



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P (MD) No.13372 of 2011
and
MP (MD) Nos.1 and 2 of 2011

R.Balasubramaniam

... Petitioner

Vs.

1.The Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai -9.

2.The Commissioner of Labour,
Chennai - 6.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus and call for the records of the 2nd respondent in his No.E4/21913/2009 dated 16.07.2009 as well as consequential order No.E2/38581/09-3 dated 02.02.2010 and quash the same and consequently direct the respondents to include the petitioner in the promotion panel fit for promotion to the post of Deputy Inspector of Labour based on his Seniority No.1134.

For Petitioner
For Respondents

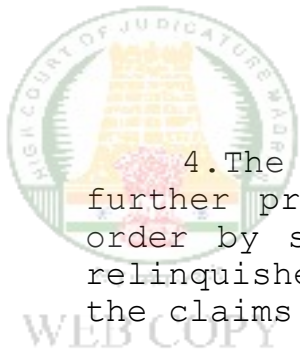
: Mr.A.Thirumurthy
: Mrs.VPM.Vaishnavi,
Government Advocate.

ORDER

The relief sought for in this writ petition is to quash the order of rejection passed by the 1st respondent on 16.07.2009 and by the 2nd respondent in proceedings dated 02.02.2010.

2.The short point to be decided in this writ petition is that the claim of the writ petitioner for promotion and for sending him training has been rejected on the ground that the writ petitioner had relinquished his right for promotion permanently under the rules. The writ petitioner was appointed as Junior Assistant and subsequently, promoted to the post of Assistant, Superintendent and Stamping Inspector.

3.The writ petitioner submitted an application stating that on account of his health conditions and family circumstances, he is relinquishing his right for promotion permanently. Based on the application submitted by the writ petitioner, the competent authorities, passed an order accepting the relinquishment offered. Accordingly, the order was passed on 03.10.2006 and therefore, the writ petitioner was not considered for further promotion.



4. The writ petitioner made his claim for training and for further promotion. However, the same was rejected in the impugned order by stating that the writ petitioner had already permanently relinquished his right of promotion under the rules and therefore, the claims of the writ petitioner could not be considered.

5. This Court is of an opinion that as per Rule 47, which is applicable prior to the enactment of the Tamil Nadu Service Conditions Act, 2016. Rule 47 deals with the relinquishment of rights by the members and the same reads as under;

47. (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.

(2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years, subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of the period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted, subsequent claim of the relinquished rights or privileges shall not be entertained.

Sub clause 2 categorically enumerates that " If relinquishment of right or privilege is made permanently and is accepted, subsequent claim of the relinquished rights or privileges shall not be entertained".

6. Subsequently, the Government enacted Tamil Nadu Government Servants Condition of Service Act, 2016, the very same rule was adopted in Section 57 of the Act. The same provision is adopted and even if any employee has relinquished his right or privilege permanently, then he can not claim any right or privilege subsequently and the same cannot be entertained.

7. This being, the legal principles, this Court is of an opinion that the relinquished rights permanently by the writ petitioner, cannot be claimed subsequently. In the present case on hand, the writ petitioner has voluntarily relinquished his rights and privilege in respect of his promotion. The relinquishment letter submitted by the writ petitioner was accepted in the year 2006 itself. Therefore, the petitioner is not entitled to claim any right or privilege or also promotion thereafter. Thus, the order impugned passed by the respondents rejecting the claim of the writ petitioner



for his willingness to undergo training for the purpose of securing promotion is in accordance with rules. There is no infirmity as such, in the orders passed by the respondents.

8. Accordingly, the writ petition stands dismissed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai - 9.

2. The Commissioner of Labour,
Chennai - 6.

+One cc to The Special Government Pleader, SR.No.57308

dsk

RL/4C/3P/KK/SAR4/6/4/2018

W.P (MD) No.13772 of 2011

21.03.2018