



W.P.(MD)No.8944 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2024

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.8944 of 2018

and

W.M.P.(MD)No.8359 of 2018

S.Sankaran

: Petitioner

Vs.

1.The Commissioner of Labour,

Chennai – 06.

2.The Deputy Commissioner of Labour,

Dindigul.

3.The Inspector of Labour,

Dindigul.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned orders passed by the first respondent vide proceedings E1/11599/2017 dated 24.07.2017 and consequential order made in letter No.E1/46463/17 dated 08.01.2018 and quash the same in respect of denial of arrears of pay



W.P.(MD)No.8944 of 2018

to the petitioner in the promotional post of UG Superintendent from 02.09.2009 to 30.04.2015 and consequently to direct the respondents to grant the arrears of pay and allowance to the petitioner in the post of UG Superintendent with effect from 02.09.2009 till his retirement on superannuation on 30.04.2015 to the petitioner with interest.

For Petitioner : Mr.M.Saravanakumar
for Mr.V.Muthukamatchi
For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 24.07.2017 passed by the first respondent and the consequential order dated 08.01.2018, denying the petitioner's request for payment of arrears of pay in the promotional post of UG Superintendent from 02.09.2009 to 30.04.2015 on the ground that the petitioner is not eligible in view of Rule 17 under FR-27 of the Fundamental Rules.

2.The petitioner was appointed as Junior Assistant on 14.08.1989, thereafter he was promoted as Assistant in the year 1997. The petitioner was then transferred to Dindigul Labour Office



W.P.(MD)No.8944 of 2018

in the year 2004. A criminal case was registered against the petitioner and his colleague Mr.Natarajan in Crime No.3 of 2008 under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act. Immediately thereafter, on 15.05.2008, the petitioner was placed under suspension by the first respondent. The petitioner challenged the suspension order in W.P.(MD)No.10819 of 2009 filed before this Court. An interim stay of the suspension order was passed by this Court on 27.10.2009. Thereafter the first respondent revoked the suspension order by his proceedings dated 12.01.2010. After the revocation of suspension order, the petitioner was transferred and posted in the office of the Deputy Commissioner of Labour on 25.02.2011.

3.While that being so, the Writ Petition filed by the petitioner challenging the suspension order dated 15.05.2008 was dismissed by this Court on 01.11.2010 in W.P.(MD)No.10819 of 2009. Once again, the petitioner was suspended from service on 10.08.2011. The Vigilance and Anti-Corruption police filed a charge sheet against the petitioner and the same was taken on file by the concerned Judicial Magistrate Court in C.C.No.3 of 2014. The Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Cases, Theni, acquitted the petitioner by his judgment dated 30.03.2015 in respect of the charges framed against him in Crime No.3 of 2008. Thereafter, the petitioner made a representation to the



W.P.(MD)No.8944 of 2018

respondents on 20.04.2015, requesting the respondents to revoke his suspension and allow him to retire from service on his superannuation ie., on 30.04.2015. However, the petitioner was not allowed to retire from service by the respondents. Aggrieved by the same, the petitioner filed W.P.(MD)No.21073 of 2015, seeking for quashing the order dated 29.04.2015 passed by the respondents refusing permission for the petitioner to retire from service. W.P. (MD)No.21073 of 2015 was allowed by this Court on 04.01.2016, by directing the respondents to settle the terminal benefits of the petitioner within a period of eight [8] weeks from the date of receipt of a copy of the said order.

4. Pursuant to the order dated 04.01.2016 passed in W.P. (MD)No.21073 of 2015, the first respondent passed orders dated 29.07.2016 and 09.09.2016, treating the period of suspension of the petitioner from 12.08.2011 to 30.04.2015 and from 15.05.2008 to 17.01.2010, respectively as duty period and also permitted the petitioner to retire from service on superannuation. The second respondent has also recommended the name of the petitioner for promotion to the post of UG Superintendent by his proceedings dated 02.06.2017. Pursuant to the same, the first respondent passed an order dated 24.07.2017 promoting the petitioner as UG Superintendent on par with the petitioner's junior with effect from 02.09.2009 notionally. The petitioner made a request for grant of



W.P.(MD)No.8944 of 2018

monetary benefits on being promoted notionally as UG Superintendent on par with his junior who was promoted on 02.09.2009. Under the impugned order, the petitioner's request has been rejected on the ground that as per Ruling 17 under FR-27, the petitioner is not eligible.

5.Counter affidavit has been filed by the respondent reiterating the contents of the impugned order but however, in the counter affidavit relying upon the proviso to Ruling 17 under FR-27, the respondents would contend that the petitioner is not eligible for payment of monetary benefits.

6.The following are the undisputed facts:

a) Admittedly, no disciplinary proceedings were initiated against the petitioner and no charges were framed by the respondents against the petitioner.

b) Criminal case registered against the petitioner has ended in acquittal and the said decision rendered by the Criminal Court has attained finality.

c) The suspension period of the petitioner was also treated as duty period by the respondents.

d) The petitioner was also notionally promoted on par with his junior with effect from 02.09.2009 onwards. However, the monetary benefits were not paid to the petitioner despite being



W.P.(MD)No.8944 of 2018

notionally promoted on par with his junior.

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7.Learned Counsel for the petitioner relied upon an order dated **12.08.2024** passed by this Court in **W.P.(MD)No.14661 of 2018** in the case of **K.Muruganantham Vs. Secretary to Government and others**, wherein a similar issue was considered. This Court while interpreting FR-27 Ruling 17 has observed that the said ruling makes it clear that only in cases where in an appeal, the original seniority of the petitioner has been restored, the applicability of FR-27 Ruling 17 comes into play. Eventhough the respondents have contended that proviso to FR-27 Ruling 17 gets attracted, the said proviso has no bearing on the instant case as admittedly, no disciplinary proceedings were initiated against the petitioner and no charges were framed against the petitioner by the respondents. Only due to the fact that the petitioner was facing criminal charges, he was not promoted on the date when his junior was promoted. However, the said criminal case against the petitioner has also ended in acquittal subsequently. The proviso to FR-27 Ruling 17 which is relied upon by the respondent reads as follows:

“Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on



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W.P.(MD)No.8944 of 2018

appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefit;"

8.As seen from the aforesaid proviso, it is clear that only when charges are pending against the petitioner in a disciplinary proceedings initiated against him, the said proviso is applicable. In the case on hand admittedly, no charges are pending against the petitioner in any disciplinary proceedings initiated by the respondents. Therefore, it is clear that the said proviso does not apply. The decision relied upon by the learned Counsel for the petitioner rendered by me referred to supra is clearly applicable to the facts of the instant case. When the petitioner has been notionally promoted on par with his junior and there are no pending charges against him and the criminal case has also ended in acquittal, necessarily the monetary benefits payable to the petitioner on account of his notional promotion has to be paid by the respondents.

9.For the foregoing reasons, the impugned order dated 24.07.2017 passed by the first respondent and the consequential order dated 08.01.2018 are hereby quashed and this writ petition is allowed and a direction is issued to the first and second respondents



W.P.(MD)No.8944 of 2018

to pay the arrears of pay and allowance to the petitioner in the post of UG Superintendent with effect from 02.09.2009 on par with his junior till his retirement on 30.04.2015, within a period of four [4] months from the date of receipt of a copy of this order. In case the petitioner desires to claim interest for the belated payment of monetary benefits, he is permitted to give a representation to the respondents and on receipt of the same, the respondents shall consider the same on merits and in accordance with law and pass final orders.

10.Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

11.09.2024

Index :Yes / No
Internet : Yes / No
NCC : Yes/No
MR



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W.P.(MD)No.8944 of 2018

To

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Chennai – 06.

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W.P.(MD)No.8944 of 2018

ABDUL QUDDHOSE, J.

MR

W.P.(MD)No.8944 of 2018

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