



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P (MD) No.2301 of 2011
and
MP (MD) Nos.1 and 2 of 2011

S.Tamilarasi ... 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 a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his Memo No.E2/38969/2006 dated 03.10.2006 and quash the same and consequently, direct the respondents to promote the petitioner to the Post of Deputy Inspector of Labour based on her Seniority No.1131, with effect from the date on which her immediate junior in the cadre of Superintendent / Assistant Inspector of Labour has been promoted to the Post of Deputy Inspector of Labour and grant further promotions, service, monetary and other attended benefits to the petitioner.

For Petitioner : Mr.A.Thirumurthy
For Respondents : 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 and the order passed by the 2nd respondent in proceedings dated 11.01.2011.

2.The short point to be decided in this writ petition is that the claim of the writ petitioner for promotion and for sending her training has been rejected on the ground that the writ petitioner had relinquished her 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 her health condition and her family circumstances, she 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 19.03.2008 and therefore, the writ petitioner was not considered for further promotion.

4. The writ petitioner made her 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 her 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 cannot 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 her promotion. The relinquishment letter submitted by the writ petitioner was accepted in the year 2008 itself. Therefore, the petitioner is not entitled to claim any right or privilege so 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(Crl.Side)

/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.

+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR NO.57034

W.P (MD) No.2301 of 2011
21.03.2018

dsk

MS/SKN-RSK/SAR-3/11.04.2018/3P.4C