



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
W.P. (MD)Nos.13829 and 14683 of 2017

and

W.M.P. (MD)Nos.10802, 10803, 11513 and 11514 of 2017

WEB COPY

V. Loganathan

... Petitioner in both WPs

Vs.

1.The Principal Secretary,
Home Department,
St.George Fort,Chennai - 600 009.

2.The Director of Prosecution,
Prosecution Department,
Slum Clearance Board Building (2nd Floor)
5, Kamarajar Salai, Chennai.

3.The Deputy Director of Prosecution,
165 -A, Bharathi Ula Salai,
Race Course Road, Madurai. ... Respondents 1 to 3 in Both WPs

PRAYER IN W.P.(MD)No.13829 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records relating to the proceedings of the impugned Government Order in GO(2D) No.213, Home (CourtsVI) Department dated 17.07.2017 on the file of the first respondent in so far as the petitioner is concerned and the consequent order of the second respondent in RC.No.6960/DOP/A1/2015, dated 17.07.2017 (D.O.No.88/17) and the consequent relieving order of the third respondent in RC.No.678/2016/A1(1) dated 18.07.2017 on the file of the third respondent and quash the same.

PRAYER IN W.P.(MD)No.14683 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records relating to the proceedings of the impugned Government Order in GO(2D) No.235, dated 28.07.2017 on the file of the first respondent and the consequent impugned order in RC.No.6960/A1/DOP/2015, dated 31.07.2017 on the file of the second respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
in both WPs

For Respondents : Mr.D.Muruganantham
Additional Government Pleader



COMMON ORDER

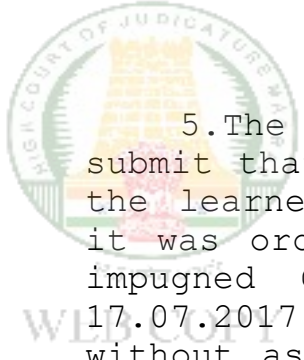
By the consent of both the sides, these writ petitions themselves are taken up for final disposal.

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2.The petitioner who is serving as Assistant Public Prosecutor, Grade II in Judicial Magistrate Court No.III (CCIW), Madurai, has submitted a representation on 12.06.2017, requesting for relinquishment of the right for promotion to the post of Assistant Director of Prosecution/ Additional Public Prosecutor, temporarily for a period of three years, giving his domestic reasons.

3.The petitioner was appointed as Assistant Public Prosecutor Gr.II and posted in the year 2005 in Devakottai Judicial Magistrate Court and subsequently, he was transferred to Judicial Magistrate Court No.I, Sivagangai. Later on, he was transferred to Judicial Magistrate Court No. III (CCIW), Madurai on 10.03.2016. As he was having less than 4 years of left over service, suffering from chronic diabetics and Hypo Thyroidism, his wife is also working as a Teacher in Government School, Cholavandhan and also to make suitable marriage arrangements for his daughter, who has also reached the marriageable age, submitted a letter to the second respondent on 12.06.2017, relinquishing his promotion to the post of the Assistant Director of Prosecution/Additional Public Prosecutor for a period of three years. When the said application was pending, the first respondent by order dated 17.07.2017, overlooking the statutory right for relinquishing him promotion, issued a temporary panel, temporarily promoting as Deputy Legal Advisor, posting in Chief Judicial Magistrate/ The Special Judge, Villupuram vide G.O.(2D)No.213, Home (Courts -VI) Department, dated 17.07.2017. On the same day, the second respondent passed second order of posting in RC.No.6960/DOP/A1/2015, with the result the relieving order dated 18.07.2017 has been issued in R.C.No.678/2016/A1 with instruction to hand over the charge also. The learned counsel for the petitioner pleaded that ironically the right of the petitioner to relinquish his promotion under section 57 of the Tamil Nadu Government Servants (Condition of service Act, 2016) is overlooked.

4.Firstly, when the petitioner has got less than four years of left over service, secondly, his wife is also working as a Teacher in Government School, Cholavandhan, Madurai and thirdly, in the event of his promotion and transfer, his only daughter's marriage would be left without any suitable match. The genuine request of the petitioner ought not to have been unfairly ignored or overlooked, it is pleaded.



5. The learned counsel appearing for the petitioner would submit that the matter was taken on 27.07.2017, at the request of the learned Additional Government Pleader, to take instructions, it was ordered to be posted on 04.08.2017, in the meanwhile, the impugned G.O.(2D)No.213, Home (Courts -VI) Department, dated 17.07.2017 was issued, rejecting the request of the petitioner without assigning any reason, simply stating that the request of the petitioner is devoid of merits. In view of the aforementioned G.O., the petitioner was constrained to file W.P.(MD).No.14683 of 2017, questioning the correctness of the said G.O. Further this Court on 07.08.2017 passed an order directing the respondents to maintain Status -quo as on date i.e on 07.08.2017. However, the respondents promoted the petitioner to the post of Additional Public Prosecutor in the Court of learned Judicial Magistrate No.III (CCIW), Madurai. The said order passed on 07.08.2017 has not been implemented and as a result, the petitioner is neither able to join in the promoted post nor able to work anywhere.

6. The learned Additional Government Pleader, appearing for the respondents opposing the petitioner's prayers submitted that the temporary panel of Assistant Public Prosecutors, who were fit for promotion to the post of Additional Director of Prosecution / Additional Public Prosecutor, was prepared and issued in G.O.(2D) No.213, Home (Courts -VI) Department, dated 17.07.2017. The Director of Prosecution incharge has communicated the above panel to the employees vide proceedings dated 08.06.2017. Thereafter, the petitioner submitted his letter relinquishing his further promotion only on 12.06.2017 to the Director of Prosecution, incharge. Had the petitioner submitted his letter of relinquishment before issuing the above said G.O. Dated 17.07.2017, the said G.O. would not have been issued by including the petitioner's name. Besides only after the copy of the panel was sent to the employees on 08.06.2017, the petitioner gave his letter only on 12.06.2017 to the Director of Prosecution. Hence, no fault can be found against the impugned proceedings, he pleaded.

7. A perusal of the said letter dated 12.06.2017 clearly shows that he has relinquished his promotion for a period of three years to the promotional post of the Assistant Director of Prosecution, as there was no any response, the petitioner again renewed his letter of relinquishment on 19.07.2017, stating the aforementioned three reasons, but, it is not known why the respondents have ignored such a bonafide request of the petitioner, when several officers are waiting for a long time to get promotion. It is always obligatory for the respondents to consider such request as mandated under section 57 (1) of the Act. Hence, the present rejection order issued vide G.O.(2D)No.213, Home (Courts -VI) Department, dated 17.07.2017, is bereft of any merit.



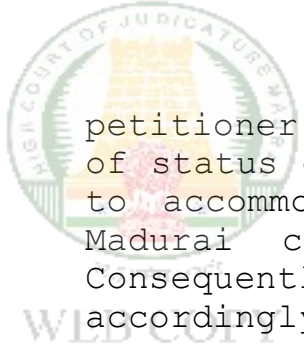
8. Therefore, this Court finds no merits in the submission of the Additional Government Pleader that the reason for rejecting the petitioner's request for relinquishment that the petitioner submitted his letter only after receiving the copy of the panel on 08.06.2017. In addition thereto this Court is of the view that the petitioner after receiving the panel on 08.06.2017, has rightly given his letter of relinquishment on 12.06.2017 to the Director of Prosecution incharge under section 57(1) of the Act. In this context, it is relevant to refer to Section 57 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows,

" 57. (1) Any person may, in writing, relinquish any right or privilege to which he may be entitled under this Act or the special rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in this Act 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."

A careful reading of Section 57 (1) reveals that it does not show that the letter of request for relinquishment of promotion should be produced prior to the preparation of the panel. However, no one will be able to know whether one's name is going to be considered for promotion, therefore, the petitioner rightly has given his letter dated 12.06.2017 only after finding his name included in the promotion panel of Assistant Public Prosecutor fit for the post of Additional Public Prosecutor on 07.06.2017, which was communicated only on 08.06.2017. After such a request has been made, the respondents could have deleted the name of the petitioner, accepting his representation dated 12.06.2017, which has been rightly given under section 57(1) of the Tamil Nadu Service Act, 2016, as the same has not been done by the respondents, this Court is inclined to allow these writ petitions accepting his request for relinquishment of his promotion for a period of three years.

9. For all the above reasons, this Court finds that the petitioner has given a genuine request for relinquishing his future promotion to the post of Deputy Legal Advisor, for a period of three years on the grounds that he is having less than four years of left over service and for two other reasons as mentioned above, hence, this Court is inclined to set aside only a portion of the G.O.(2D)No.213, Home (Courts -VI) Department, dated 17.07.2017, granting promotion in respect of the petitioner alone.

10. Accordingly, that portion of the impugned order in respect of the petitioner alone is set aside and both the writ petitions stand allowed and the respondents are directed to permit the



petitioner to continue in his previous place as there was an order of status quo granted. Alternatively, the respondents are directed to accommodate the petitioner in any other equivalent post in Madurai considering the reasons mentioned supra. No Costs. Consequently, the connected miscellaneous petitions are ordered accordingly.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary,
Home Department,
St.George Fort,
Chennai - 600 009.
- 2.The Director of Prosecution,
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5, Kamarajar Salai, Chennai.
- 3.The Deputy Director of Prosecution,
165 -A, Bharathi Ula Salai,
Race Course Road, Madurai.

+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 76318

W.P. (MD) Nos.13829 and 14683 of 2017

DSK/MRN
JM/SKN RSK/SAR 3/05.09.2017/5P/5C