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W.P.No.14754 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 12.09.2024

ORDER PRONOUNCED ON : 23.09.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.14754 of 2017

G.Sivaraj

...Petitioner

Vs.

1. The Secretary to Government,
Commercial Tax and Registration Department,
Fort St. George, Chennai- 9.

2.The Inspector General of Registration,
No. 120, Santhome High Road,
Chennai- 28.

...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed by him in No.46232/K3/2016 dated 15.02.2017 and to quash the same and further direct the 2nd respndent to grant the arrears of pay for the post of Assistant from 03.05.2002 to 13.11.2009 and in Sub-Registrar Grade-II post from 14.11.2009 to 20.12.2012 within a reasonable time.

For Petitioner : Mr.G.Bala

For Respondents : Mr.R.Kumaravel,

Additional Government Pleader



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ORDER

Writ petition is filed challenging the orders dated 15.02.2017 rejecting the petitioner's claim for arrears of pay for the post of Assistant from 03.05.2002 to 13.11.2009 and for the post of Sub-Registrar, Grade II from 14.11.2009 to 20.12.2012.

2. The lengthy case history is concised to omit extensive details. The petitioner belongs to Kuruman's community which falls under the Schedule Tribe category. The petitioner after some legal proceedings approached this Court in W.P.No.16390 of 1995 for issuance of provisional community certificate. In the said writ petition, a direction was issued on 25.01.1996 to the Revenue Divisional Officer, Tirupattur to issue Provisional Community Certificate to the petitioner. The RDO in pursuance of the said order of this Court issued the Provisional Community Certificate to the petitioner. The petitioner appeared in Grade IV examination conducted by the TNPSC and was selected and appointed as Junior Assistant in the Registration Department on 10.07.1997. On the basis of the



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provisional certificate the petitioner joined the Registration Department and thereafter applied for permanent certificate to the RDO, Tirupattur on 30.04.2003.

As the petitioner was not issued with the permanent certificate he filed W.P.No.10276 of 2004 for a direction to the RDO, Tirupattur to issue Permanent Community Certificate. This court vide order dated 19.04.2004, directed the RDO to pass final orders within a time frame. Meanwhile, the RDO forwarded the petitioner's case to the District Vigilance Committee, which vide order dated 02.05.2007, confirmed the petitioner's Provisional Community Certificate. The petitioner thereafter requested the RDO, Tirupattur, to issue him the Permanent Certificate, but as the RDO did not issue the certificate, the petitioner approached this Court again in W.P.No.16571 of 2009 for mandamus, directing the RDO to issue the Permanent Certificate. The petitioner also filed W.P.No.16752 of 2009 praying to fix his seniority in the cadre of Junior Assistant from 25.07.1997 and to grant him all arrears. The Division Bench of this Court vide order dated 29.01.2010 directed the 2nd respondent therein to issue the Permanent Community Certificate within the time stipulated by it. In W.P.No.16752 of 2009, the Division



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Bench gave liberty to the petitioner to submit a representation to the concerned authority after obtaining the Permanent Community Certificate with further direction to the concerned authority to consider and pass orders within the time stipulated by it. The RDO, Tirupattur, thereafter issued the Permanent Community Certificate to the petitioner on 22.03.2010. The petitioner on 05.04.2010 represented to the 2nd respondent to regularise his services, fix his seniority and to grant him consequential benefits. As the petitioner's request was not considered he approached this Court in W.P.No.26893 of 2010 and this Court vide order dated 07.02.2012, directed the 2nd respondent to consider the claim of the petitioner for fixing his seniority and also to consider his case for promotion as per his seniority within the time stipulated by it. The Court further directed the 2nd respondent to pay the petitioner, the arrears of pay, if any. In compliance of the said order, the 2nd respondent passed orders on 12.12.2012 fixing the seniority of the petitioner in the post of Junior Assistant from 01.01.1997, in the post of Assistant in the panel list 2001-2002 and in the post of Sub-Registrar, Grade II in 2009 seniority list. Thereafter the petitioner was promoted as Sub-Registrar, Grade-I on 24.07.2013.



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The petitioner finally retired on 31.07.2015 as Sub-Registrar, Grade-II. As under the order dated 12.12.2012 the petitioner was denied arrears of pay for the period 03.05.2002 to 13.11.2009 in the post of Assistant and from 14.11.2009 to 20.12.2012 in the post of Sub-Registrar, Grade-II, the petitioner represented to the respondent on 29.09.2016, claiming arrears of pay for the aforesaid periods in the said posts. As the respondent did not respond to the petitioner's representation, the petitioner filed W.P.No.41246 of 2016, and the same was disposed with a direction to the respondents to consider the petitioner's representation within the stipulated period. In pursuance, thereof, the respondent passed the impugned order rejecting the petitioner's claim and hence the writ petition challenging the same.

3. The respondent filed a detailed counter admitting the earlier litigations. The respondent in support of the impugned order stated that the impugned order was passed in accordance with Ruling 17 under Rule 27 of the Fundamental Rules and therefore the same did not call for any interference. The respondent further stated that the petitioner was not entitled to arrears of pay in the Higher Posts for



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the time periods claimed as he had not actually worked during the periods. It was further submitted that the petitioner was appointed purely on temporary basis and that his services were not regularised for want of permanent Community Certificate. It was further stated that the issue regarding the genuiness of the petitioner's Community Certificate was pending enquiry only because of the petitioner's indifferent attitude. The respondent stated that the impugned order was validly passed invoking Ruling 17 of Rule 27 of the Fundamental Rules and therefore the writ petition deserved to be dismissed as meritless.

4. The learned counsel submitted that the Ruling 17 of Rule 27 of the Fundamental Rules does not apply to the petitioner's case as the petitioner's case was a special one, in that, for no fault of the petitioner he was allowed to stagnate in the post of Junior Assistant without promotion for over 15 years. The learned counsel further submitted that the impugned order was discriminatory because one Vetriazhagan, who was similarly placed was sanctioned arrears of salary and all monetary benefits.



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5. The learned counsel for the respondent on the other hand submitted that the petitioner was not entitled for arrears of pay as per Ruling 17 of Rule 27 of the Fundamental Rules. The learned counsel further submitted that the case of Vetriazhagan was completely different and hence there was no discrimination as alleged by the petitioner.

6. I heard both counsels and perused the records.

7. It is admitted that the petitioner was temporarily appointed in the 2nd respondent department on 10.07.1997 on the basis of the Provisional Community Certificate issued to him in pursuance of the order dated 25.01.1996 of this Court in W.P.No.16390 of 1995. The petitioner after a series of litigations in pursuance to the order of the Division Bench dated 29.01.2010 in W.P.No.16571 of 2009 was issued the Permanent Community Certificate on 22.03.2010. The Division Bench in W.P.No.16752 of 2010, vide order dated 29.01.2010, gave liberty to the petitioner to represent to the concerned authority for promotion, after obtaining Permanent Community Certificate. The petitioner after obtaining the Permanent



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Community Certificate, represented to the 2nd respondent on 05.04.2010 to regularise his service, fix his seniority and grant him all consequential benefits. As the respondent did not consider the claim of the petitioner, the petitioner filed W.P.No.26893 of 2010 and the same was disposed on 07.02.2012 in following terms:

“to consider the claim of the petitioner for fixing his seniority and also consider his case for according promotion as per his seniority. The said exercise has to be carried out by the second respondent within a period of eight weeks from the date of receipt of the order. Further, the arrears of pay, if any to the petitioner has to be paid by the 2nd respondent within the aforesaid period”.

Thereafter on 12.12.2012, the 2nd respondent passed order fixing the seniority of the petitioner in the post of Junior Assistant from 01.01.1997 and in the post of Assistant panel list from 2001-2002 and the Sub-Registrar, Grade-II in 2009 seniority list. The petitioner was later promoted as Sub-Registrar, Grade-I on 24.07.2013 and he retired on 31.07.2015.



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8. As the petitioner was not paid arrears of pay for the post of Assistant from 03.05.2002 to 13.11.2009 and in the Sub-Registrar, Grade-II post from 14.11.2009 to 20.12.2012, the petitioner submitted a representation on 29.09.2016. As the said representation was not considered, the petitioner filed W.P.No.41246 of 2016. This Court vide order dated 24.11.2016 directed the respondent to pass orders on the petitioner's representation dated 29.09.2016 within the time stipulated by the Court. In compliance of the said order, the impugned order was passed on 15.02.2017. Aggrieved by the same, the petitioner has filed the above writ petition.

9. The main issue to be decided in this writ petition is whether the petitioner is entitled to arrears of pay for the post of Assistant from 03.05.2002 to 13.11.2009 and in the post of Sub-Registrar, Grade-II from 14.11.2009 to 20.12.2012.

10. The respondents rely on Ruling 17 of Rule 27 of the Fundamental Rules to deny the petitioner the relief claimed by him. Before moving further, I think it



relevant to refer here to the judgment of the Hon'ble Supreme Court in the case of

Union of India vs. K.V.Jankiraman, reported in (1991) 4 SCC 109 while

considering a similar rule in Central services the Court held as follows:

“25. We are not much impressed by the contentions advanced on behalf of the authorities. 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.

26. 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



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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. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal.....”

11. From a reading of the judgment it is lucid that the Government servant is not entitled to arrears of pay as a matter of right, but the entitlement or the extent of it, will have to be considered on the facts of the case and by considering the



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entire circumstances. The contention of the petitioner that Ruling 17 of Rule 27 does not apply to his case as his is a special case has to be examined, in the light of the facts and circumstances of the case.

12. Undisputably, the petitioner was appointed on temporary basis as Junior Assistant on 10.07.1997, on the strength of the Provisional Community Certificate. The petitioner's service could not be regularised for want of Permanent Community Certificate. The petitioner filed W.P.No.16571 of 2009, for issuance of Permanent Community Certificate and along with it, filed W.P.No.16572 of 2009, for fixing seniority in the category of Junior Assistant from 25.07.1997 with all arrears. The Hon'ble Division Bench on 29.01.2010, while directing the issuance of Permanent Community Certificate to the petitioner disposed W.P.No.16572 of 2009 giving liberty to the petitioner to submit representation for promotion after obtaining the Permanent Community Certificate. After receiving the Permanent Community Certificate on 22.03.2010 the petitioner submitted his representation for regularisation of his services, fixation of seniority and grant of consequential



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benefits. As the same was not considered the petitioner filed W.P.No.26893 of 2010 and by order dated 07.02.2012, the 2nd respondent was directed to consider and pass orders on the petitioner's representation. Thereafter on 09.05.2012, the petitioner's services were regularised by the 2nd respondent. Subsequently seniority was fixed by order dated 30.10.2012, in the cadre of Junior Assistant and consequently the petitioner was promoted as Assistant on par with his junior on 01.11.2012. On 12.12.2012, the petitioner was promoted notionally to the post of Sub-Registrar, Grade-II. Thereafter the petitioner was further promoted as Sub-Registrar, Grade-I on 24.07.2013 and retired on 31.07.2015. It was only after his retirement that the petitioner submitted his representation claiming arrears of pay in the posts of Assistant and Sub-Registrar, Grade-II. As the petitioner's representation was not considered he filed W.P.No.41246 of 2016 and the same was disposed with direction to consider the petitioner's representation.

13. It is to be noted that the petitioner approached this Court in W.P.No.16752 of 2009 for fixation of seniority in Junior Assistant post along with



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arrears, this Court vide order dated 29.01.2010, disposed the writ petition in following terms:

“13. As far as the other writ petition in W.P.No.16752 of 2009 is concerned, this court cannot direct the respondents to fix the seniority of the petitioner, as prayed for in the writ petition. However, after obtaining the permanent community certificate, it is open to the petitioner to make a representation expressing his grievance and on such receipt of said representation and also representation already made on 26.09.2007, the authority concerned shall consider and pass orders within a period of three weeks thereafter, in accordance with law. With the above observation, W.P.No.16752 of 2009 is disposed of. No costs.”

14. So also in W.P.No.26893 of 2010, the petitioner prayed for regularisation of his services as Junior Assistant, fixation of Seniority, promotions as per seniority and for arrears of pay in the Higher posts. This Court vide order dated 07.02.2012 disposed the writ petition in following terms:

“8. In view of the above stated position, I am of the considered view that the second respondent has to consider the



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claim of the petitioner for fixing his seniority and also consider his case for according promotion as per his seniority. The said exercise has to be carried out by the second respondent within a period of eight weeks from the date of receipt of this order. Further, the arrears of pay, if any, to the petitioner has to be paid by the second respondent within the aforesaid period.”

15. From the aforesaid orders it is clear that though the petitioner claimed arrears of pay, the Court did not pass any positive order but, left it to the authorities to consider the same. When these orders are contrasted with the order dated 15.07.2011 in W.P.No.12870 of 2010 passed by this Court in Vetriazhagan's case it will be clear that the petitioner's plea of discrimination cannot be sustained.

In Vetriazhagan's case the Court passed the following order:

“12. This writ petition is allowed. The Respondents 1 and 2 are directed to grant the petitioner all consequential benefits including monetary benefits Rs.1,41,010.45 from the date of notional promotions for the post of Sub-Registrar Grade II from 10.08.83 to 08.06.88, Sub-Registrar Grade I from 29.09.94 to 30.03.97 and District Registrar from 17.08.98 to 31.07.2007



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including selection grade. It is made clear that the above said exercise shall be completed within a period of 8 weeks from the date of receipt of copy of this order. No costs.”

16.It is hence clear that absolutely there is no discrimination as in Vetriazhagan's case there was a positive direction of the Court to pay arrears and hence the respondent paid it.

17. Further in the petitioner's case, the Hon'ble Division Bench in W.P.No.16752 of 2009 clearly directed the petitioner to submit his representation expressing his grievances after the receipt of the Permanent Community Certificate. Only after the receipt of the Permanent Community Certificate, the respondents regularised the services of the petitioner. The delay in submitting the Permanent Community Certificate lies with the petitioner and therefore, the respondents cannot be blamed for the delay in regularisation and the consequent promotions. One more vital aspect which needs mention here is that the petitioner has only challenged the order passed rejecting the representation claiming arrears of pay but, he has not challenged the order dated 12.12.2012, granting notional



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promotions. The petitioner is deemed to have acquiesced in the order dated 12.12.2012 as he accepted his further promotion to Sub-Registrar, Grade-I, continued in the said post till his retirement on 31.07.2015 and thereafter only submitted his representation claiming arrears of pay.

In the light of the above facts, I find no illegality or infirmity in the impugned order. The writ petition has no merits, ergo, it is dismissed, but without costs.

23.09.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

1. The Secretary to Government,
Commercial Tax and Registration Department,
Fort St. George, Chennai- 9.

2.The Inspector General of Registration,



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No. 120, Santhome High Road,
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N.MALA,J.

dsn

Pre-Delivery Order in

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Order Delivered on

23.09.2024