

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5699 OF 2013

R.Parameswaran

.. Petitioner

-vs-

1.The Principal District Judge
Coimbatore District
Coimbatore.

2.The Chief Judicial Magistrate
Coimbatore, at Coimbatore.

3.S.Gvoindaraju

.. Respondents

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the entire records in pursuant to the proceedings of the 1st respondent issued vide A.No.263/2006 D.No.1958 and 29.09.2011 and quash the same and direct the first respondent, to promote the petitioner to any higher post at par with the 3rd respondent with all consequential and attendant benefits within a stipulated time.

For Petitioner : Mr.R.Bharat Kumar

For Respondents : Mr.V.Ayyadurai - R1 & R2
Addl.Advocate General

No appearance - R3

O R D E R

NOOTY.RAMAMOHANA RAO, J.

This Writ Petition is instituted, challenging the correctness of the order passed on 29.09.2011, by the learned Principal District Judge, Coimbatore and also to direct the first respondent to consider the promotion of the writ petitioner to any higher post, on par with the third respondent.

2.The petitioner was initially recruited as a Steno-Typist on 09.01.1984, and he subsequently earned promotion as Assistant. He was posted to perform duties of a Magisterial Bench Clerk. It appears, he was having certain amount of difficulty to perform his duties very efficiently and effectively, due to acute stammering with which he was suffering. The duties of the Magisterial Bench Clerk, normally include attending to the call work viz. calling the names of the Advocates/Counsels appearing for the parties and the names of the parties also have to be called on at regular intervals. Due to his speech deficiency, the job has become very stressful and hence, he submitted a representation to the learned Principal District Judge, Coimbatore on 09.11.1993. The operative part of his representation reads as under :

"In the above circumstances, I request that I may kindly be reverted and posted as Steno-typist in any of the court in Coimbatore, in the Criminal Unit of the Hon'ble Chief Judicial Magistrate, Coimbatore and thus I may be protected from my difficulty."

3.The petitioner's request has been favourably considered by the learned Principal District Judge and accordingly he was reverted and posted as a Steno-Typist. However, it was recorded by the learned Principal District Judge, Coimbatore, that the writ petitioner has given up his claim for higher post forever. On that basis, the writ petitioner's claim was not considered for promotion to a higher post, while simultaneously considering the claims of his immediate juniors for promotions.

4.Rule 47 of Tamil Nadu State and Subordinate Service Rules (henceforth referred to as the 'Rules'), provides for relinquishment of rights by the members of the service. There is no dispute on the count of the applicability of the Rule, to the case of the writ petitioner. Sub Rule (1) of Rule 47 of the Rules, provides that 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, to allow him to do so. Whereas Sub-Rule (2) of Rule 47 of the Rules, provides for relinquishment of a similar right or privilege for a temporary period of not less than three years duration. Thus, clauses 1 & 2 of Rule 47 of the Rules have contemplated two different situations altogether, one of permanent nature and another of a temporary nature of not less than three years duration. It was further made clear in Rule 47 that , if relinquishment of rights or privilege is made permanently and such request is accepted, subsequent claim for those relinquished rights or privileges shall not be entertained. Therefore, the whole question boiled down to this; as to whether the writ petitioner by his representation dated 09.11.2013, has given up his right of promotion permanently at all.

5. When we perused the representation in its entirety, we do not find any clear indication therein that the writ petitioner intended to forgo his right to be considered for promotion on a permanent basis or forever. The operative part of the representation, which we have extracted above, also does not lead to an invariable inference that the writ petitioner intended to give up his avenue of promotion for ever. Therefore, it may be harsh for one to conclude that the representation of the petitioner dated 09.11.1993, is wholly intended to give up his right to be considered for promotion on a permanent basis. On the other hand, when there is a facility for giving up a particular right or privilege for a shorter period of duration, in terms of Rule 47(2) of the Rules, which is considered as temporarily giving up the said right or privilege, the said provision should be construed have to come to the aid of such cases.

6. We are therefore more inclined to accept the plea that the writ petitioner has intended to give up his right for consideration to promotion for a shorter period of duration, which shall not be less than three years period, instead of giving up such a right forever. Accordingly, we hold that there is no warrant for one to conclude, based upon the representation of the writ petitioner dated 09.11.1993, that the writ petitioner has given up his right of promotion to higher posts for ever. On the other hand, we are inclined to accept the plea of the writ petitioner that he has given up his promotion as an Assistant and preferred to be reverted as a Steno-Typist for a temporary period, duration of which shall not be less than three years period, as provided for in Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules.

7. Accordingly, we direct the respondents to work out the rights of the writ petitioner. However, he may not be entitled to be paid any differential amount of pay and allowances, since the Writ Petition itself is instituted in this

Court after a long lapse of time i.e. only on 20th December 2012. Therefore, the petitioner may not be entitled to any financial benefits for the period upto 31st December, 2011, which is approximately one year prior to the date of institution of the Writ Petition and any financial benefits, he is only entitled to, on and from 01.01.2012. It is needless for us to observe that the benefits will accrue while settling the terminal benefits such as Pension, Death-cum Gratuity, etc. on the above basis.

With this, the Writ Petition is disposed of. No costs. .

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

rpa

To

1.The Principal District Judge
Coimbatore District
Coimbatore.

2.The Chief Judicial Magistrate
Coimbatore, at Coimbatore.

+1cc to Mr.R.Bharathkumar, Advocate sr.959

W.P.No. 5699 OF 2013

kgk(co)
ss(25/01/2017)

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