



W.P.No.10004 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.07.2026

Pronounced on : 24.07.2026

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.10004 of 2020
and W.M.P.No.12161 of 2020

M.Govindarajan

... Petitioner

vs

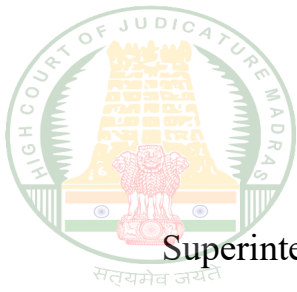
1. The State of Tamil Nadu

Represented by its Additional Chief Secretary to Government,
Highways and Minor Ports (H.K.1) Department,
Secretariat,
Chennai – 9.

2.The Director General of Highways,
Guindy,
Chennai – 25.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for records connected in G.O. (Pa).No.48, Highways and Minor Ports (H.K.1) Department, dated 14.03.2018 of the 1st respondent and quash the same in so far as denying arrears of salary in the promotion post and consequently direct the respondents to pay the arrears of salary in the promoted post of Assistant Divisional Engineer from 14.07.2006 and Deputy



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Superintending Engineer/Divisional Engineer from 14.05.2015 with all benefits to the petitioner.

For Petitioner : Mr.A.R.Suresh
for Mr.K.Arumugam
For Respondents : Mr.C.P.Goutham
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the records.

2. The petitioner, by the present writ petition has assailed the action of the first respondent in issuing G.O.(Pa).No.48, Highways and Minor Ports (H.K.1) Department, dated 14.03.2018, in so far as, it denies him arrears of salary in the promotion post of Assistant Divisional Engineer from 14.07.2006 and Deputy Superintendent Engineer/Divisional Engineer from 14.05.2015.

3. The case of the petitioner in brief is that disciplinary proceedings were initiated against him; that on the basis of the said disciplinary proceedings the respondents did not consider his name for grant of promotion; that he had challenged the said disciplinary proceedings initiated, before this Court by filing



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two writ petitions vide W.P.No.33107 of 2012 and 24123 of 2015; that this Court was pleased to set-aside the said proceedings; and that since, the disciplinary proceedings were set aside by this Court, the petitioner is entitled for being promoted to the post of Assistant Divisional Engineer from the post of Assistant Engineer.

4. It is the further case of the petitioner that though the respondents have granted notional promotion by the impugned proceedings, the petitioner is entitled to be paid arrears of salary in the said post to which he would have been promoted but for the initiation of disciplinary proceedings by the respondent which were ultimately set aside by this Court.

5. On behalf of the petitioner, it is contended that for no fault of the petitioner, the respondents have denied him promotion, thereby, depriving him from holding the post of Assistant Divisional Engineer and Divisional Engineer and thus, he is entitled to be paid arrears of salary for the period when he was eligible to hold the said post.



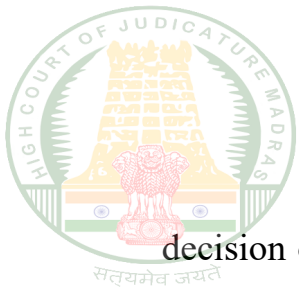
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6. The petitioner contended that the respondents while granting notional promotion, however, applying Rule 27(17) of Fundamental Rules of Tamil Nadu Government (in short 'Fundamental Rules') denied the claim of the petitioner for payment of arrears of salary on the ground that the petitioner did not assume charge in the higher post, which action it is contended is highly illegal and arbitrary and without taking note of the fact that the petitioner was ready and willing to discharge the duties and it is only on account of initiation of disciplinary proceedings he was deprived of holding the higher post.

7. On behalf of the petitioner it is further contended that Rule 27(17) of Fundamental Rules does not apply to the case of the petitioner as the same deals with being over looked for promotion / appointment on account of wrong fixation of seniority and same being decided in appeal, while the petitioner was denied promotion on account of initiation of disciplinary proceedings.

8. In support of the aforesaid contention, reliance is placed on the



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decision of the Hon'ble Apex Court in ***K.Samba Moorthy vs. Sanjiv Chadha and***

others – 2025 INSC 110.

9. *Per contra*, learned Government Advocate appearing on behalf of the respondents contended that Rule 27(17) of the Fundamental Rules not only covers the matters relating to fixation of seniority but also covers the issue relating to where promotion was denied on account of initiation/pendency of disciplinary proceedings.

10. On behalf of the respondents, it is contended that on this Court quashing the notice(s) issued to the petitioner initiating disciplinary proceedings, the respondent authorities have issued G.O.(D).No.47, Highways and Minor Ports (H.R.2) Department dated 14.03.2018 granting notional promotion to the petitioner to the post he would have been holding i.e., Assistant Divisional Engineer and Divisional Engineer, but for the initiation and pendency of the disciplinary proceedings; that on the same day, the respondents issued impugned G.O. (Pa).No.48, Highways and Minor Ports (H.K.1) Department dated 14.03.2018, whereby, the claim of the petitioner for payment of arrears of salary in the post of



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Assistant Divisional Engineer from 18.02.2011 to 14.05.2015 and in the post of Divisional Engineer from 15.05.2015 till the date of issuance of the impugned order was rejected as per Rule 27(17) of Fundamental Rules, as the petitioner was not holding the said post(s) during the said period on account of the pendency of disciplinary proceedings.

11. On behalf of the respondents, it is contended that since, the petitioner did not discharge the duties in the said post(s), the petitioner would not be entitled to claim arrears of salary.

12. Contending as above, the respondents placed reliance on the decision of the Hon'ble Apex Court in the case of ***Government of West Bengal and others vs. Dr.Amal Satpathi and others - 2024 INSC 906.***

13. I have taken note of the respective contentions urged.

14. From the submissions made on either side, the point that falls for consideration of this Court in this case is as to- “whether the petitioner who is exonerated of the charges leveled against him in departmental proceedings would be entitled to claim arrears of salary in the promotional post which he would have held but for the said proceedings”.



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15. At the outset, it is to be noted that there is no challenge in the present writ petition to Rule 27(17) of Fundamental Rules of Tamil Nadu Government. In absence of any challenge to the said Rule, this Court is only required to consider as to whether the rejection of the claim of the petitioner by the respondents applying to the said Rule is correct or the said Rule has no application to the case of the petitioner as contended by the petitioner.

16. In order to consider the said issue, it is necessary to refer to Rule 27(17) of Fundamental Rules of Tamil Nadu Government which reads as under:.

“(17) In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with



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his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

[G.O. Ms. No. 977, Personnel and Administrative Reforms (FR.III), dated 6th October, 1986.]

"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 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;

(underlining supplied by Court)

Provided further that in the case of Government



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servant whose names were deferred for inclusion in the panel due to pendency of charges and have subsequently died while in service or after retirement from service, the charges shall automatically stand abate. In such cases, the pay shall be fixed notionally on the last date of their service or on the date of the retirement on superannuation, as the case may be, at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their juniors for the purpose of pension and other monetary terminal benefits."

17. It is to be noted that in the Fundamental Rules, Chapter -IV, Part -III deals with 'Pay' and Rule-27 specifies the "Authorities competent to sanction premature increments and rectify pay anomalies". It is under this heading Sub Rule (17) as extracted above, provides for fixation of pay in the higher post on the date of assumption of charge where the Government servant has been overlooked for promotion to the next higher post, but is subsequently promoted or appointed to that higher post after restoration of the original seniority.

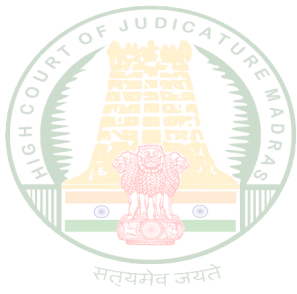
18. In the facts of the present case, though it is contended by the petitioner that the use of the word 'appeal', in Sub Rule (17) is to be understood in



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the context where an employees seniority is fixed wrongly initially, and the seniority of the said employee being restored on being appealed and thus, the said Sub Rule has no application where promotion was denied on account of initiation/pendency of disciplinary proceedings, a reading of the Sub-Rule (17) in its entirety including the two provisos which were inserted vide G.O.Ms.No.120 dated 06.07.2001 w.e.f. 30.10.2000, would make it clear that the Sub-Rule (17) not only covers the cases of exclusion of Government servant while preparing and issuing the seniority list and such seniority being restored on appeal but would also cover the cases where name of the Government servant is excluded or deferred for being included in the panel for promotion due to pendency of charges.

19. Admittedly, the petitioner's name was not included in the panel for promotion to the post of Assistant Divisional Engineer and Divisional Engineer on account of pendency of disciplinary proceedings initiated against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955. Thus, the contention of the petitioner that Rule 27(17) does not apply to the case of the petitioner being one of disciplinary proceedings, does not appeal to this Court for being accepted.



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20. In so far as, the contention urged by the petitioner that since, the disciplinary proceedings initiated against him, on a challenge being made before this Court having been set aside, the petitioner is entitled to arrears of salary for the promotional post, it is to be noted that such payment cannot be held to be not automatic but is dependent on the facts and circumstances of each case, wherein, the authority is required to consider as to whether the disciplinary proceedings ended in favour of the delinquent employee, was based on benefit of doubt or on account of non availability of evidence, due to the act attributable to the employees etc or was on merits. If only, the disciplinary proceedings ended in favour of the delinquent employee on merits, one can justify his claim for payment of arrears of salary which was denied to him on account of foisting of false charges. On the other hand, if the disciplinary proceedings have ended in favour of the delinquent on account of technicalities, the delinquent cannot be allowed to take advantage of closure of such proceedings, in order to claim arrears of salary.

21. Further, in order to claim arrears of salary attached to a particular



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post, the delinquent is required to hold the said post which comes with risk and responsibilities attached to the said chair and thus, without holding the said post and facing the risks or discharging the responsibilities, a delinquent cannot claim only the benefits / reward.

22. In the facts and circumstances of the present case, admittedly, the punishment awarded pursuant to the disciplinary proceedings initiated against the petitioner after being confirmed in the appeal, on a challenge being made before this Court in the first round of litigation vide WP.No.33107 of 2012 was set aside by this Court and remanded back to the respondents for denovo consideration within a time frame. Though the respondents on remand initiated proceedings by issuing notice, since, the disciplinary proceedings were not concluded within the time frame fixed by this Court, the petitioner approached this Court once again by the second writ petition vide W.P.No.24123 of 2015, and this Court having regard to the order passed in the first writ petition fixing the time lines and the respondents having failed to adhere to the time lines or having sought for extension of time from this Court, allowed the writ petition setting aside the notice issued by the respondents. Thus, the disciplinary action initiated against the petitioner

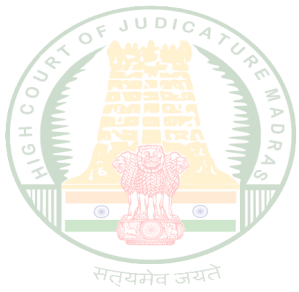


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was set aside by this Court on both the occasions on technicalities and not by appreciating the material on record, for the petitioner to claim he has been exonerated of charges on merits.

23. The above being the factual position in relation to the disciplinary proceedings initiated against the petitioner, the petitioner merely by securing orders in his favour from this Court, cannot seek for payment of arrears of salary of the post to which he was notionally promoted by the respondents on the disciplinary proceedings being set aside by this Court.

24. Further, as noted herein above, since, the petitioner is notionally promoted to the promotional post under G.O.(D).No.47, Highways and Minor Ports (H.R.2) Department, dated 14.03.2018 though is entitled for pensionary benefits, however is not entitled for the arrears of salary as did not hold the promotional post any time. On the other hand as the petitioner did not take up the risk and responsibilities attached to the said post nor discharged duties holding the said post, this Court is of the view that the petitioner is not entitled to claim the monetary benefits attached to the said post.



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25. The Hon'ble Apex Court in the case of ***Union of India Vs.***

K.V.Jankiraman and others – (1991) 4 SCC 109 dealing with an analogous situation arising under Rule 17 (1) of the Fundamental Rules and Supplementary Rules relating to civil servants of the Union held as under:

“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 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



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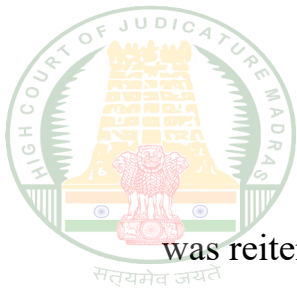


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necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period 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. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., “but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion”, we direct that in place of the said sentence the following sentence be read in the Memorandum:

“However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.”

26. The aforesaid principle laid down in K.V.Jankiraman case (*supra*)



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was reiterated once again by the Hon'ble Apex Court in the case of ***Union of India***

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and others vs. A.N.Mohanan -(2007) 5 SCC 425.

27. The Hon'ble Apex Court in **Dr.Amal Satpathi case (supra)** and others dealing with Rule 54(1)(a) of West Bengal Service Rules had held that -

“promotion becomes effective from the date it is granted rather than from the date pendency arises or the post is created.”

28. The Hon'ble Apex Court in the said decision further held that

“ the promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of vacancy or the date of recommendation.”

29. If the aforesaid principle stated by the Hon'ble Apex Court is applied to the case of the petitioner, on this Court quashing the notice issued by the respondents initiating disciplinary proceedings afresh after the earlier order of punishment was quashed by this Court, the respondents granted notional promotion to the petitioner when his junior was promoted to the said post under G.O.(D).No.47, Highways and Minor Ports (H.R.2) Department, dated 14.03.2018. However, as the petitioner did not assume the duties in the promotional post and

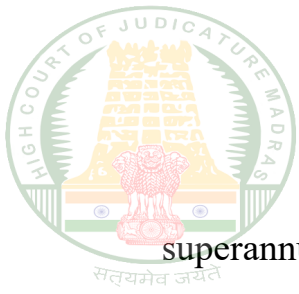


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taking note of the fact that the petitioner became entitled for such notional promotion on account of the disciplinary proceedings being set aside by this Court on technicalities, this Court is of the view that the petitioner is not entitled to claim arrears of salary, particularly, in the notionally promoted post on account of Rule 27(17) of Fundamental Rules which clearly stands attracted.

30. In view of the authoritative pronouncements of the Hon'ble Apex Court as noted herein above, the decisions on which reliance is placed by the petitioner would not advance his case.

31. It is also pertinent to note that the petitioner had retired from service on 30.04.2018 (i.e.,) about 45 days after he was granted notional promotion under GO.Ms.No.47 dated 14.03.2018. The petitioner at the time of settlement of his retiral benefits did not raise any protest or reserve his right to claim arrears of salary having been denied promotion on account of pendency of disciplinary proceedings and accepted retiral benefits without any demour or protest. It is only after two years after receiving the retiral benefits on attaining the age of



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superannuation, had filed the present writ petition. Thus, the claim of the petitioner for arrears of salary is to be considered as having been raised after he having been promoted notionally and retired from service, but with delay.

32. In view of the discussion and analysis, this Court is of the considered view that the challenge to G.O.(Pa).No.48, Highways and Minor Ports (H.K.1) Department, dated 14.03.2018 is devoid of merits.

33. Accordingly, the writ petition fails and is dismissed. No costs. Consequently connected miscellaneous petition is closed.

24.07.2026

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Speaking order / Non-speaking order

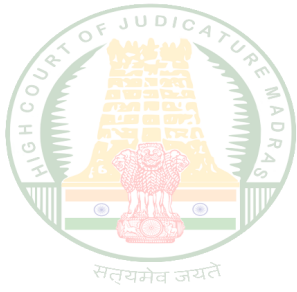
Index : Yes / No

Neutral Citation : Yes / No

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu
Highways and Minor Ports (H.K.1) Department,
Secretariat, Chennai – 9.

2. The Director General of Highways,
Guindy, Chennai – 25.



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Pre-delivery order made in
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and W.M.P.No.12161 of 2020

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