

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM

THE HON'BLE MR. JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. No.21419 of 2010

R.Senthamarai .. Petitioner

Vs.

1.The Registrar,
High Court, Madras.

2.The Principal District Judge,
Kancheepuram District
at Chengalpet.

3.P.Ganesan

4.S.Santhi

5.S.Valarmathi

6.S.M.Noorjahan

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent pursuant to the promotion order of the respondents 3 to 6 dated 12.11.2009 passed in D.No.7706/A/511/2009 by the second respondent and the consequential proceedings of the second respondent rejecting the petitioner's claim for promotion passed in D.No.3520/A/5316-09/2010 dated 23.06.2010 and quash the same and direct the second respondent to promote the petitioner as Superintendent in the Tamil Nadu Judicial Ministerial Service at par with the respondents 3 to 6 and juniors to the petitioner with all consequential and attendant benefits in accordance with law.

For Petitioner .. Mr.J.Ramakrishnan

For Respondents .. Mr.R.Tholgappian for R1 & R2
R3 to R6 - No appearance

ORDER

(Order of the Court was made by NOOTY. RAMAMOHANA RAO, J.)

This writ petition is instituted, challenging the validity of the proceedings dated 12.11.2009, according promotion to respondents 3 to 6 by the learned Principal District Judge, Kanchipuram and also the proceedings dated 23.06.2010 rejecting the claim of the writ petitioner for promotion with effect from 12.11.2009.

2.The petitioner was initially recruited to the Judicial Ministerial Service as Examiner of Copies on 08.01.1979. In her due turn, she earned promotion subsequently as Junior Assistant, Assistant and then as Head Clerk. She was working as a Bench Clerk of the Judicial Magistrate Court No.II, Kanchipuram. She submitted a representation on 25.10.2006 to the learned Principal District Judge, Kanchipuram, seeking permission to relinquish the right of promotion as Head Clerk for a period of three years on personal grounds. That letter was accepted by the second respondent and he issued the necessary proceedings in that respect on 13/16.11.2006 accepting the relinquishment right of promotion to higher post for a period of three years with effect from 14.11.2006. It should be noted that the validity of this proceedings in D.No.9905/A/2006 dated 13/16.11.2006 has not been called in question. Hence we have to proceed on the premise that the said proceedings has become final and accepted by the writ petitioner. If the right of the writ petitioner is relinquished with effect from 14.11.2006, the three years period contemplated by Rule 47 of the General Rules for Tamil Nadu State and Subordinate Services would expire by 13.11.2009. But, however, in the instant case, on 07.10.2009, four posts of Bench Clerk Grade I , 11 posts of Bench Clerk Grade II and 22 posts of Bench Clerk Grade III have been sanctioned and allocated to the Kanchipuram District Unit by the High Court of Madras through its proceedings dated 07.10.2009. On the same day, by way of separate Official Memorandum, the learned Principal District Judge, Kanchipuram was also instructed to fill up those vacancies. The four posts of Grade I Bench Clerk are liable to be filled up by considering those candidates who are working as Superintendents in the pay scale existing as on that date viz., Rs.5700-175-9200, on merit basis. Hence the four Superintendents viz., R.Poonguzhali, S.Rajan, D.Rajeswari and M.Devarajan were promoted as Bench Clerks Grade I on 12.11.2009. By virtue of according promotion to these four Superintendents, the four posts of Superintendent have become vacant. That was the reason why the following four viz., P.Ganesan, S.Santhi, S.Valarmathi and S.M.Noorjahan were promoted as Bench Clerks Grade II. It is the contention of the writ petitioner that Mr.P.Ganesan would not have been promoted but for her relinquishment.

3. In normal circumstances, the case of the writ petitioner would have been taken up for consideration on 12.11.2009 but for her relinquishing her right of consideration for promotion to the next higher post. But, however, three year period reckoned from 14.11.2006 has not yet expired by 12.11.2009. The respondents 3 to 6 came to be promoted on 12.11.2009.

4. Realising that as on 12.11.2009, the three year period to be reckoned from 14.11.2006 has not yet expired, learned counsel for the writ petitioner Mr. J. Ramakrishnan would press into service the policy decision of the State Government contained in G.O. Ms. No. 173 Personnel and Administrative Reforms (Personnel S) Department dated 15.03.1988, wherein it was pointed out that if an employee relinquishes a right already enjoyed, the period of three years can be reckoned from the date of actual offer or the date of accepting the order of relinquishment. In the instant case, as on 25.10.2006, the date on which the writ petitioner has exercised to relinquish her right, there is no existing right available to her nor was she enjoying any such right as on that date. She merely had a right to be considered for promotion. But whereas giving up a right in existence is not the same as that of giving up a right to be considered for promotion as and when the next vacancy becomes available. In other words, what the writ petitioner admitted to give up was a contingent right in the form of consideration of her case for promotion as and when the next vacancy becomes available. We, therefore, are of the opinion that the policy of the State Government enabling the three year period to be reckoned from the date of the offer of relinquishment will not enure to the benefit of the writ petitioner.

5. Even otherwise, the writ petitioner has relinquished her right to be considered for promotion on 25.10.2006 whereas the new posts came to be sanctioned on 07.10.2009, by which date, clearly the three year period, even if reckoned from 25.10.2006, has not expired.

6. Further, the writ petitioner came to be considered and promoted as Bench Clerk Grade II attached to the Senior Civil Judge Court on 08.01.2010 i.e. nearly in two months time from the date the respondents 3 to 6 have been accorded promotion. We do not see, hence, much merit in this writ petition and accordingly, it stands dismissed, but however with costs.

7.It goes without saying that in case the writ petitioner falls within the zone of consideration for the next higher category of promotion, the present order will in no way come in her way for consideration.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Registrar General,
High Court, Madras.

2.The Principal District Judge,
Kancheepuram District
at Chengalpet.

+1cc to Mr.J. Ramakrishnan, Advocate, S.R.No.14378

ks (CO)
md(16/03/2017)

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