



WA No.2747 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 12.09.2024

CORAM:

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

THE HONOURABLE MR.JUSTICE P.B. BALAJI

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1.State of Tamil Nadu,
Represented by its Secretary to Government,
Rural Development Department,
Secretariat, Chennai-600 009.

2.The District Collector,
Thiruvallur District, Thiruvallur.

... Appellants

versus

1.M.S.Govarthanan, B.D.O.(Retired),
Plot No.52, Arul Nagar,
Kavaraipettai -601 206,
Gummidipoondi Taluk,
Thiruvallur District.

2.N.Ponnurangham (died)
Block Development Officer (Bio Gas),
D.R.D.A., Thiruvallur District.

3.S.Elumalai,

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Block Development Officer (Village Panchayats)
Thiruvallur.

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4.P.Kamatchi,
5.P.Govindharajan

...Respondents

R2 (died) is substituted by the respondents 4 and 5 as legal heirs of deceased R2, vide order of the court dated 20.02.2024 in CMP No.1900 of 2023 in CMP No.19173 of 2022 in WA SR No.96327 of 2022 by (RMDJ and MSQJ)

PRAYER: Writ Appeal filed against the order of the learned Single Judge in WP No.27790 of 2007 dated 22.02.2022.

For the Appellants :Mr.T.K.Saravanan
Government Advocate

For the Respondents :Mr.V.R.Rajasekaran
for first respondent

JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

This Writ Appeal is filed against the order of the learned Single Judge in WP No.27790 of 2007 dated 22.02.2022.

2. According to the appellant, as per Fundamental Rule 27(17), the



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first respondent herein is not entitled for monetary benefits from the date of notional promotion on par with his junior as he was not drawing the same rate of pay as his junior in the lower post from time to time. Further, as per the said Rule, he is entitled for monetary benefits only from the date of actual promotion. The writ court, without considering the said aspect has allowed the writ petition. Hence, the appellant Department has filed the present intra court appeal.

3. Learned Counsel for the first respondent submitted that a similar issue came before a Division Bench of this Court in W.A.No.2780 of 2022, filed by the Department. The Division Bench had considered the aforesaid issue and based on a judgment of the Hon'ble Supreme Court, had dismissed the said appeal by judgment dated 23.02.2023. The relevant portion of the judgment is extracted hereunder:

"3.According to the learned Special Government Pleader appearing for the appellants, during the course of employment of the respondent, an anomaly arose in the matter of fixation of his seniority along with other employees. This led to filing of Original Application before the Tamil Nadu Administrative Tribunal and it culminated in passing the order



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dated 19.04.2005 by the Division Bench of this Court in W.P.Nos.19960 to 19962 of 1998 etc., On the basis of the direction issued by the Division Bench of this Court, the re-fixation of seniority of the respondent was under process. At this stage, the respondent herein has filed W.P.No.25407 of 2007 praying to forthwith pay notional benefits viz., difference in salary in the post of Assistant, Extension Officer, Deputy Block Development Officer, Block Development Officer, Assistant Director and as Joint Director. During the pendency of the writ petition, the respondent reached the age of superannuation and he was permitted to retire on 31.05.2009 while he was holding the post of Block Development Officer. After his retirement, the seniority of the respondent was revised and re-fixed by a proceeding dated 24.01.2011 of the third appellant herein and he was conferred with notional promotion in the posts of Assistant, Extension Officer, Assistant Director and as Joint Director. However, the respondent claimed that he was not paid the difference in salary in the aforesaid posts. It is the contention of the learned Special Government Pleader appearing for the appellants that as per Rules 27(17) of the Fundamental Rules, the respondent had not physically assumed charge in the notionally promoted posts. The notional promotion was conferred to the respondent only after his retirement and therefore, he is not entitled for the difference in pay and allowance. The learned Judge, instead of dismissing the writ petition filed by the respondent, has granted liberty to him to submit a representation seeking difference in salary and allowance in the notionally promoted posts. When the respondent



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was conferred with notional promotion, the question of paying the difference in salaries and allowance in the notionally promoted posts will not arise. While so, the learned Judge ought not to have granted liberty to the respondent to submit a representation to the appellants with a consequential direction to the appellants to consider it within a specific time limit.

4. On the other hand, the learned counsel for the respondent/writ petitioner submitted that the learned Judge has observed that reliance on Ruling 17 under the Fundamental Rules, vide G.O.Ms.No.977, Personnel and Administrative Reforms (FR.III) dated 06.10.1986, cannot be made, since the notional promotion, together with benefits, was directed to be paid on the basis of the order passed by the Division Bench of this Court. Further, the learned counsel for the respondent/writ petitioner submitted that the appellants failed to pay the difference of wages, which the respondent/petitioner is entitled to. The appellants are bound to pay interest on the due amount as per the decision of the Division Bench of this Court in the Collector, Dharmapuri District vs N.Murugan (W.A.No.3024 of 2003 dated 05.01.2005) and as per the decision of the Hon'ble Supreme Court in D.D.Tewari Vs.Uttar Haryana Bijli Vitran Nigam Limited and others [(2014) 8 SCC 894]. Hence, the learned Judge has rightly allowed the writ petition and it does not warrant any interference by this Court."

4. Since the issue involved in the present appeal has already been



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decided by the Division Bench of this Court. Therefore, nothing warrants to interfere with the order of the writ court. Consequently, the Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, C.M.P.No.20153 of 2024 is closed.

(D.K.K., ACJ.) (P.B.B., J.)
12.09.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

THE HON'BLE ACTING CHIEF JUSTICE
and
P.B. BALAJI, J.

(mrn)



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