

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.7404 of 2013

M.Nandagopalan

... Petitioner

Vs

The State of Tamilnadu,
rep. by the Secretary to Government,
Public (SPL-A) Department,
Fort St. George,
Chennai-600 009.

... Respondent

PRAYER :

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to respondent's letter made in No.1404/2011 Public Special-A Department dated 22.1.2013, to quash the same and to consequently direct the respondent to promote the petitioner as Deputy Secretary on par with his immediate junior and extend all benefits such as enhanced pension and pensionary benefits granted exemption from Compulsory District Training for Under Secretaries for promotion as Deputy Secretary with all other benefits arising thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.J.Pothiraj,
Spl. Govt. Pleader

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O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.J.Pothiraj, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court seeking the following relief:-

"To issue a Writ of Certiorari Mandamus, calling for the records relating to respondent's letter made in No.1404/2011 Public Special-A Department dated 22.1.2013, to quash the same and to consequently direct the respondent to promote the petitioner as Deputy Secretary on par with his immediate junior and extend all benefits such as enhanced pension and pensionary benefits granted exemption from Compulsory District Training for Under Secretaries for promotion as Deputy Secretary with all other benefits arising thereto."

3. The case of the petitioner is as follows:-

The petitioner was initially employed as Section Officer in RD & LA Department, Government of Tamilnadu. He was appointed as PA to Director of Rural Department, which was in the cadre of DDO on other duty and in which post, he discharged as such between 09.04.1983 and 10.07.1990. Subsequently, he was promoted as Under Secretary on 11.07.1990 and was reverted back to the Secretariat as Under Secretary to Government. Since he was on other duty, he was not considered for compulsory training for Under Secretaries. According to the petitioner, since he was on other duty, he could not be sent for compulsory training and therefore, he became ineligible for the post of Deputy Secretary. According to the petitioner, his immediate junior one Mr.M.Sethuraman, was promoted as Deputy Secretary in 1990, however, the claim of the petitioner was not considered. On his repeated representations, his claim was ultimately rejected on 22.01.2013 and according to the petitioner, the rejection order by the respondent was a non speaking order and the said rejection order is put to challenge in the present writ petition.

4.Shri L.Chandrakumar, learned counsel for the petitioner would submit that, it is not fault on the part of the petitioner that he did not go for training meant for Under Secretary but it was due to the fact that he was on other duty and due to non availability, he was not sent for training. In any case, after his retirement from service, the petitioner who is 85 years now, is merely seeking for notional promotion cannot be accepted to undergo training as required. According to the petitioner, he could not make any claim for promotion in view of disciplinary action against him which ultimately was set aside by this Court in W.P.No.28301 of 2005 and the retirement benefits were settled and pension was also revised.

5. Resisting the claim of the petitioner, a detailed counter statement has been filed and submission was also made by the learned Special Government Pleader that the petitioner after passage of more than three decades claiming for such relief. In fact, paragraph-13 of the counter affidavit, it is clearly stated that the petitioner was not entitled to be sent for training in 1990, since after his promotion as Under Secretary, he had only 15 months left over service whereas as per the Government Order in G.O.Ms.No.652, provided for at least 3 years of left over service required for sending District Training in the post of Under Secretary to Government. The averments contained in paragraph - 13 of the counter affidavit is extracted below:

"13. I submit that the above petitioner was suspended in the post of Personal Assistant to the Director of Rural Development and then on revocation of suspension, he joined the post of Under Secretary to Government on 11.07.1990 and retired from service on 31.10.1991. He was having 15 months left over service in the post of Under Secretary to Government out of the required service of 3 years. As he was not having left over service of three years on 11.07.1990 in the post of Under Secretary to Government, he was not qualified for District Training. As he has not completed District Training he is 'not qualified' and 'not fit' for promotion to the post of Deputy Secretary to Government as per rule 3 of the Tamil Nadu General Service-Class-XII Rules. Hence the grounds made by the petitioner in the said writ petition are not sustainable and his request was not complied with."

6. The learned Special Government Pleader has also produced the Government Order in support of the above submissions and averments. On going through the Government Order, it is seen that the Under Secretaries to Government, could ought to possess at least 3 years of service left before retirement to be sent for training and as far as the petitioner was concerned, he had worked as Under Secretary to Government only for about 15 months and clearly lacking 3 years of left over service. Therefore, the claim of the petitioner is clearly untenable and unsustainable. Even otherwise the present claim by the petitioner is highly belated and stale and the same cannot be

entertained.

7. In view of the above, the writ petition is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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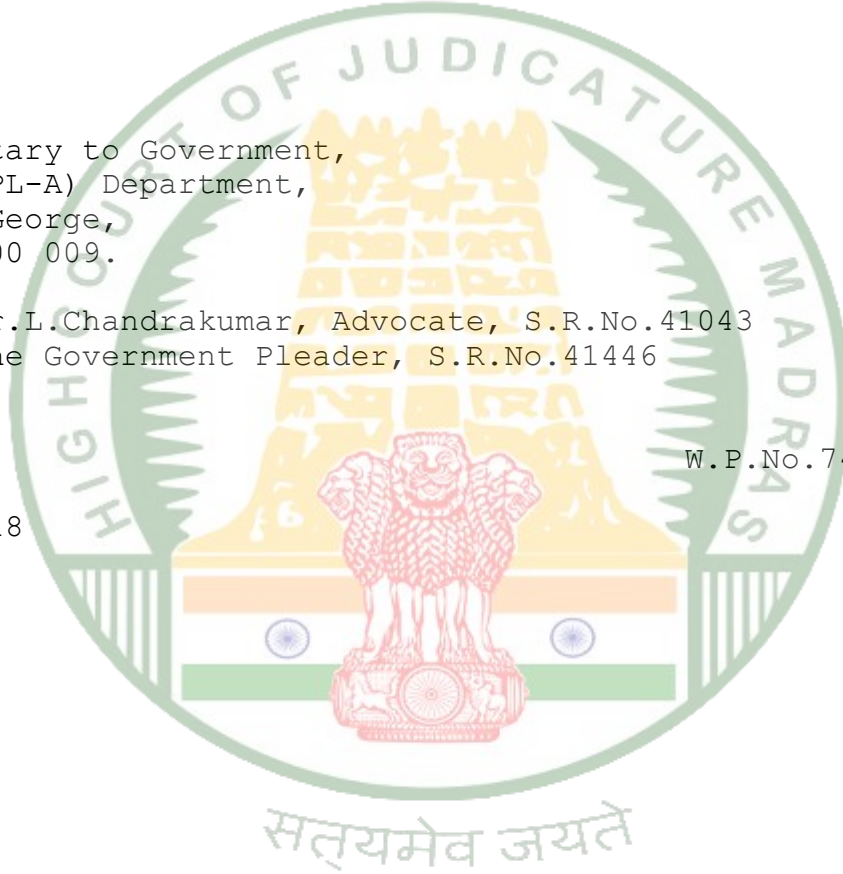
To

The Secretary to Government,
Public (SPL-A) Department,
Fort St. George,
Chennai-600 009.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.41043
+1cc to the Government Pleader, S.R.No.41446

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CS/24/07/18



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