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W.A.Nos.930 and 931 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 18.04.2024
DELIVERED ON: 14.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.930 and 931 of 2021

Geetha Mahadevan ... Appellant in W.A.No.930/2021

N.Sathiyamurthy ... Appellant in W.A.No.931/2021

Vs.

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai-600 009.

2.The Director of Medical & Rural
Health Services,
Chennai-600 006.

... Respondents in both WAs.

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 23.10.2018 made in W.P.Nos.10485 of 2014 & 11951 of 2014 respectively.

For Appellant : Mr.V.S.Jagadeesan
in both WAs.

For Respondents : Mrs.Sneha,
Special Counsel for R2



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COMMON JUDGMENT

D.KRISHNAKUMAR, J.

These intra court appeals are filed challenging the order of the Writ Court dated 23.10.2018 made in W.A.Nos.10485 of 2014 and 11951 of 2014 respectively. Since the issue involved in both the writ appeals are one and the same, they are disposed of by this common judgment.

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2. The appellant was appointed as Junior Assistant on 03.03.1992 on compassionate ground on the death of her husband, a Assistant Surgeon and she was regularized on 04.04.1994. She was promoted as Assistant on 13.11.1998. The appellant was temporarily promoted as Office Superintendent on 02.01.2012 and her name was included in Sl.No.115 and she was called to attend the counselling on 04.01.2012 at 2.00 p.m. She attended the counselling and also gave her option for the place of posting and the entire process was over by 3.00 p.m. on 04.01.2012. While so, suddenly, the respondent informed that on account of the interim order



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passed by this Court in Cont.P.No.6 / 2012 in W.P.No.12470 of 2010, filed by one Pichaimani and others, they have stopped the further proceedings and subsequently, the said interim order was vacated after the disposal of W.A.No.417 of 2012. In the meantime, the petitioner attained the age of superannuation on 31.01.2012 and she was allowed to retire. The appellant filed writ petition seeking notional promotion and other monetary benefits in the post of Office Superintendent till his retirement. The writ petition was dismissed, against which the present writ appeal has been filed.

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3. The appellant was appointed as Telephone Attendant on 10.01.1983 in the King Institute of Preventive Medicine, Chennai and later promoted as Junior Assistant on 02.04.1991 by transfer of service and on 10.07.1998, he was promoted as Assistant. Whileso, the Director, vide letter dated 21.03.2011 has called the service particulars of Assistants for preparation of panel for promotion to the post of Office Superintendent for the year 2011-12 and the crucial date being 15.03.2011. The appellant's name was included in Sl.No.74 and he was called to attend the counselling



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on 04.01.2012 at 2.00 p.m. He attended the counselling and also gave his option for the place of posting and the entire process was over by 3.00 p.m.

on 04.01.2012. While so, suddenly, the respondent informed them that on account of the interim order passed by this Court in Cont.P.No.6 / 2012 in W.P.No.12470 of 2010, filed by one Pichaimani and Others, they have stopped the further proceedings and subsequently, the said interim order was vacated. In the meantime, the petitioner attained the age of superannuation on 31.05.2012 and he was allowed to retire. The appellant filed writ petition seeking notional promotion and other monetary benefits in the post of Office Superintendent till his retirement. The writ petition was dismissed, against which the present writ appeal has been filed.

4. Mr.V.S.Jagadeesan, learned counsel appearing for the appellants would submit that the crucial date for preparation of promotion panel for the year 2011-12 is 15.03.2011 and on that day, the appellants were eligible to be included in the panel and get promoted to the post of Superintendent. It is further submitted that though the name of the appellants/writ petitioners were found in the promotion panel and they attending the counselling on the



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date fixed i.e., 04.01.2012 and also gave their choice of place of posting, on account of the interim order granted by this Court in Cont.P.No.6/2012 in W.P.No.12740 of 2010 on 04.01.2010, which was filed by the Typist/Stenographers to include them in the promotion panel, posting orders were not issued to the appellants and for no fault on the part of the appellants, they were deprived of their promotional opportunity as Superintendent till their retirement on 31.01.2012 and 31.05.2012 respectively and the Writ Court has failed to consider these aspects in proper perspective and dismissed the writ petition and therefore, prays for setting aside the order of the Writ Court and for a direction to the respondents to grant notional promotion as Superintendent on par with his juniors along with other attendant monetary benefits.

5. Mrs.V.Sneha, learned Standing Counsel appearing for the second respondent would contend that the appellants are not entitled for notional promotion as Superintendent since promotion was not granted to any of the juniors to the appellants till the date of their superannuation, and therefore, the appellants cannot seek for notional promotion on par with their juniors



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and the order of the Writ Court is perfectly valid and therefore, prays for dismissal of these writ appeals.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. The point for consideration is whether the appellants are entitled to be considered for notional promotion on par with his juniors, in the peculiar facts and circumstances of this case?

8. It is not in dispute that the appellants have been promoted temporarily to the post of Office Superintendent and their names were included in Sl.Nos.115 & 74 in the promotion panel, which was drawn as on 30.12.2011 and they were directed to attend the counselling on 04.01.2012. The appellants had attended the counselling and also gave their choice of place of posting, however posting orders were not issued on account of grant of interim orders by this Court in Cont.P.No.6/2012 in W.P.No.12740 of 2010 on 04.01.2010, which was filed by the Typist/Stenographers seeking



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to include them in the promotion panel. Aggrieved by the order passed in W.P.No.12740 of 2010 as well as the interim order in Cont.P.No.6/2012, the Government has preferred W.A.No.417 of 2012, and vide interim order dated 09.03.2012 the Division Bench has ordered that no coercive steps shall be taken and based on the interim order passed in the writ appeal, the contempt petition was dismissed by this Court, vide order dated 02.11.2012. In the meantime, the appellants had retired from service on attaining the superannuation on 31.01.2012 and on 31.05.2012 respectively.

9. It is the grievance of the appellants that the very same seniority list dated 02.01.2012 was given effect to and as a result, juniors to the appellants were promoted as Superintendent and whereas the petitioners were not given promotion. According to the respondents, at the time of giving promotion and issuing posting orders to other persons for the post of Superintendent, the appellants have retired from service on attaining superannuation and therefore, they were not given posting orders.

10. The respondents have filed counter affidavits before the Writ



Court, wherein it has been stated as follows:

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"13.It is submitted that the post of Office Superintendent was very much required for smooth functioning of the administration in Government Hospitals/Medical Institutions, the Government in its letter No.18816/AA2/2011-9, Health and Family Welfare Department dated 12.11.2012, permitted the second respondent herein to fill up the post of Office Superintendent, based on the option given by the candidates during the counselling held on 04.01.2012 subject to following conditions:

1. This is subject to the outcome of the judgment pending in W.A.No.417 of 2012.

2. The posts are reserved for the petitioners in Writ Petition (respondent in Writ Appeal) as a measure of abundant caution and to ensure that there is no perception of coerciveness.

3. In case the petitioner in the writ petition (respondents in W.A.) are successful, the entire seniority, promotion and even place of posting will be based on the final verdict and the individuals benefit this on account of this posting will not be vested with any claim or seniority on choice of places again to ensure no element of coercion."



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11. The aforesaid counter affidavits clearly reveals that the appellants were promoted temporarily to the post of Office Superintendent, however posting orders could not be issued based on the interim order of this Court. That apart, the cut off date for preparation of panel for promotion for the post of Office Superintendent for the year 2011-2012 is 15.03.2011 and in the promotion panel drawn on 02.01.2012, the name of the appellants were found place. The appellants retired on attaining the age of superannuation on 31.01.2012 and the writ appeal in W.A.No.417 of 2012 was disposed of on 03.02.2014 and thereafter, promotional orders have been issued to others and therefore, the same yardstick should be applied to the appellants and they cannot be deprived of promotion.

12. Notional Promotion refers to the promotion in which a Government employee is involved in a particular exigencies due to which he is unable to work. Thus such kind of promotions are done on compassionate grounds with an intent to not hinder any future prospects of such employee. The employee cannot claim such promotion as a matter of right. The discretion to give notional promotion or not vests exclusively with the



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employer, who can take a decision on the same in accordance with the policies/ rules governing the employment of such employee as well as other circumventing circumstances. Moreover, the decision to give notional promotion has to be examined based on the facts and circumstances of each case. The employee who is notionally promoted cannot claim as a right benefits of the promoted post from the date he was granted the notional promotion.

13. This is a peculiar case where the appellants were already given temporary promotion as Office Superintendent and they appeared for the counselling and also gave their choice of posting orders, however, posting orders could not be issued on account of interim orders passed by this Court and after the disposal of Writ Appeal No.417/2012 on 03.02.2014, the very same promotion panel list drawn as on 02.01.2012 was operated, in which the name of the appellants were found at Sl.Nos.115 & 74 and the juniors to the appellants were given posting orders. In these circumstances, the appellants have a legal right for notional promotion and in the light of the interim orders passed in the contempt petition, they have been deprived of



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their promotion and subsequently, the interim order has been vacated. Once the appellant's are eligible to be considered and promoted and merely because the appellants have retired and not served in the promotional post, will not justify the act of the respondents in not granting promotion. Moreover, when the juniors to the appellants were given promotion and posting order was issued, the appellants cannot be deprived of such benefits on the ground that they have retired from service while effecting such promotions. Considering the peculiar nature of the case, we safely comes to the conclusion that the appellants are entitled for notional promotion on par with their juniors as the denial of promotion would amount to arbitrary, discriminative and violates Articles 14 of the Constitution of India. This Court finds much force on the submission made by the learned counsel for the appellants and the order of the Writ Court is legally unsustainable and hence, the order of the Writ Court warrants interference.

14. In the light of the reasons assigned above, these Writ Appeals stand allowed and the order of the Writ Court dated 23.10.2018 made in W.P.Nos.10485 and 11951 of 2014 are set aside. The appellants are



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entitled to notional promotion on par with their juniors and they are entitled for monetary and other service benefits till the date of their retirement. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

(D.K.K.J.) (K.B. J.)
14.06.2024

Internet: Yes/No
Index : Yes/No
Jvm

- To
- 1.The Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai-600 009.
 - 2.The Director of Medical & Rural Health Services,
Chennai-600 006



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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.
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Common Judgment in
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