

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.4063 of 2012

D.Subramaniam

.. Petitioner

Vs.

1. The Secretary to Government,
Planning, Development and Special Initiatives (ST.3)
Department,
Fort ST. George,
Chennai 9.

2.The Principal Secretary and Director,
Department of Economics and Statistics,
Chennai 600 006.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Letter No.9752/St.3/2009, dated 23.12.2009 and quash the same and consequently, direct the respondents to promote the petitioner for the post of Statistical Officer by giving exemption from doing field service for three years.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.R.S.Selvam,
Government Advocate

O R D E R

Writ Petition is filed challenging the proceedings in Letter No.9752/St.3/2009, dated 23.12.2009 of the 1st respondent and consequently, directing the respondents to promote the petitioner for the post of Statistical Officer by giving exemption from doing field service for three years.

2.The petitioner is orthopedically handicapped person and his both legs are paralyzed due to Polio attack. His disability is permanent. He was appointed as an Assistant Statistical Investigator on 12.10.1981 through Employment Exchange under the

Physically Handicapped quota. His service has been regularized by the Tamil Nadu Public Service Commission by conducting special test confirmed the service on 11.10.1983. The next avenue of promotion is Statistical Inspector. For promotion to the post of Statistical Inspector, the petitioner has to complete one year field service. Since he is a physically handicapped person, he applied for exemption before the respondents. The petitioner being polio affected person, was given exemption under Rule 48 of the General Rules for the Tamil Nadu State and Subordinate Services contained in Part-II in Volume-I of the Tamil Nadu Services Manual 1987, from undergoing field service by G.O.Ms.No.6 [Planning and Development (ST3) Department], dated 18.01.1994. On such exemption, the petitioner was promoted as Statistical Inspector. The next avenue of promotion is Statistical Officer and the said post is only a desk work and there is no necessity to do field service. At that time, the petitioner became eligible for promotion to the post of Statistical Officer, for which three years experience of field service was required. The petitioner made representation to the respondents for exemption from the field service. The 1st respondent rejected the request of the petitioner by impugned order in proceedings Letter No.9752/St.3/2009, dated 23.12.2009. Hence, the Writ Petition.

3.The learned counsel appearing for the petitioner contended that the reasons given by the 1st respondent for rejecting the request of the petitioner for exemption are not valid. The 1st respondent failed to see that the petitioner worked as the Assistant Statistical Investigator and Statistical Inspector for a long period of time and gained experience to discharge duties of Statistical Officer. The petitioner has requisite experience to analyze the reports of the Statistical Inspector and Assistant Statistical Investigator, prepare the report and send to the Government. The petitioner has experience which would enable him to guide the subordinates in collecting the statistics and prayed for allowing the Writ Petition.

4(i).The 2nd respondent filed counter affidavit on his behalf and on behalf of the 1st respondent. The learned Government Advocate appearing for the respondents contended that the petitioner being physically handicapped person was given exemption of one year field service for promoting him as Statistical Inspector by one concession and on humanitarian ground. The Department of Economics and Statistics has been performing an important role in collecting data from various sources and schemes and monitoring the same. Collection of data from various fields is submitted to the Government, which is useful for making policy decisions by the Government. Staff of the Department must have field service in collecting data to meet its objects and goals. This capability is very much

required in a higher post like Statistical Officer. The petitioner was already given concession in the post of Assistant Statistical Investigator. Concession cannot be extended to the petitioner at every stage.

4(ii).The Statistical Officer in the department headquarters has to design schedules, scrutinize, compile and prepare reports on various surveys and censuses. He also has to provide necessary guidance to the staff in the scrutiny, coding, tabulation and analyzing work on concerned sections. All these works mentioned above can be done only by those who have adequate knowledge of field service in the post of Statistical Inspector. The petitioner admittedly is not possessing field experience in the post of Statistical Inspector and without such experience, the petitioner will not be in a position to discharge duties of the Statistical Officer and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

6.The petitioner is a physically handicapped person being affected by Polio. He was appointed as an Assistant Statistical Investigator under the Physically Handicapped quota. Subsequently, he was promoted as Statistical Inspector. To hold the post of Statistical Inspector, one year field service is required. The 1st respondent considering the physical disability of the petitioner, exempted the requirement of one year field experience and on such exemption, the petitioner was promoted as Statistical Inspector. From the records, it is seen that the respondents have not stated that the petitioner did not perform the duties of Assistant Statistical Investigator or Statistical Inspector properly due to lack of field experience. The respondents have also not stated that after petitioner being promoted as Statistical Inspector, he was required to do field service. This aspect is relevant to the case of the petitioner as three years field experience is required to be promoted as Statistical Officer. The respondents have also not stated what is the nature of work allotted to the petitioner during his tenure as Assistant Statistical Investigator and Statistical Inspector. The contention of the learned counsel for the petitioner that duties of Statistical Officer is desk work and no field service is required is admitted by the respondents in their counter affidavit. Both the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents stated that job of the Statistical Officer is to analyze the data received from the Subordinate Officers and prepare report on various surveys and censuses. The respondents having exempted the petitioner from field service

while promoting him as Statistical Inspector and having not sent the petitioner for field service, cannot deny promotion to the post of Statistical Officer. The reasons given by the 1st respondent that exemption granted to the petitioner from field service is concession and on humanitarian ground are not valid. The 1st respondent has discretion to grant exemption under Rule 48 of the General Rules for the Tamil Nadu State and Subordinate Services contained in Part-II in Volume I of the Tamil Nadu Services Manual, 1987 and discretion has to be exercised judicially. Having exempted the petitioner from field service, now the respondents cannot deny promotion of the petitioner to the post of Statistical Officer.

7. For the above reason, the impugned order of the 1st respondent in his proceedings Letter No.9752/St.3/2009, dated 23.12.2009 is set aside. The petitioner is entitled to be promoted to the post of Statistical Officer, when his immediate junior was promoted to the said post. The petitioner was 55 years at the time of filing Writ Petition in the year 2012. Now, he has attained the age of superannuation. In such circumstances, the respondents are directed to give notional promotion to the petitioner to the post of Statistical Officer. The petitioner is not entitled to difference of monetary benefits from the date of notional promotion till his date of superannuation. The respondents are directed to fix the scale of pay of the petitioner in the post of Statistical Officer from the date of his notional promotion which will be counted for granting terminal benefits, including gratuity and pension. If the respondents have already paid terminal benefits and calculated pension based on the salary received by the petitioner as Statistical Inspector, the respondents are directed to re-calculate the terminal benefits and pay the arrears and difference to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is allowed. No costs.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

gsa

To

1.The Secretary to Government,
Planning, Development and
Special Initiatives (ST.3) Department,
Fort ST. George,
Chennai 9.

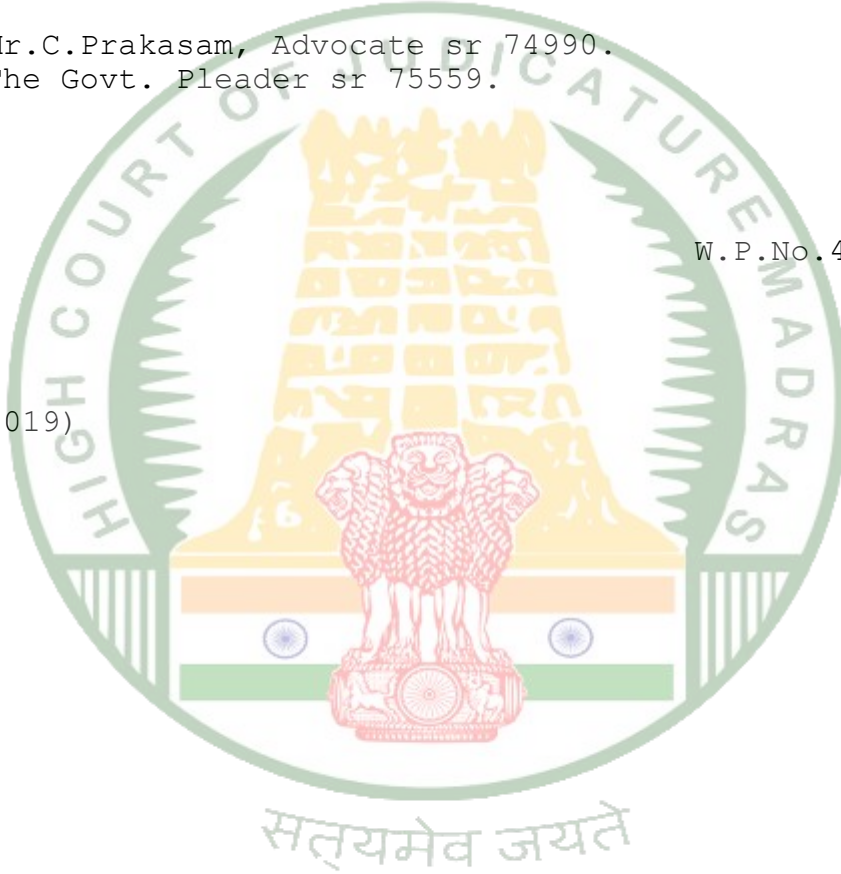
2.The Principal Secretary and Director,
Department of Economics and Statistics,
Chennai 600 006.

+1 CC to Mr.C.Prakasam, Advocate sr 74990.

+1 CC to The Govt. Pleader sr 75559.

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PVS (CO)
SP(31/10/2019)



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