

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.672 of 2016

M.Jayapalan

... Appellant

Vs

1.The Additional Chief Secretary to
Government cum Commissioner of Land
Administration
Chepauk, Chennai 600 005.

2.The District Collector
Tiruvannamalai
Tiruvannamalai District.

... Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters
Patent Act, to set aside the order passed by this Court in
W.P.No.7849 of 2016 dated 02.03.2016.

W.P.No.7849 of 2016: Petition under Article 226 of the
constitution of India, praying for the issue of a writ of
Mandamus, directing the respondents to grant relaxation of
Rule 7(a) of Tamil Nadu State and Sub-ordinate Service Rules
for the post of Deputy Thasildar and consequently direct the
respondents to grant notional promotion of Deputy Thasildar
and to pay all benefits accrued there from in the case of the
petitioner.

For Appellant : Mr.S.Udayakumar

For Respondents: Mr.V.Anandhamurthy
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The writ petition filed by the appellant for a direction
to the Government to grant relaxation of Rule 7(a) of the
Tamil Nadu State and Subordinate Service Rules for promotion
to the post of Deputy Tahsildar was dismissed by the learned
Single Judge on the ground that relaxation is not a matter of
right. Feeling aggrieved by the said order, the appellant has
come up with this intra court appeal.

2. The learned counsel for the appellant contended that the appellant has been making representation to the respondents for considering his case for relaxation and for promotion to the post of Deputy Tahsildar. The Government kept the matter pending and the same resulted in filing the writ petition after attaining the age of superannuation. The learned counsel further contended that under similar circumstances, relaxation was given to the other employees even after retirement and as such, the learned Single Judge was not correct in rejecting the prayer for relaxation.

3. We have also heard the learned Additional Government Pleader on behalf of the respondents.

4. The appellant tried his level best for passing the departmental examination, which is a pre-condition for considering his case for further promotion. The last of such attempt was in 2012. The appellant even during the currency of his service submitted representation for relaxation. It is true that the representation was not considered by the Government in spite of recommendation made by the higher authorities. It is a matter of record that the appellant retired from service on attaining the age of superannuation on 31 May, 2013. It was three years thereafter, the appellant filed the writ petition for a writ of mandamus.

5. There is no dispute that the Government is having a discretion to relax Rule 7(a) for the purpose of giving promotion to the employee. The relaxation is not a matter of rule. The Government has to consider host of factors before granting relaxation.

6. The appellant ought to have taken up the issue during the currency of his service. The appellant waited till his retirement for filing the writ petition. In fact, the writ petition was filed only after three years. There was no employer and employee relationship between the appellant and the respondents as on the date on which the writ petition was filed. We are, therefore, of the view that the learned Single Judge was correct in dismissing the writ petition.

In the upshot, we dismiss the intra court appeal. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

To

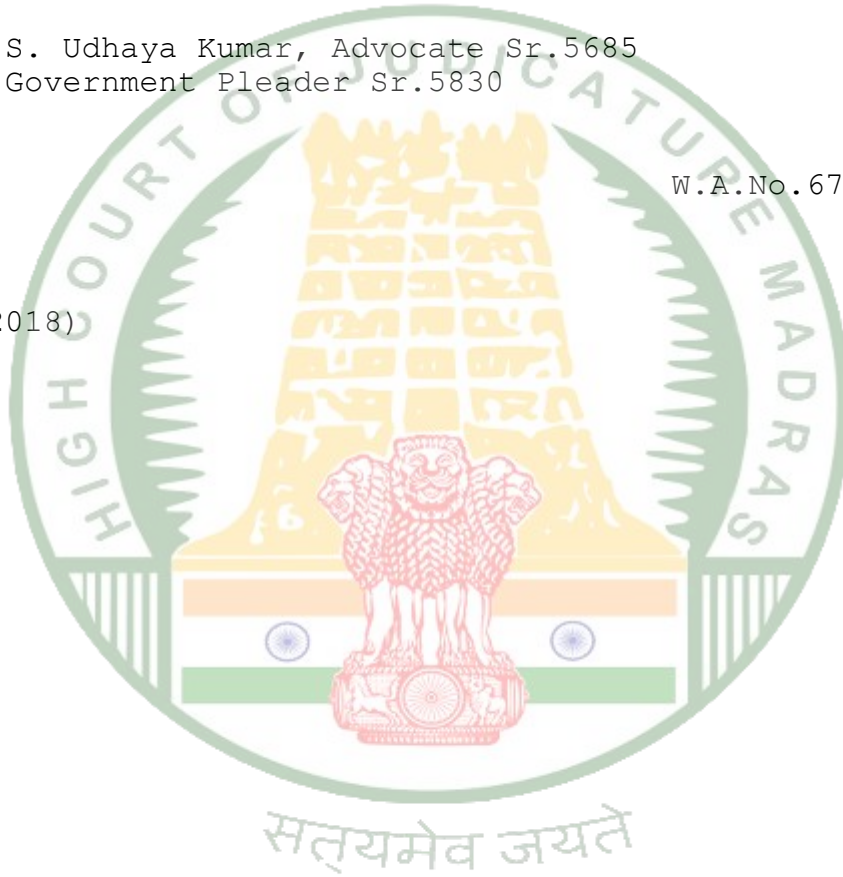
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+ 1 cc Mr.S. Udhaya Kumar, Advocate Sr.5685
+ 1 cc to Government Pleader Sr.5830

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NRK (CO)
EU (19/02/2018)



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