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W.P.No.9435 of 2016

IN THE HIGH COURT AT JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.9435 of 2016

and

WMP.Nos.8399 & 8400 of 2016

G.Kannan,
Assistant Section Officer,
Agriculture Department,
Secretariat,
Chennai-600 009.

...Petitioner

Vs.

1. The Secretary to Government,
Agriculture Department,
Secretariat,
Chennai-600 009.

2.The Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai-600 009.

...Respondents

Writ petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd Respondent issued in Letter No.47965/U2/2015-1, P & A.R. Department, dated 08.01.2016 and QUASH the same and consequently direct the 2nd Respondent to regularize the services of



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the Petitioner in the post of Assistant from 07.05.2012 and in the post of Assistant Section Officer from 22.07.2015, with all monetary benefits within a reasonable periods as may be fixed by this Hon'ble Court.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.S.Arumugam,

Government Advocate

ORDER

Writ petition is filed for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order dated 08.01.2016 and for a direction to regularize the services of the petitioner in the post of Assistant from 07.05.2012 and in the post of Assistant Section Officer from 22.07.2015 with all monetary benefits.

2. The petitioner was given compassionate appointment in the post of Record Clerk on 15.11.2007 in the Agricultural Department, after the demise of his father, who worked as a Record Clerk in the same department. At the time of appointment, the petitioner passed X Std., ITI draftsman (Civil) and also passed 3 years course in Diploma in Civil Engineering. Considering the educational qualifications of the petitioner, the 1st respondent appointed him as Record



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Clerk and he assumed charge on 15.11.2007. With the permission of the

respondent, the petitioner completed B.A degree (History), 3 years course through Correspondence from Madras University. The petitioner made representation to the 2nd respondent through 1st respondent for appointment as Assistant under the graduate quota. Rule 19 of the Tamil Nadu State and Subordinates Service Rules stipulates that Record Clerk with any degree of any recognized University was eligible for appointment as Assistant. According to the petitioner, though he was fully eligible and qualified for promotion to the post of Assistant as early as 2011-2012, the 2nd respondent did not consider him for promotion, on the specious reasoning that the petitioner had not passed B.Ed degree as per Government Order in G.O.(Ms).No.107, P & A.R. Department, dated 18.09.2009 under 10+2+3 pattern. Subsequently, the Equivalence Committee constituted by the Government gave clearance for treating 10+3+3 pattern as equivalent to 10+2+3 pattern but even then the petitioner was not considered. The petitioner was therefore constrained to file W.P.No.21149 of 2015 before this court as his name was not considered for promotion on par



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with his junior Rizanulla Sheriff. This court by order dated 18.07.2015 directed the respondents to promote the petitioner as Assistant by including his name in the panel for the year 2011-2012 in appropriate place from the date of promotion of his junior Rizanulla Sheriff on notional basis. In pursuance of the aforesaid order of this court, by order dated 13.08.2015 the petitioner was promoted as Assistant in the panel relating to the year 2011-2012 and thereafter promoted to Assistant Section Officer vide proceedings dated 30.10.2015. However, no monetary benefits were paid to the petitioner. The petitioner therefore filed the present writ petition for a direction to grant monetary benefits to the petitioner on par with similarly placed persons.

3. The 2nd respondent filed detailed counter which was adopted by the 1st respondent.

The respondents in their counter stated that the petitioner was not entitled to the monetary benefits in view of ruling 17 under Fundamental Rule 27 which specifically provided for fixation of pay from the date of assumption of charge



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in the higher post on restoration of seniority. According to the respondents the monetary benefits were payable only from the date of assumption of charge as per the aforesaid rule. The respondents therefore prayed that writ petition was meritless and therefore the same deserved to be dismissed.

4. The learned counsel for the petitioner relying on the order passed by this court in similar case in W.P.No.15615 of 2018 dated 15.12.2022 submitted that denial of monetary benefits from the date on which he was notionally promoted, on the ground that, the monetary benefits were payable from the date of assumption of charge was untenable.

5. I have heard the learned counsels and I have perused the materials placed on record.

6. A learned Single Judge of this court in the case of V.Mani v. The Secretary to Government, State of Tamil Nadu, Revenue Department, Fort St.George, Chennai-9 in W.P.No.21229 of 2006 dated 29.11.2007, following the



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judgment of the Hon'ble Supreme Court reported in 1991 SCR (3) 790 held as follows:

"11.The decisions relied on by the learned counsel for the petitioner are briefly dealt with hereunder:-

(i)The Supreme Court in Union of India v. K.V.Janakiraman, reported in 1991 SC 2010 , in Paragraph 7 of the judgment, held as follows:

"The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases."

(vi) A Division Bench of this Court in Munivenkatappa v. State Bank of India, reported in 2007 (2) CTC 135, considered a case where the request of the appellant therein for voluntary retirement was unilaterally treated as resignation and by applying the principle of "No work No pay", the employer refused to give him the monetary benefits. The Division Bench of



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this Court at Paragraph 12, held as follows:

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"Once it is found that the decision of the respondents is illegal, it has to be held that the respondents have illegally prevented the petitioner from discharging his duties from 01.10.1999 and if the respondent's illegally prevented the petitioner from attending to the duties, respondents are bound to pay salary for the period for which the petitioner was not allowed to perform his duties."

15. Having accepted that date of birth of the petitioner as 18.04.1939 and directed the authorities to make necessary correction, the department instead of merely applying the principle of "No work No Pay" ought to have considered, whether the delay on their part in considering the application dated 21.05.1991, the ultimate decision taken by them, had prevented the government servant from discharging his duties. On consideration of the facts and circumstances of this case, I am of the considered view that though the petitioner was willing to work, he was kept away by the department by erroneously approaching the issue of alteration of date of birth, which has been held proved by the decision of the Tribunal and confirmed by this Court and thereby he was prevented from working till



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31.05.1998. The respondent cannot take advantage of this error

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and deny the legitimate salary and other emoluments.”

7. From the extract of the above order, it is clear that ruling 17 under Fundamental Rule 27 cannot be invoked for denying monetary benefits when the employee is not at fault for not working in the post. As the petitioner was denied promotion illegally, the petitioner approached this court by filing W.P.No.21149 of 2015 and in pursuance of the order in the said writ petition, the petitioner was promoted. Therefore the petitioner cannot be blamed for not working in the post and hence ruling 17 of Fundamental Rule 27 cannot be invoked to deny the petitioner, the monetary benefits. Therefore following the aforesaid order, I am of the view that respondents cannot rely on the ruling 17 under Fundamental Rule 27 for denying monetary benefits to the petitioner from the date of his notional promotion.

In view of the above, writ petition is allowed and monetary benefits shall be fixed and disbursed to the petitioner within a period of twelve (12) weeks



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from the date of receipt of a copy of this order. No costs. Consequently

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connected WMP's are closed.

12.08.2024

dsn

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

To

1. The Secretary to Government,
Agriculture Department,
Secretariat,
Chennai-600 009.

2. The Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai-600 009.



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N.MALA,J.

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