



Writ Appeal No.2801 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
01.07.2024

PRONOUNCED ON
08.08.2024

CORAM

**THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR, ACTING CHIEF JUSTICE
AND**

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.2801 of 2022
and C.M.P.No.22753 of 2022

- 1.The Secretary to Government Tourism,
Culture and Religious Endowments Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Chairman and Managing Director,
Tamil Nadu Tourism Development Corporation Limited,
Tourism Complex, No.2,
Wallajah Road, Chennai – 600 002.
- 3.The General Manager,
Tamil Nadu Tourism Development Corporation Limited,
Tourism Complex,
No.2, Wallajah Road, Chennai – 600 002. ... Appellants

Vs

M.Umasankari

... Respondent

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 15.11.2011 made in W.P.No.29703 of 2018 and pass such further order.



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For Appellants : Mr.A.Edwin Prabakar
State Government Pleader

For Respondent : Mr.N.Alagu Narayanan
for M/s.RRN Legal

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred as against the order of the learned Single Judge, wherein the order of the second appellant herein rejecting the monetary benefits to the respondent who had been notionally promoted with retrospective effect on the ground of “No work no pay” has been set aside.

2. Heard Mr.A.Edwin Prabakar, learned State Government Pleader for the appellants and Mr.N.Alagu Narayanan, learned counsel for M/s.RRN Legal, appearing on behalf of the respondent.

3. Mr.A.Edwin Prabakar, learned State Government Pleader for the



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appellants would contend that the respondent herein was initially imposed with a punishment of down grading her to the post of Junior Assistant for a period of three months from the post of Senior Grade Assistant for the charges framed against her. The said order was set aside by this Court in W.P.No.2253 of 2009. But, however permitted the Disciplinary Authority to conduct a fresh enquiry in respect of the said charges. After due enquiry, the respondent was imposed with a punishment of censure vide proceedings dated 22.09.2014. On an appeal filed by the respondent to the second appellant, the second appellant had set aside the punishment and had decided to drop the charges framed against the respondent, however had warned her not to give room for any complaint in future. The said order came to be passed on 10.10.2015 and thereafter by a communication dated 11.01.2018, the second appellant had also passed orders granting retrospective promotion to the respondent to the cadre of Assistant Manager with effect from 01.06.2012 and the cadre of Deputy Manager with effect from 14.07.2015 (the dates on which her immediate Junior was promoted) and the pay of the individual was also directed to be fixed in the promoted cadres with retrospective effect. Thereafter, the respondent had made a



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representation for arrears of pay and allowance, pension and all other consequential benefits upon the said notional promotion. The said request was rejected by the second appellant by holding that on the said date the respondent had not worked in the said promoted cadre and therefore, only such notional fixation could have been made. The said order was challenged by the respondent and the learned Single Judge without looking into the Rules had held that it is not the fault of the respondent, which had denied her the promotion at the right time but for the charges that had been framed for which punishment had been imposed and originally been set aside by this Court and secondly by the Appellate Authority himself, by dropping the charges. The respondent was denied the arrears of pay on the principle of “No work no pay”. He would submit that when the person had not been holding the post, which would entitle her to draw the higher salary, then such person cannot be entitled for actual monetary benefits and only notional monetary benefits and therefore, the second respondent had rightfully granted only the monetary benefits notionally and not the actual monetary benefits. But, however the learned Single Judge had directed the appellants to pay the arrears that the respondent would have otherwise been



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entitled to and also burdened the appellants by directing them to pay the interest at the rate of 7.5% per annum on the delayed payment of arrears.

Hence, he would seek interference of this Court.

4. Countering his arguments, Mr.N.Alagu Narayanan, learned counsel appearing for the respondent would submit that it was no fault of the respondent that she had been denied of her due promotion. On a flimsy charge, she had been sought to be departmentally proceeded and she had been imposed with a punishment of down grading her cadre. The said order had been set aside by the learned Single Judge of this Court with a liberty to the appellants to conduct a fresh Disciplinary enquiry. The said order has not been challenged by the appellants and in compliance with the said order, a fresh departmental enquiry was conducted and after a period of four years, an order of punishment of censure was passed. The said order of censure was appealed against by the respondent and the second appellant by the proceedings of the year 2015 had set aside the order of censure and had also dropped the charges that were framed against the respondent. When the charges itself had been dropped and the punishment imposed on the respondent was also set aside, the respondent would be entitled for



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retrospective promotion as earned by her immediate Junior and all other monetary benefits. Since, such monetary benefits had been denied, the respondent had approached this Court. The learned Single Judge had rightly held that it was no fault of the respondent that she had been denied the benefits of promotion at that relevant point of time and therefore, the respondent would be held to be entitled for actual monetary benefits also. Therefore, he would pray this Court to dismiss the Writ Appeal and direct the appellants to make the payment as directed by the learned Single Judge together with interest for the delayed payment.

5. We have heard the submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. It is not disputed by the appellants that the respondent is entitled for the promotion at the relevant point particularly the date on which her immediate Junior was promoted. Such promotion has also been granted to the respondent by the second appellant. The said order granting retrospective promotion had been passed in favour of the respondent on



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11.01.2018, that is after she attained the age of superannuation. It is to be noted that the second respondent being the Appellate Authority had on an appeal filed by the respondent against which she had been awarded with a punishment of censure, had dropped all the charges that were framed against her. The said order came to be passed on 10.07.2015. Had that order been given effect to by the appellants, she would have been notionally promoted as an Assistant Manager on 01.06.2012 and as Deputy Manager on 14.07.2015. But, no order of promotion was given to her till the date of her superannuation and the said order had come to be passed only after her superannuation. The appellants have denied her monetary benefits, eventhough granted her promotion and pay notionally.

7. Had the Authorities acted upon the order of the second respondent dropping the charges, she would have been granted promotion on 14.07.2015 and would have performed her duties atleast as a Deputy Manager on and from 14.07.2015. The lethargic and laxity attitude on the part of the authorities in not conferring her benefits as per the Rules and had denied atleast the post of Deputy Manager.



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8. G.O.Ms.No.22 had been heavily relied upon by the appellants to substantiate their claim that the respondent would only be entitled for a notional fixation of the salary. On a reading of the aforesaid Government Order, particularly, the **Schedule VII Part A-II**, the Government Order envisages that on exoneration or acquittal from charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which her immediate junior was promoted, if he is otherwise qualified for promotion. Even accepting the arguments of the appellants that the respondent had not performed the functioning of either the Assistant Manager or Deputy Manager and that she would be entitled to only notional fixation of the pay, it could be seen that, the second appellant had dropped the charges against the respondent on 10.07.2015 and only after that date her chance of promotion had come which is evidenced from the order itself where the respondent had been given retrospective promotion. She was entitled to be promoted on 14.07.2015, the date after which the charges have been dropped against her. In such an event, she was atleast entitled to hold the post of Deputy Manager from 14.07.2015 and



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she had been denied the benefit to hold the said post for no fault of her. Had the appellants acted without laxity, she would have been granted with the promotion much before the date she attained the age of superannuation and she would have also held the post of Deputy Manager. Hence, the reasonings assigned by the appellants to deny the benefit to the respondent according to us does not hold good. Even though, we accept the contentions of the appellants, for the post that she had not held, she would not be entitled to the actual monetary benefits, we are of the view that she failed to hold the post of Deputy Manager was not her fault and it was the fault of the appellants in processing her claim for promotion pursuant to the order of dropping all charges which is also in violation of G.O.Ms.No.22 relied upon by them.

9. In that context, we are of the view that the respondent would be entitled for actual benefits for the promotional post of Deputy Manager. But, we reject her claim for monetary benefits to the promotional post of Assistant Manager.



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10. In view of the aforesaid reasoning and conclusions, this Writ

Appeal is partly allowed and the order of the learned Single Judge directing monetary benefits for the promotional post of Assistant Manager with effect from 01.06.2012 alone is set aside. We hold that the respondent is entitled to monetary benefits for the promotional post of Deputy Manager, which, she would have been benefited from 14.07.2015 and direct the appellants to pay the monetary benefits that would have been accrued to her on 14.07.2015 and pay such arrears within a period of twelve (12) weeks from the date of receipt of a copy of this order. The appellants are further directed to refix her pensionary benefits on the said basis. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J., .A.C.J.) (K.B., J.)
08.08.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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THE HON'BLE ACTING CHIEF JUSTICE
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
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