

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 10.09.2018****CORAM:****THE HONOURABLE Mr. JUSTICE S. VAIDYANATHAN****W.P. (MD) No. 19502 of 2018****WEB COPY**

M. Karuppasamy

... Petitioner

Vs.

1. The Director,
Rural Development Department,
Saidapet,
Chennai-600 015.

2. The District Collector,
Thoothukudi District,
Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to give promotion as Deputy Block Development Officer and consequently, direct the respondents to give all the pension benefits thereto to the petitioner based on the petitioner's representation dated 12.02.2018.

For Petitioner

: Mr. G. Gomathi Sankar

For Respondents

: Mr. S. Dhayalan

Government Advocate

ORDER

The petitioner seeks for a Writ of Mandamus, directing the respondents to give promotion as Deputy Block Development Officer and consequently, direct the respondents to give all the pension benefits to the petitioner, based on the petitioner's representation, dated 12.02.2018.

2. Mr. S. Dhayalan, Government Advocate, takes notice for the respondents.

3. By consent, the writ petition itself is taken up for final disposal.

4. According to the petitioner, he was initially appointed as Record Clerk in Kovilpatti Panchayat Union and thereafter, he was promoted as Junior Assistant. On account of unauthorized absence, the petitioner was terminated from service. Therefore, the petitioner approached the Tribunal in the year 2000 and filed O.A. No. 4009 of 2000 and after abolition of the Tribunal, the said Original Petition was transferred to the Madras High Court and the same was renumbered as W.P. No. 46033 of 2006. The said writ petition was allowed and directed the respondents to treat the period from 08.05.1964 to 03.07.1972 as the period spent on duty and grant all



the consequential reliefs and the punishment imposed on the petitioner was quashed. Thereafter, the petitioner was not granted promotion and hence, he filed a writ petition in W.P.(MD).No.11524 of 2012 before this Court questioning the rejection of promotion and this Court passed the following order:

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"9. The operative part of the order passed by this Court reads as under:

"12. In these circumstances, the writ petition is allowed and directing the respondent to treat the period from 08.05.1964 to 03.02.1972 as period spent on duty and grant consequential benefits within a period of 8 weeks from the date of receipt of a copy of this order. No costs."

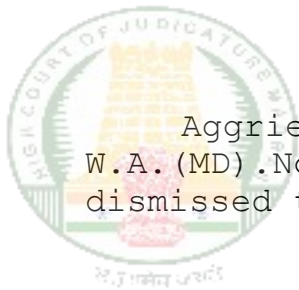
13. In this case, it was not the case of the petitioner that because of suspension, the petitioner was denied promotion. The petitioner has also not pleaded whether any junior to the petitioner was promoted and that his case was not considered only because of the suspension.

14. It is not disputed that the petitioner was reinstated in service and continued in service till the age of superannuation. The reading of the judgment shows that this Court in spite of the specific prayer of the petitioner that he was entitled to the promotion, no order was passed, meaning thereby that either the prayer was not pressed or this Court did not agree, under the principle of constructive res-judicata.

15. This Court ordered regularisation of suspension period with consequential benefit, which means that petitioner was entitled to pay an allowance for the period. It could not include right to promotion, as in the earlier writ in spite of the prayer, the relief was not granted. There is no pleading at all in support of the claim of promotion, as it is not disclosed if any junior to the petitioner was promoted during the period of suspension by ignoring the petitioner for reason of his being under suspension.

16. The right of promotion could accrue to the petitioner only in case any junior to the petitioner had been promoted, to consider notional promotion. In absence of any pleadings or materials, there is no ground whatsoever for issuance of direction to promote the petitioner as claimed, specially when the petitioner stands retired from service on attaining the age of superannuation, and his claim for promotion in earlier writ was not accepted.

No merit. "Dismissed".



Aggrieved over the same, the petitioner preferred an appeal in W.A.(MD).No.1445 of 2015 and by order dated 04.01.2006, this Court dismissed the writ appeal as follows:

"7.The appellant retired about 16 years ago. From the period of his appointment in 1960 or so up to the date of his retirement in 1990 or so, there has been at least three rounds of litigation. Promotion to the post of Assistant is not automatic. The appellant did not seek or get such a relief in the previous round of litigation. Therefore, the learned Judge was right in rejecting the claim. We see no reason to interfere with the said order. Hence, the writ appeal is dismissed. No costs."

5.After the dismissal of the writ appeal, the petitioner has come forward with the present writ petition directing the respondents to give promotion as Block Development Officer, for which, he made a representation dated 12.02.2018.

6.This Court, while coming to the conclusion with regard to the seeking of promotion, has observed that the petitioner is not at all eligible to give promotion. The petitioner did not get any relief in the previous round of litigation. The relief sought for by the petitioner is hit by res-judicata and by using different terminology, the petitioner is trying to unsettle the settled issue. There is no reason available to grant such relief sought for by the petitioner, more particularly, seeking a direction to the respondents to dispose of the petitioner's representation dated 12.02.2018. Though it is a fit case for imposing cost not less than one lakh, taking into account of the age of the petitioner as 78 years, this Court is not imposing any cost. If the petitioner is going to approach the Court seeking similar relief at later point of time, the Court will take serious note on the issue.

7.With the above observation, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(crl side)

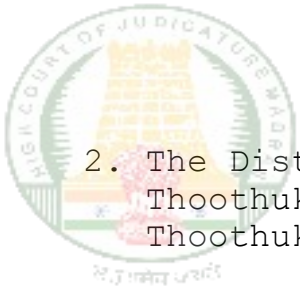
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Sub Assistant Registrar(CS-I)

To

1. The Director,
Rural Development Department,
Saidapet,

<https://hcservices.ecourts.gov.in/hcservices/>
Chennai-600 015.



2. The District Collector,
Thoothukudi District,
Thoothukudi.

+1cc to Mr.G.Gomathi Sankar, Advocate Sr.No.83178

+1cc to Spl.Government Pleader Sr.No.84064

NS

VB/BK/SAR1/10.12.2018/4P/5C

W.P. (MD) No.19502 of 2015
10.09.2018