



W.P(MD) No.19138 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2024

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

W.P(MD) No.19138 of 2016

Ponmudi

... Petitioner

Vs

1. The District Collector,
Collectorate (Development),
Karur.

2.The Personal Assistant to District Collector,
(Rural Development),
Karur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records and quash the impugned order passed by the 2nd



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respondent in his proceedings Na.Ka.Pa.Va.4/2213/2014 dated 16.11.2015 on the ground that the same is arbitrary, illegal and without jurisdiction consequently direct the respondents to give notional promotion i.e., Deputy Block Development Officer and pay all other monetary benefits to the petitioner on par with juniors by re-fixing the pension pay with effect from 2005.

For Petitioner : Mr.A.Joel Paul Antony

For Respondents : Mr.M.Siddarthan

Additional Government Pleader

ORDER

This Writ Petition is filed by the petitioner with a prayer to issue a Writ of Certiorarified Mandamus, to call for the records and quash the impugned order passed by the 2nd respondent in his proceedings Na.Ka.Pa.Va.4/2213/2014 dated 16.11.2015 on the ground that the same is arbitrary, illegal and without jurisdiction consequently direct the respondents to give notional promotion i.e., Deputy Block Development



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Officer and pay all other monetary benefits to the petitioner on par with juniors by re-fixing the pension pay with effect from 2005.

2. Brief facts of the petitioner case are as follows :-

The petitioner states that he was appointed as a Junior Assistant, Taluk Office at Kodaikanal in the year of 1983 through TNPSC. On 09.07.1985 the petitioner was transferred to Divisional Development Office at Musiri and thereafter, he was transferred to Manapparai Panchayat Union. He was continuously working there. Later on due to illness, the petitioner was not able to continue the work from 19.03.1996 to 13.09.2001 nearly for a period of 5 years. Subsequently, punishment of stoppage of increment was awarded for a period of 5 years. Thereafter, he assigned duty at Kulithalai Panchayat Union Office on 08.09.2011.

3. When the petitioner was in service, due to lethargic attitude of the respondents and his subordinates, his service register was found missing. The petitioner approached the respondents many times in



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this regard. But he was informed that due to bifurcation of Karur from Trichy District, certain files and service register were missing in the Department. After lapse of 10 years, the authorities have found his service register in Trichy region. Since his service register was lost for more than a decade, the petitioner was not given periodical promotions.

4. Apart from that the respondents without any notice to him, started to deduct a sum of Rs.2292/- for a period of 35 months and without any valid reasons deducted a sum of Rs.82,529/- from his pay. The petitioner approached the respondents several times to release the sum of Rs.85,529/- and also to give promotion. Even though, he was passed all the Departmental test, he was not given with any promotion. The petitioner was finally retired on 31.05.2010 after attaining the age of superannuation as Assistant. The representation given by the petitioner to the respondents to give notional promotion and also to give respective pay on par with juniors, was rejected and impugned order was passed by the 2nd respondent on 16.11.2015. Challenging the same, the present writ petition has been filed.



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5. Brief averments in the counter filed by the respondents are as follows :

The writ petition is not maintainable and misconceived. When the petitioner had been working as Panchayat Union Cashier in Kadavur Panchayat Union on 18.03.1996, the petitioner stayed away from duty from 19.03.1996 to 13.09.2001. Due to the above, he was charged under Rule 17(b) of Tamil Nadu Civil Servants (Disciplinary and Appeal) Rules and punishment was awarded him for stoppage of increments for 5 years without cumulative effect. He has not preferred any medical leave, he was not eligible for promotion for 5 years. It is false to state that the service register of the petitioner was misplaced due to bifurcation of Karur District from Trichy District, some files and service registers were transferred lately from Trichy District and however, the petitioner service register was traced out and maintained.

6. That the contention of the petitioner made in paragraph No.7 was denied. The promotion was not considered as eligible, not on



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his service register but he was stayed away from duty from 19.03.1996 to 13.09.2001, more than 5 years, he was awarded punishment of stoppage of increment without cumulative effect for five years. As per Tamil Nadu State and Subordinate Service Rules, the petitioner should pass the prescribed Department tests within 5 years from the date of appointment. Rules 28 of the above Rules state as follows :

“The maximum period up to which the probation of a Government servant shall be extended so as to enable him to acquire the test qualification, be fixed as five years. If he does not acquire the test qualification even within the maximum period of five years, he shall be reverted and the qualified and eligible juniors shall be considered for promotion.”

7. The petitioner should have passed the department test before 06.07.1990, but he passed the test belatedly on 29.12.2002. As per Rule, the petitioner should have reverted from the post, but on humanity basis the petitioner was allowed to continue on Government Service and after he acquired all qualifications, he was promoted to next post as Assistant on 08.07.2008.



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8. Since the petitioner did not acquire test qualification within the period of maximum five years, his probation period was declared from 29.12.2002, by the Government as per G.O.(1D)No.451 Rural Development and Panchayat Raj Department, dated 16.08.2007. After declaration of probation, his increment to be sanctioned but the petitioner got increment prior to the probation period and hence, the wrong increment arrear amount was recovered from the petitioner. The Panchayat Union Commissioner, Krishnarayapuram, vide proceedings No.RC/A1/434/2006 dated 13.06.2007 to recover the petitioner's wrong claimed amount and it was recovered from the petitioner in 36 instalments. The same is very well known to the petitioner. The petitioner also give consent at the time of service on his recovery. The petitioner appeal was not valid, since it was against the Government Rules and therefore, the appeal was rejected after scrutiny of records. Since the petitioner stayed away from duty for more than 5 years and did not acquire test qualification within 5 years, he was not eligible for next promotion. Hence, the petitioner appeal was rejected vide proceedings No.Na.Ka.Pa.Va.4/2213/2014 dated 16.11.2015 after scrutiny of records



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and verification of the Rules in force. The order passed by the second respondent is valid and hence, prays to dismiss the writ petition.

9. Heard the learned counsel on either side and perused the materials available on record.

10. A perusal of the records it reveals that the petitioner had submitted an application on 16.05.2014 with requests to revoke the punishment imposed on him. A sum of Rs.82,529/- deducted from his salary should be refunded, he should be promoted to Block Development Officer equal to his junior. He states that he was joined in Kodaikanal Taluk Office as Junior Assistant on 09.03.1983, transferred to Rural Development Department. His service record was lost for 10 years and therefore, he was put in mental torture. Due to non-availability of his service record, his selection grade period, promotion was affected and he was kept behind his juniors. He should be promoted in earlier date (no service record available between 1995 to 2005), he was unconscious and granted medical leave from 19.03.1996 to 13.09.2001 but the leave was



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not regularized. The punishment imposed when he was unconscious could not be accepted. Before probation he was granted increment for that he is not responsible. Hence the deduction is improper and the same to be refunded. He had served for the same post but he was not sanctioned selection grade, he should be promoted as Deputy Regional Development Officer.

11. The 2nd respondent vide letter Na.Ka.Pa.Va.4/2213/2014 dated 16.11.2015 clearly stated that the petitioner completed the required qualification for promotion only on 29.12.2002 and his probation declared vide G.O.(1D)No.451 Rural Development and Panchayat Raj Department, dated 16.08.2007. The petitioner failed to prove that he had completed his probation within the prescribed period.

12. Further, it is proved that the petitioner was absent from duty from 19.03.1996 to 13.09.2001 and charges were framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules and he was punished with stoppage of increment for 5 years with cumulative



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effect. He failed to file an appeal within stipulated time. The petitioner is now retired. A member of Tamil Nadu Judicial Service and any other Officers prescribed in Rule 11 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules is entitled to appeal to the Government against an order passed by the authorities specified in the Rule to the next higher authorities to whom the former authorities is Administratively Subordinate. Rule 27(3) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, an appeal shall not be entertained if it is not preferred within a period of two months after the date on which the appellant was informed of the order appealed against. However, the appellate authority may entertain the appeal even after expiry of two months if it is satisfied that the appellant had reasonable cause for not preferring the appeal in time. But the petitioner has not preferred the appeal in time to the appellate authority and after retirement sent a requisition letter to revoke the punishment without any ground to revoke the same, his request is rightly rejected by the respondents. Now he has no right to request for revocation of the punishment as it is time barred.



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13. Further the additional amount paid to him at Rs.82,529/- was deducted as per Letter No.33482/E7/2005-06 dated 07.12.2006, he admitted that it was paid in excess and it should be liable to be deducted, further he has not objected the deduction when the authorities issued proceedings, now he has no right to challenge after lapse of long time.

14. The petitioner was punished with stoppage of increment for a period of 5 years and Selection Grade was sanctioned on 08.07.1995 which is not disputed by the petitioner. However, the petitioner has been promoted to Selection Grade after completion of 10 years service on 08.07.1995, vide Na.Ka.Pa.va.No.4/1302/2012 dated 19.07.2012. Thereafter, he was promoted to Assistant on 08.07.2008 and served till 31.05.2010 and retired on the same day. Therefore, his grievance that he was not given selection grade and denied his promotion are unreliable.

15. The petitioner seek further promotion on par with his junior but he has not furnished any particulars about the list of his juniors



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who were alleged to be promoted before his promotion and he has not impleaded them as parties. Therefore, the claim could not be considered for want of particulars.

16. There is no merit in the writ petition and hence, the writ petition is liable to be dismissed.

17. Accordingly, the Writ Petition stands dismissed. No costs.

03.12.2024

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

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R.POORNIMA, J.

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