. Hence, all the benefits should flow from the date of notional promotion and not from the date of assumption of office as Health Inspectors Grade-I

(ii)The learned counsel for the petitioners had relied upon the judgment of this Court in ***WP(MD).No.15615 of 2018 (M.Senthamil Selvi Vs. The Secretary to Government and another)*** dated 15.12.2022 to impress upon the Court that the petitioners are eligible to receive arrears from the date of notional promotion.

4.Per contra, the learned Additional Government Pleader appearing for the respondents had relied upon Rule 27(17) of Fundamental Rules and contended that the petitioners had not functioned as Health Inspector Grade-I from 26.07.2016. They were notionally promoted from the said date. Therefore, the monetary benefits cannot be extended to the writ petitioners from the said date. He relied upon 27(17) of Fundamental Rules and



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contended that in all cases where the names are deferred for inclusion in the panel for promotion, but subsequently included in the same panel on exoneration of charges, the pay shall be fixed notionally on the date of assumption of office. Therefore, the order impugned in the writ petition is strictly in accordance with F.R 27(17).

5.I have considered the submissions made on either side and perused the material records.

6.The petitioners have been terminated on the ground that their names have not been sponsored by Employment Exchange. Later, this Court has set aside the said order in WP(MD).Nos.7092 & 7093 of 2013 dated 23.10.2019.

Paragraph No.11 of the order is extracted as follows:

“11.The qualification of petitioners is admitted. The only ground on which the impugned order came to be passed is that the names of the petitioners were not sponsored by Employment Exchange. As pointed out earlier, the petitioners' name have been duly restored in the Employment Exchange with the qualification. It was only because, the petitioners' name were not sponsored by the concerned Employment Exchange, the petitioners and others have approached the Government for relaxing the Rules. Accordingly, the Government has relaxed Rules with the specific direction to the second respondent to appoint the persons, whose name are found in the Government Order in the post of Health Inspector Grade-II.



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Merely because, the names were sponsored on the recommendation of the Commissioner, Employment and Training, Guindy, it cannot be presumed that the petitioners' names were not sponsored by Employment Exchange. As recommended by the Commissioner of Employment and Training Guindy, call letters were issued to the petitioners and they were appointed. If the requirement of getting the name of petitioners sponsored through Employment Exchange is insisted, at the relevant point of time, their names would have been sponsored.”

7.A careful perusal of the order of this Court would reveal that the petitioners' were appointed after the rules were relaxed and there was no fault on the part of the petitioners in their names not being sponsored through Employment Exchange. The fundamental Rule 27(17) is extracted as follows:

“F.R.27(17) 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.

[G.O. Ms. No. 977, Personnel and Administrative Reforms (FR.III), dated 6th October, 1986.]

"Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefit;"

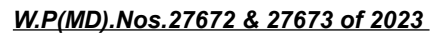
8.A careful perusal of the said sub-rule will clearly indicate that a pay scale should be fixed for a Government Servants whose name has been overlooked originally, but later he was promoted, as per F.R 27(17). The pay scale has to be fixed on the date of assumption of charge in the higher post on par with the junior. It further reveals that if their seniority has been restored after 19.09.1981, 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.



9.Now the issue that arises for consideration is when the name of a Government servant is overlooked due to certain charges, but later he was exonerated, though he would be entitled to a notional promotion on par with his junior, whether he would be entitled to pay arrears period, the period preceding notional promotion or not?.

10.The Hon'ble Supreme Court in a judgment reported in **(1991) 4 SCC 109 (Union of India and others Vs.K.V.Jankiraman and others)** in paragraph No.26 has held as follows:

“We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it.....”



“5. In the present case on hand, the petitioner has not been considered for promotion on account of pendency of the charge memo. Once the charge memo has been quashed by this Court, the writ petitioner will have to be necessarily put back to the original position to be considered for promotion/appointment and the delay cannot be said to be directly attributable on the part of the writ petitioner in acquiring the said post. If the contention of the appellants is accepted then the Department can issue a charge memo and postpone the promotion to any person according to their whims and fancies by simply quoting Rule 27(17) of Fundamental Rules. Once a charge memo has been interfered with by this Court, the charge itself is non-est in the eye of law which means the case of the employee has got to be considered from the date he was eligible....”

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the facts and circumstances of each case. In all cases where an employee is completely exonerated, he has to be given the benefit of salary of higher post along with the other benefits from the date on which he would have normally been promoted. But in cases where the employee is acquitted in criminal proceedings on the basis of benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, the authorities are vested with the power to decide whether the employee would be entitled to receive arrears during the notional promotion period or not. In the present case, the petitioners were erroneously terminated from service on the ground that they were not sponsored through Employments Exchange overlooking the fact that the said mandatory provision was relaxed and an order of appointment was issued. This Hon'ble Court was pleased to set aside the order of termination. Therefore, during panel year 2016-2017, the petitioners were kept out of employment for no fault on their part. Hence, on the facts of this case, the petitioners are entitled to receive the pay arrears between 26.07.2016 till 19.10.2021 also.

(C).Conclusion:

13.In view of the above said deliberations, the orders impugned in the writ petitions are set aside to the extent to which it denies the pay arrears during the notional promotion period is concerned and the writ petitions stand allowed. The respondents are directed to pay arrears of monetary



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benefits with effect from 26.07.2016 till the petitioners were promoted as Health Inspectors Grade-I within a period of 12 weeks from the date of receipt of a copy of this order.

14. Accordingly, the writ petitions stand allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

19.12.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery common order made in

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