

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-06-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8224 of 2010

S.Subbulakshmi

...Petitioner

-vs-

1.State of Tamil Nadu,
rep.by Principal Secretary to Government,
Home (Courts-V) Department,
Fort St.George,
Chennai-600 009.

2.The Registrar General,
High Court of Judicature at Madras,
High Court Campus,
Chennai-600 104.

3.The Principal District Judge,
District Court Campus,
Chengalpattu,
Kancheepuram District.

4.Tmt.V.Banumathi

...Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, directing the respondents 1 to 3 to promote the petitioner as Steno-Typist Grade-II with effect from the date on which the fourth respondent was promoted as Steno-Typist Grade II, with all consequential benefits including the next promotion to the post of Superintendent in Tamil Nadu Judicial Ministerial service, with immediate effect.

For petitioner : Mr.V.Meenakshisundaram
For respondent-1 : Mr.S.Babu,
Govt.Advocate.
For respondents 2&3 : Mr.V.Vijayshankar
For respondent 4 : No appearance

O R D E R

(Order of the Court was made by Nooty.Ramamohana Rao,J.)

A former Steno-Typist, Grade-II, of the District Court unit of Chengalpattu, is the petitioner herein. Her grievance in a sense is that without considering her candidature for promotion to the next higher post of Steno-Typist, Grade-II, the cases of her juniors were repeatedly considered and they were promoted.

2. In the above set of circumstances, she sought for a direction to respondents 1 to 3 herein to consider her for promotion as Steno-Typist, Grade-II, at least from the date on which the fourth respondent was promoted as Steno-Typist, Grade-II, with all consequential benefits, including consideration for promotion to the next higher grade.

3. Writ Petitioner was selected by Tamil Nadu Public Service Commission and she came to be appointed as Steno-Typist, Grade-III, in Chengalpattu unit on 01.07.1987. She has also successfully completed her probation in that cadre. Thus, she was eligible to be promoted to the next higher post, but, however, it appears, that based upon an alleged oral refusal to be considered for promotion as Steno-Typist, Grade-II, the then Judicial Magistrate, Alandur, submitted a report to the then Principal District Judge, Chengalpattu, stating that the petitioner was not willing to work as Steno-Typist, Grade-II. On the basis of the said report, the case of the next person in the seniority list was taken up for consideration for promotion. Accordingly, one Smt.V.Banumathi, fourth respondent herein, came to be appointed as Steno-Typist, Grade-II, by way of promotion in the year,2000. She worked as such for four years and, on certain health grounds, she sought for reversion. In the year 2004, she was reverted back, following the acceptance of her request, as Steno-Typist, Grade-III. In the vacancy caused by Smt.V.Banumathi, the next junior Smt.T.Kanchana was considered and she was promoted as Steno-Typist, Grade-II. She worked as Steno-Typist, Grade-II, for a few months and, thereafter, sought for reversion as Steno-Typist, Grade-III. That request was accepted. In the vacancy caused by Tmt.Kanchana, the next junior Sri K.Mohanakrishnan was promoted in the year 2004, as Steno-Typist, Grade-II. In the year 2006, the composite Chengalpattu district was bifurcated and a new district, called Thiruvallur, was formed. Sri Mohanakrishnan, who was holding the post of Steno-Typist, Grade-II, opted to move out to Thiruvallur District. In the vacancy caused by Sri Mohanakrishnan on moving to Thiruvallur, one B.Baskar was promoted as Steno-Typist, Grade-II. He, having worked for sometime as such, got recruited as Personal Assistant to the Hon'ble Judges, High Court, Madras, in the year 2008. Consequently, he left the post of Steno-

Typist, Grade-II, and joined the service of High Court of Madras.

4. It is the case of the respondents that for filling up the vacancy caused by migration of Sri Baskar, options were called for on 01.01.2007, and, it is, once again, stated, that the writ petitioner expressed her unwillingness for promotion to the post of Steno-Typist, Grade-II. In that view of the matter, her junior Smt.V.Banumathi, who exercised option once again for promotion as Steno-Typist, Grade-II, was, once more, promoted as Steno-Typist, Grade-II. It is, at that stage, the present Writ Petition is filed.

5. Rule 47 of the Tamil Nadu State and Subordinate Service Rules deals with Relinquishment of rights by members. Once a person relinquishes any right or privilege, to which he is entitled, nothing requires thereafter, as contained in general or special rules, to recognise any such right or privilege, to the extent to which it is relinquished.

6. It is on the basis of this Rule 47, the respondents have not considered the case of the writ petitioner for promotion as Steno-Typist, Grade-II, when Smt.V.Banumathi was promoted for the second time in the vacancy caused by the departure of Sri B.Baskar to the Madras High Court service from the Judicial Ministerial Service. Hence, this Writ Petition.

7. The entire issue revolves around a short question of fact i.e., Whether the writ petitioner has relinquished her right to be considered for promotion to the post of Steno-Typist, Grade-II, in accordance with the Tamil Nadu State and Subordinate Service Rules, or not ?

8. Before advertent to the analysis of facts, we consider it appropriate to refer to Rule 47 of the Tamil Nadu State and Subordinate Service Rules. It reads as under :

"47. Relinquishment of rights by members -

(1) Any person may in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

(2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three

years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained."

9. The above rule unmistakably brings out that any person may, in writing, relinquish any right or privilege to which he may be entitled under these Rules or the Special Rules. This presupposes that the expression of relinquishment on the part of a candidate requires to be expressed in writing. In other words, there could not have been any oral relinquishment of a right. No such oral relinquishment can form a valid basis for denying the right, to which the employee is entitled.

10. It is too well recognised, that a right to be considered for promotion emanates from Articles 14 and 16 of the Constitution of India, in public employment domain. Therefore, whenever a vacancy of Steno-Typist, Grade-II, has fallen and it is to be filled in, the cases of all eligible candidates, depending upon their inter se seniority ranking, shall be considered for promotion. Consideration of promotion in respect of any candidate can be deferred, only in case such candidate has expressed the relinquishment of such a right in writing. In the instant case, the contents of the additional counter affidavit filed by the Principal District Judge, Chengalpattu, bring out the correct position in paragraph 5 in the following words :

"5.....on perusal of records, it appears that written option from the petitioner was not obtained by the then Judicial Magistrate, Alandur, inadvertently and based on the oral submission of the petitioner, the then learned Judicial Magistrate, Alandur, appears to have submitted the report to the Principal District Judge, Chengalpattu, stating that the petitioner was not willing to accept the promotion as Steno-Typist, Grade-II...."

11. The learned District Judge has preferred to use the word "inadvertently", while describing the failure of the Judicial Magistrate, Alandur, in not securing in writing the alleged relinquishment of right, to be considered for promotion, by the writ petitioner. It is, thus, clear, that the

relinquishment of right ought to have been obtained in writing from the writ petitioner and that was not so obtained.

12. Though the learned counsel for the petitioner has pointedly drawn our attention to the contents of the representation submitted by the petitioner on 16.12.2009, wherein she has protested that no options were called for from her for promotion as Steno-Typist, Grade-II, and, hence, the question of relinquishment of the petitioner for consideration of promotion would not arise, we are not willing to go by the said explanation at this distant point of time, for the following reasons :

13. The promotion to Steno-Typist, Grade-II, has taken place in the year 2000, when the immediate junior to the writ petitioner, namely, Smt.V.Banumathi, was considered and promoted as Steno-Typist, Grade-II. She worked as such in the District Court, Chengalpattu, for more than four years. Thereafter, she sought for reversion voluntarily on health grounds. That was accepted and she was reverted as Steno-Typist, Grade-III. Against that vacancy, the next junior to the writ petitioner, namely, Smt.T.Kanchana, was promoted. Smt.Kanchana worked as Steno-Typist, Grade-II, for a while. After a few months of service, she sought for reversion voluntarily and she was reverted as Steno-Typist, Grade-III. In that vacancy, one Sri K.Monahakrishnan was promoted as Steno-Typist, Grade-II. He worked for nearly two years till the new district of Thiruvallur was formed. He went away to Thiruvallur. Hence, Steno-Typist, Grade-II, in Kancheepuram arose. Against that vacancy, Sri Baskar was selected and appointed. He worked for about one year and eight months, before his selection to the post of P.A.To Hon'ble Judges, High Court of Madras. Thus, when Sri Mohanakrishnan moved away to Thiruvallur, in that vacancy, Sri Baskar was appointed and Sri Baskar being selected as P.A.To Hon'ble Judges, against that vacancy, Smt.V.Banumathi was once again considered and promoted. Accordingly, several of the juniors of the writ petitioner, in the category of Steno-Typist, Grade-III, were consistently got promoted as Steno-Typist, Grade-II, from the year 2000 onwards, one after the other, without considering the case of the writ petitioner. But, she kept quiet and maintained silence.

14. That being so, the writ petitioner has not either protested or approached this Court immediately or in time, after so many promotions have taken place. Instead, she approached the third respondent, by submitting a detailed representation, only on 16.12.2009 and, thereafter, this Court in the year 2010, by way of this Writ Petition.

15. It is, therefore, a clear case, where, by her conduct, the writ petitioner has acquiesced in allowing one or several of her juniors to be promoted and posted as Steno-Typist, Grade-II, in the District Court. We are, therefore, of the opinion that though the learned Judicial Magistrate, Alandur, ought to have obtained, in writing, the relinquishment of her willingness for promotion of the writ petitioner, yet, because of the conduct of the writ petitioner in not protesting against the promotion of her juniors or moving this Court in time against any such promotion, such past promotions are not liable to be reviewed.

16. However, it is rather unfortunate, that even in the year 2007, the same mistake has been committed. The learned Principal District Judge of Kancheepuram at Chengalpattu has drawn a Memo vide D.No.4693/A/2007, dated 3/6-07-2007, requesting all the subordinate judicial officers in the district to obtain and submit the willingness of the Steno-Typists working in their Courts, for promotion to the post of Steno-Typist, Grade-II, to the Principal District Court, Chengalpattu, immediately, on or before 05.07.2007, without fail. But, yet, the learned Judicial Magistrate, Alandur, through his letter Dis.No.2234/07, dated 12.7.2007, has submitted that the writ petitioner is not willing for promotion to the post of Steno-Typist, Grade-II, without obtaining, in writing, any such option/relinquishment from the writ petitioner. Thus, even on this occasion, the action of the learned Judicial Magistrate, Alandur, in reporting to the District Court that the writ petitioner is not willing for promotion as Steno-Typist, Grade-II, is incorrect, as it is not in conformity and consonance with the contents of Rule 47 (1) of the Tamil Nadu State and Subordinate Service Rules.

17. It is based upon the above communication of the learned Judicial Magistrate, Alandur, dated 12.07.2007, sent to the Principal District Judge of Kancheepuram at Chengalpattu, Smt.V.Banumathi, again came to be considered for promotion as Steno-Typist, Grade-II, and she was once again so promoted on 08.02.2008 as Steno-Typist, Grade-II. To this extent, the right of the writ petitioner to be considered for promotion as Steno-Typist, Grade-II, certainly, stands violated, inasmuch as her case was not considered for such promotion at all. In the representation, dated 16.12.2009, when viewed in this backdrop, the writ petitioner's grievance that without calling for her willingness or without providing her an opportunity, her case for promotion as Steno-Typist, Grade-II, was ignored, appears to be acceptable, as it is credible. Therefore, there appears to be some justification to give a direction to reconsider the case of the writ petitioner for promotion as Steno-Typist, Grade-II, with effect from 08.02.2008, when Smt.V.Banumathi was so

promoted. Earlier thereto, the promotions of others, including that of Smt.V.Banumathi as Steno-Typist, Grade-II, on 06.04.2000, need not be reviewed, as it all happened due to the lapse and laches on the part of the writ petitioner, as stated above. Accordingly, there shall be a direction to the third respondent to consider the case of the writ petitioner for promotion as Steno-Typist, Grade-II, along with the case of Smt.V.Banumathi, with effect from 08.02.2008. In case the writ petitioner is selected in that process, the other consequential benefits may, accordingly, be worked out.

18. However, we make it very clear that the writ petitioner will not be entitled for payment of any arrears of salary and allowances, as she has not worked and rendered service as Steno-Typist, Grade-II, while Smt.V.Banumathi has rendered and shouldered the responsibilities of the said post with effect from 08.02.2008 and she was paid already. The State cannot pay to two persons the salary and allowances for the same period as against one and the same post. It is all because of the failure of the writ petitioner not to approach the competent authority or the Court immediately after 08.02.2008 and protest against the appointment of Smt.V.Banumathi, as Steno-Typist, Grade-II, for the second time. If the writ petitioner succeeds, as observed by us in the earlier paragraph, the monetary benefits shall be reworked and passed on to her from 01.01.2010, a date earlier to date of institution of this writ petition.

19. To the extent indicated supra, this Writ Petition stands allowed. Rest of the claims stand rejected. No costs. Consequently, the connected M.P.No.1 of 2010 is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

dixit

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home (Courts-V) Department,
Fort St.George,
Chennai-600 009.

WEB COPY

2.The Registrar General,
High Court of Judicature at Madras,
High Court Campus,
Chennai-600 104.

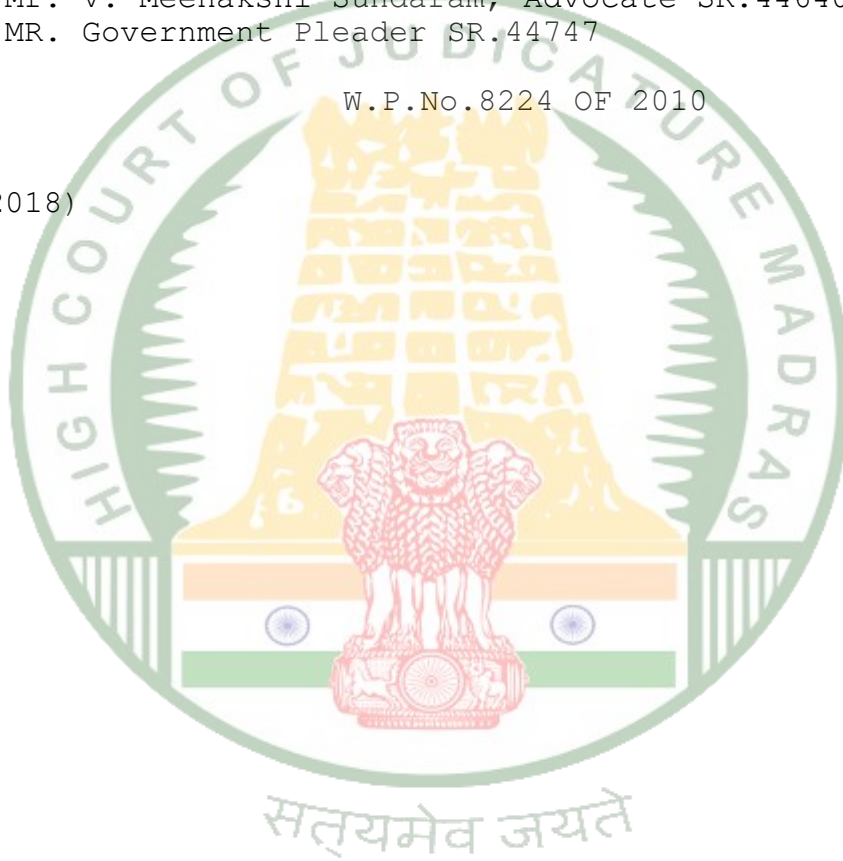
3.The Principal District Judge,
District Court Campus,
Chengalpattu,
Kancheepuram District.

+ 1 cc to Mr. V. Meenakshi Sundaram, Advocate SR.44640

+ 1 cc to MR. Government Pleader SR.44747

W.P.No.8224 OF 2010

KJ(CO)
EU(08/01/2018)



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