

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2016

Coram

The Hon'ble Mr.Justice R.SUBBIAH

W.P.No.34339 of 2016

R.Tamizh Mannan

...Petitioner

Versus

- 1.The Additional chief Secretary / The Commissioner of Tourism,
O/o. Tamil Nadu Tourist Building,
Walaja Salai,
Chennai-2.
 - 2.The Tourist Officer,
O/o.Tourist Office,
Poombukar-609 105,
Nagapattinam District.
 - 3.The Tourist Officer,
O/o.Tourist Office,
Collectorate Campus,
Tirunelveli,
Tirunelveli District.
-Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus, to direct the 1st respondent to consider the proposal sent by the 2nd respondent in Na.Ka.No.485/T.O.P/2014, dated 07.07.2014 and to pass orders on the same in regard to the petitioner's promotion to the post of Assistant on par with juniors.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.R.Rajeswaran, Spl GP

O R D E R

The petitioner has filed this Writ Petition, praying for issuance of a writ of Mandamus, to direct the 1st respondent to consider the proposal sent by the 2nd respondent in Na.Ka.No.485/T.O.P/2014, dated 07.07.2014 and to pass orders on the same in regard to the petitioner's promotion to the post of Assistant

on par with his juniors.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1. The petitioner was initially selected and appointed as Junior Assistant on 08.07.2003 through Employment Exchange on contract basis. The Government has taken policy decision to absorb the 10(a)(1) employees through TNPSC special competitive examination. As per the Government Policy, the petitioner has undergone special competitive examination conducted by the TNPSC. Then, he was selected and appointed as Junior Assistant on 03.06.2009 and he was posted to the O/o. Tourist Office, Poombukar, Nagapattinam District. Thereafter, he was transferred and posted to O/o. The Tourist Office, Tirunelveli Collectorate Campus.

2-2. Subsequently, the petitioner has passed department test in the year 2011 and also completed Bhavani Sagar Training in June, 2012, and he was also eligible to be promoted as Assistant. But, his name was not considered for promotion as Assistant in the year 2012. Immediately, he made a representation to the 2nd respondent with a request to promote him to the post of Assistant. After receiving his representation, the 2nd respondent has forwarded his representation to the 1st respondent. Subsequently, the Additional Director O/o. The Commissioner of Tourism, Chennai vide his letter No.7569/MavaMe-2/2014, dated 24.06.2014, addressed to the 2nd respondent and sought for certain details in regard to his promotion as Assistant. After receiving the said letter, the 2nd respondent has sent a letter to the 1st respondent along with full particulars in regard to his promotion as Assistant in Lr.Na.Ka.No.485/TOP/2014, dated 07.07.2014. But, after receiving the said proposal from the 2nd respondent, the 1st respondent has not passed any order on the said proposal till date.

2-3. In the meantime, due his heart ailment, the petitioner was suddenly admitted in the hospital and the Doctor advised him to undergo a surgery immediately. Hence, the petitioner availed medical leave for undergoing heart surgery and he sent leave letter to the 2nd respondent. After receiving the petitioner's leave letter, the 2nd respondent had issued a letter on 27.01.2015 instructing the petitioner to hand over all the records which were under his custody within three days. The petitioner submitted a detailed explanation to the 2nd respondent on 31.01.2015 and also on 20.04.2015, explaining that no record is under his custody and all the records are in the Office of the Superintendent. However, the 2nd respondent issued a show cause notice in Memo.No.40/Ka/2015, dated 24.04.2015 under Rule 17(a) of TNCS (D & A) Rules, and instructed the petitioner to submit his explanation. The petitioner sent a detailed explanation on 30.04.2015. But, the 2nd respondent without conducting any enquiry held that all the charges levelled

against the petitioner were proved and imposed a punishment of stoppage of increment for one year without cumulative effect in Proc.No.40/Ka/2015, dated 25.05.2015. Aggrieved over the same, the petitioner preferred an appeal before the 1st respondent. Since the 1st respondent has not passed any orders on the appeal preferred by the petitioner, he has already filed a writ petition in W.P.No.25846 of 2016 seeking to direct the 1st respondent to consider and pass orders on his appeal. The said writ petition is still pending before this Court.

2-4.It is further stated by the petitioner that he has submitted a representation to the respondents on 13.05.2015 for promotion as Assistant. But, there is no response from the 1st respondent even after receiving the proposal from the 2nd respondent with regard to the promotion of the petitioner as Assistant on par with his juniors. Hence, now the petitioner has filed the present writ petition for the relief as stated supra.

3.Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

4.Considering the facts and circumstances of the case and also the submissions made on both sides and taking note of the limited scope of the prayer sought for by the petitioner in this writ petition, this Court direct the 1st respondent to consider the proposal sent by the 2nd respondent in Na.Ka.No.485/T.O.P/2014, dated 07.07.2014, and pass orders on the same, with regard to the petitioner's promotion to the post of Assistant on par with his juniors, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioner and it is for the 1st respondent to pass orders wholly on merits and in accordance with law.

With the above direction, this writ petition is disposed of.

No costs.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Additional chief Secretary / The Commissioner of Tourism,
O/o. Tamil Nadu Tourist Building,
Walaja Salai,
Chennai-2.

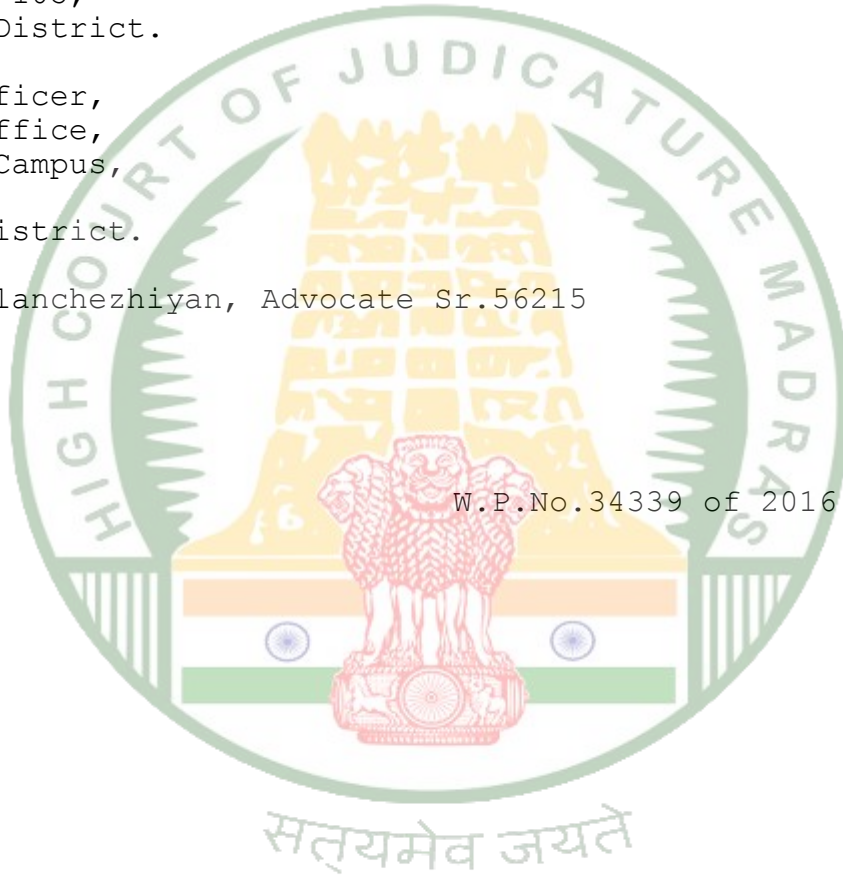
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Tirunelveli,
Tirunelveli District.

+1 CC to Mr. G.Elanchezhiyan, Advocate Sr.56215

CO-RJ

ths : 04.11.2016



W.P.No.34339 of 2016

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