

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

DATED THIS THE 2<sup>ND</sup> DAY OF APRIL, 2014,

**: PRESENT :**

**THE HON'BLE MR. JUSTICE N.K. PATIL**

**AND**

**THE HON'BLE MR. JUSTICE PRADEEP.D.WAINGANKAR**

WRIT APPEAL NO. 5583 OF 2012 (S-PRO)

Between:

Sri. B.K. Srinivasamurthy,  
S/o. Late Kariyanna,  
Aged about 49 years,  
First Division Assistant,  
Zilla Panchayath Office,  
Tumkur.  
Now working on Deputation,  
Taluka Panchayat,  
Tumkur and R/at. Manikanthaswamy Nilaya,  
7<sup>th</sup> Cross, Sadashivanagar, Melekote,  
I Main Road, Near Sadiq Engineering Works,  
Tumkur-572 101.

... Appellant

(By Shri. A.C. Balaraj, Advocate)

And:

1. The State of Karnataka,  
Rep. by its Principal Secretary to  
Government, Rural Development and  
Panchayath Raj Department,  
M.S. Building, Bangalore-1.

2. The Chief Executive Officer,  
Zilla Panchayath,  
Tumkur District, Tumkur-572 101.

... Respondents

(By Shri. D. Aswathappa, AGA)

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This Writ Appeal is filed U/S 4 of the Karnataka High Court Act praying to set aside the order passed in Writ Petition No.33430/2011 (S-PRO) dated 16/03/2012.

This Writ Appeal coming on for Preliminary Hearing, this day, **N.K. PATIL. J.**, delivered the following:

### J U D G M E N T

The appellant, questioning the correctness or otherwise of the order impugned passed by the learned Single Judge, in Writ Petition No.33430/2011 (S-PRO) dated 16<sup>th</sup> March 2012, has presented this writ appeal.

2. In the aforesaid writ petition, the appellant herein had sought for quashing the endorsement dated 7<sup>th</sup> September, 2010, issued by second respondent vide Annexure H to the writ petition.

3. The said writ petition had come up before the learned Single Judge and the learned Single Judge after hearing, rejected the said writ petition, on the ground

that the respondents have not rejected the claim of the appellant for further promotion. Being aggrieved by the rejection of the writ petition, the appellant herein has presented this appeal, seeking appropriate reliefs as stated supra.

4. The only grievance of the appellant in this appeal is that, he had sought for quashing the endorsement dated 7<sup>th</sup> September 2010 vide Annexure H, by which, his request for retrospective promotion in the cadre of First Division Assistant and for further promotion was rejected. It is his specific contention that, from 19-09-2005, he was in-charge First Division Assistant and subsequently on 14-11-2008 he was promoted as First Division Assistant. By accepting the said promotion, he continued in the same post and after lapse of nearly two years, he gave representations on 11-06-2010 and 09-07-2010 requesting the respondents for retrospective promotion and for further promotion. But, his request has not been considered, instead, an endorsement is issued by the second

respondent, stating that his request would be considered at an appropriate stage as per the relevant Rules. Being aggrieved by the said endorsement issued by the second respondent dated 7<sup>th</sup> September 2010, the appellant filed a writ petition.

5. The said writ petition had come up for consideration before the learned Single Judge on 16-03-2012 and the learned Single Judge after hearing both sides and perusal of the entire records available on file, rejected the writ petition, holding that the respondents have stated that they will consider the claim of the appellant for further promotion in accordance with law at an appropriate stage, i.e. as and when vacancies arise and interference in the same is not called for. Being aggrieved by the said order of the learned Single Judge, the present writ appeal is filed by appellant.

6. Shri.A.C. Balaraj, learned counsel appearing for appellant submitted that, the second respondent grossly erred in not considering the representations submitted by appellant dated 11-06-2010 and 09-07-

2010, in proper perspective, where, the appellant had specifically stated that he has worked as in-charge First Division Assistant from 19-09-2005 till his regular promotion as First Division Assistant on 14-11-2008 and his promotion will be from 19-09-2005 retrospectively instead of his promotion from 24-04-2008 and that ought to have been considered by second respondent in accordance with law and passed appropriate order. The reasoning given in the endorsement and affirmed by the learned Single Judge is contrary to the case made out by the appellant. Therefore, he submitted that, the endorsement issued by the second respondent and the order passed by the learned Single Judge are liable to be set aside and appropriate direction be issued.

7. As against this, learned Additional Government Advocate appearing for respondents sought to justify the endorsement issued by second respondent and the order passed by the learned Single Judge stating that, the endorsement is crystal clear in stating that the

further promotion of the appellant would be considered in accordance with law at an appropriate stage and he specifically pointed out that, the request of the appellant is not declined or rejected and it is stated that, his request will be considered as and when vacancies arise in accordance with law. Hence, interference in the same is uncalled for.

8. After careful consideration of the submission of the learned counsel appearing for appellant and learned Additional Government Advocate appearing for respondents, after perusal of the endorsement issued by second respondent and the order passed by the learned Single Judge, it is manifest on the face of the same that, there is no error apparent on the face of the same resulting in any miscarriage of justice in issuing the impugned endorsement. It is crystal clear from the endorsement issued by the second respondent that, they have specifically stated that, the case of the appellant for further promotion would be considered at an appropriate stage, as and when the vacancies arise,

in accordance with law and at that time, it is very much open for the appellant to make out a case and put forth his grievance stated in the representations. The respondents are yet to take a final decision. The appellant has come up before this Court against an endorsement, seeking redressal of his grievance, invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, which is premature in nature.

9. Hence, considering all these relevant aspects, the writ appeal filed by appellant is liable to be dismissed and accordingly it is dismissed.

SD/-  
JUDGE

SD/-  
JUDGE

BMV\*