



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P(MD)Nos.11344 of 2014
and
M.P(MD).No.1 of 2014

K.Rakkappan

... Petitioner

Vs.

1. The Director of Medical and
Rural Health Services,
No.359-361, Annasalai,
Teynampet, Chennai-600 006.

2. The Joint Director of Health Services,
District Government Hospital Campus,
Virudhunagar.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the first respondent in proceedings K.Dis.No.69780/E2/1/2013 dated 27.05.2014 and quash the same and consequently direct the respondents to revise the petitioner's seniority in the cadre of Assistant and to promote the petitioner as Superintendent retrospectively on par with his Junior and to grant all consequential service benefits with in a stipulated time may be fixed by this Court.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.Jeyakumar

Additional Government Pleader

ORDER

The petitioner was appointed as Junior Assistant on 22.01.1996. His probation was declared. The next promotional post for the post of Junior Assistant is that of Assistant. In this regard, counselling was held on 19.07.2006, but, the petitioner herein gave a letter dated 17.07.2006 stating that he is not in a position to attend the counselling. There is a clear instruction issued by the Government to the effect that if the person eligible for promotion does not relinquish his right, but chooses to absent himself on the day of counselling or if he attends the counselling but fails to relinquish, it shall be deemed that he is willing to be considered



for promotion.

2. In the present case the petitioner only gave a letter indicating that he will not be able to attend the counselling. But, unfortunately for the writ petitioner, it was construed as a matter of relinquishment. It is clearly a wrong committed by the authority concerned. But then, the petitioner was promoted as Assistant only in the year 2010. In the next counselling, the petitioner was passed over for the post of Office Superintendent. When the petitioner represented, the impugned order dated 27.05.2014 was passed, informing the petitioner that his re-fixation of seniority for the post of Assistant is not feasible for consideration. The same is assailed in the writ petition.

3. As rightly pointed out by the learned counsel appearing for the writ petitioner, the authority has proceeded on an entirely wrong footing as at no point of time the writ petitioner relinquished his claim for promotion to the post of Assistant. He only indicated that he will not be in a position to attend the counselling. Therefore, the reason assigned in the impugned order is clearly un-sustainable. But then the question arises as to what relief can be granted in this case. The writ petitioner was passed over for the promotion to the post of Assistant in the year 2006, and his Junior was given promotion. The writ petitioner did not have the alertness to knock the door of this Court immediately. He chose to wait till the year 2010 i.e., when the next counselling was conducted. The writ petitioner accepted his promotion to the post of Assistant, with effect from the date in which it was given. Therefore, the re-fixation of seniority in the said post can be done only from the date of appointment. It is not possible to accede to the request of re-fixation of seniority by notionally considering that he was promoted to the post of Assistant in the year 2006 itself. Though the writ petition had a good case on merits, by his own conduct and laches, he has forfeited it.

4. In this view of the matter the order impugned is sustained. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

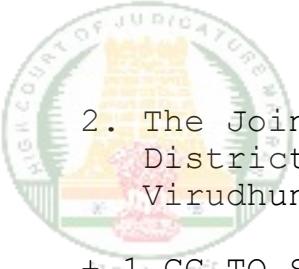
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Medical and
Rural Health Services,
No.359-361, Annasalai,
Teynampet, Chennai-600 006.



2. The Joint Director of Health Services,
District Government Hospital Campus,
Virudhunagar.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 53322

+ 1 CC TO Mr.M.SARAVANAKUMAR, ADVOCATE IN SR No. 53068

RMK

TE/SKN-RSK/SAR-4 : 06/07/2018 : 3P/5C

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