

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.38420 of 2015

Tmt. Anusuya Annamalai,
Retired District Registrar,
9/3, Gangadeeshwarar Koil Street,
Purasawakkam,
Chennai - 600084.Petitioner

Vs.

1. State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Commercial Tax and Registration (H.1) Department,
Fort St.George,
Chennai - 600009.
2. The Inspector General of Registration,
Santhome High Road,
Madras - 600028.Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in letter No.62564/A1/2012 dated 11.07.2013 of the second respondent and Government Letter No.9613/H/2013-4 dated 22.09.2014 of the first respondent insofar as it states that the period of relinquishment of the petitioner for a period of three years for promotion as Assistant Inspector General of Registration expired on 30.05.1997, computing from 31.05.1994, the date on which the request for relinquishment for promotion was accepted on 31.05.1994 by the first respondent in G.O.Ms.No.159 Commercial Taxes and Religious Endowments Department dated 31.05.1994 and quash the same as null and void on the ground being that under Rule 47(1) of the Tamil Nadu State and Subordinate Service Rules, the relinquishment will operate only "to the extent to which it has been relinquished" and direct the respondents to proceed on the basis that the period of three years of relinquishment expired on 23.06.1996 computing the period of relinquishment from 24.06.1993 and consequentially consider her for Notional promotion as Assistant Inspector General of Registration for the year 1996-1997 with

consequential benefit of higher pay and increased pension to the petitioner.

For Petitioner : Mr.P.Chandrasekaran

For Respondents: Mr.P.P Purushothaman
Government Advocate

O R D E R

The petitioner is aggrieved against the impugned proceedings, which in effect, denied the benefit of notional promotion to the petitioner for the post of Assistant Inspector General of Registration for the year 1996-1997, by stating that during such period, the petitioner has already relinquished her right of promotion.

2. The petitioner was working as a Sub-Registrar in the Registration Department. She gave an application on 24.06.1993, relinquishing her rights for the promotion to the post of Assistant Inspector General of Registration temporarily for 3 years due to certain circumstances stated therein. Again, by a letter dated 10.05.1994, the petitioner reiterated the relinquishment as per Rule 47 of the Tamil Nadu State and Subordinate Services Rules. She retired on 31.10.1997.

3. It seems that a Disciplinary Proceedings initiated against her was also subsequently dropped in pursuant to an order passed by this Court in W.P.No.25014 of 2006 and W.A.No.1748 of 2011 in her favour.

4. The petitioner claims notional promotion to the post of Assistant Inspector General of Registration for the year 1996-1997 by contending that the period of 3 years of relinquishment had expired on 23.06.1996 itself. However, such request was rejected by contending that the 1st respondent-Government granted permission to relinquish by issuing G.O.Ms.No.159 dated 31.05.1994 and therefore, the period of 3 years has to be reckoned only from the date of such G.O and not from the date of the original application. Therefore, the present writ petition is filed seeking for the relief as stated supra.

5. A counter affidavit is filed by contending that the original request made by the petitioner on 24.06.1993 was a conditional one and therefore, a revised application was filed by the petitioner on 10.05.1994, based on which, G.O.Ms.No.159 dated 31.05.1994 was passed permitting the petitioner to relinquish her rights for promotion for a period of 3 years. Thus, it is contended by the respondents that the period of 3 years has to be reckoned only from the date of the said

Government Order and not from the date of her original application.

6. The learned counsel appearing for the petitioner after inviting this Court's attention to Rule 47 of the Tamil Nadu State and Subordinate Services Rules, contended that the date of the application has to be taken as the date of commencement of 3 years period of relinquishment and not the date of the Government Order, which permitted the petitioner to relinquish. Therefore, he contended that for considering the petitioner for promotion to the post of Assistant Inspector General of Registration for the year 1996-1997, there was no impediment for the respondents to do so, as her relinquishment period was already over as on 23.06.1996.

7. On the other hand, the learned Government Advocate appearing for the respondents reiterated the contentions raised in the counter affidavit and submitted that the impugned orders were passed rightly denying the claim of the petitioner.

8. Heard both sides.

9. While the petitioner was working as Sub-Registrar, she sent an intimation to the 1st respondent-Government, through the 2nd respondent on 24.06.1993, relinquishing her rights for the promotion to the post of Assistant Inspector General of Registration temporarily for a period of 3 years. The said letter reads as follows:

"From
ANUSUYA ANNAMALAI
Sub-Registrar (District Registrar Cadre)
Purasawlkam
Madras-600 007.

To
The Secretary to Government
CT & RE Department,
Tamilnadu Secretariat
Madras-600 009.

Through : I.G. Of Regn., Madras-1.

Respected Sir,

I beg to submit the following few lines for your kind consideration and necessary orders. I am ailing from heart trouble for the past few years and I could not travel some distance of miles and to work in other districts. I am consulting whenever necessary, Dr.Thanikachalam,

Cordialogist who is residing in Anna Nagar, nearer to my residence. Further, my husband is also suffering from diabetic decease and he needs my assistance, otherwise there is no body help to my family.

Above reasons are forced me to stay in the Madras City. I came to know that the panel for A.I.G. post is being approved in which my name is included. If I am promoted to the post of A.I.G. and posted elsewhere in the districts. I am not in a position to work in other district.

I therefore relinquish my rights for promotion to the post of A.I.G. Temporarily for 3 years.

I am once again request you Sir, that I may kindly be allowed to continue in the present post and in the present place (Sub-Registrar Office, Purasawalkam) till my health condition is recouped and also I could consult my family doctor, Mr.Krishnamoorthy who is near by my office at Purasawalkam.

Thanking you.

Yours faithfully,
(ANUSUYA ANNAMALAI)"

10. According to the respondents, the above said request of the petitioner dated 24.06.1993 is a conditional one. A careful perusal of the said request made by the petitioner would first of all show that it is not an application seeking permission to relinquish, but the said communication itself is relinquishing her right of promotion for 3 years. Further, it is seen that it is not a conditional one and on the other hand, the same only explained the reasons for making such relinquishment. The petitioner through her subsequent communication dated 10.05.1994 reiterated that her relinquishment made through application dated 24.06.1993 is as per Rule 47 of the Tamil Nadu State and Subordinate Services Rules. Therefore, the second communication of the petitioner dated 10.05.1994 cannot be construed as a fresh application.

11.It is true that the said request made by the petitioner has subsequently resulted in passing G.O.Ms.No.159 dated 31.05.1994, wherein and whereby, the 1st respondent permitted the petitioner to relinquish her rights for promotion to the post of Assistant Inspector General of Registration, temporarily for a period of 3 years. At this

juncture, it is to be noted that Rule 47 of the Tamil Nadu State and Subordinate Services Rules, deals with relinquishment of rights by the members, does not speak about any permission to be granted by the competent authority and on the other hand, Sub Rule 2 of Rule 47 the Tamil Nadu State and Subordinate Services Rules, only indicates that the relinquishment of a right for a temporary period shall be "accepted" if it is made for a period of not less than three years. For better clarity, Rule 47 of the Tamil Nadu State and Subordinate Services Rules, is extracted here under:-

47. Relinquishment of rights by members
- (1) Any person may in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest, and nothing contained in these rules 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 period of relinquishment and without restoration or 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.]

12. When Sub-Rule 2 of Rule 47 the Tamil Nadu State and Subordinate Services Rules, contemplates only the acceptance of the relinquishment, needless to say that such acceptance shall have the effect of reckoning the period of such relinquishment from the date of such application and not from the date of such acceptance. Otherwise, there will be no meaning for granting such liberty to the employee to relinquish his/her right for a particular period of 3 years of their choice due to various reasons. Further, it is to be noted that while Sub-Rule 1 of Rule 47 grants discretion to the employee to exercise relinquishment of rights or privileges, to which, he/she may be entitled to under the said Rules and when such right is

exercised by such person, the scope of exercise of duty contemplated under Sub-Rule 2 would make it clear that such relinquishment of right or privilege for a temporary period shall have to be accepted by the concerned authority, if it is made for a period of not lesser than three years, of course, by imposing other conditions with regard to the status of such person post relinquishment. In other words, while the relinquishment is the discretionary right of the employee, acceptance of the same by the employer is mandatory. When such being the statutory position, granting permission to relinquish does not arise as has been done in this case, by passing G.O.Ms.No.159 dated 31.05.1994. Certainly, there is a difference between the act of "acceptance" and "permission".

13. Under the above stated circumstances, If the period of 3 years is reckoned from the date of the said application, as rightly contended by the petitioner, such relinquishment period expired on 23.06.1996 and therefore, there would have been no impediment for the respondents to consider the application of the petitioner for the post of Assistant Inspector General of Registration for the year 1996-1997 in the absence of any other legal impediment for them to do so.

14. Accordingly, I find that both the impugned proceedings are liable to be set aside and consequently, the matter needs to be remitted back to the respondents to reconsider the claim of the petitioner and pass appropriate orders accordingly, by taking note of the fact that the period of relinquishment had expired on 23.06.1996. Thus, this Writ Petition is allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the respondents to consider the claim of the petitioner for notional promotion for the post of Assistant Inspector General of Registration for the year 1996-1997 and pass appropriate orders. Such exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(Insp.cell)

//True Copy//

Sub Assistant Registrar

sni/mk
To

1. The Principal Secretary to Government,
Commercial Tax and Registration (H.1) Department,
Fort St.George, Chennai - 600009.

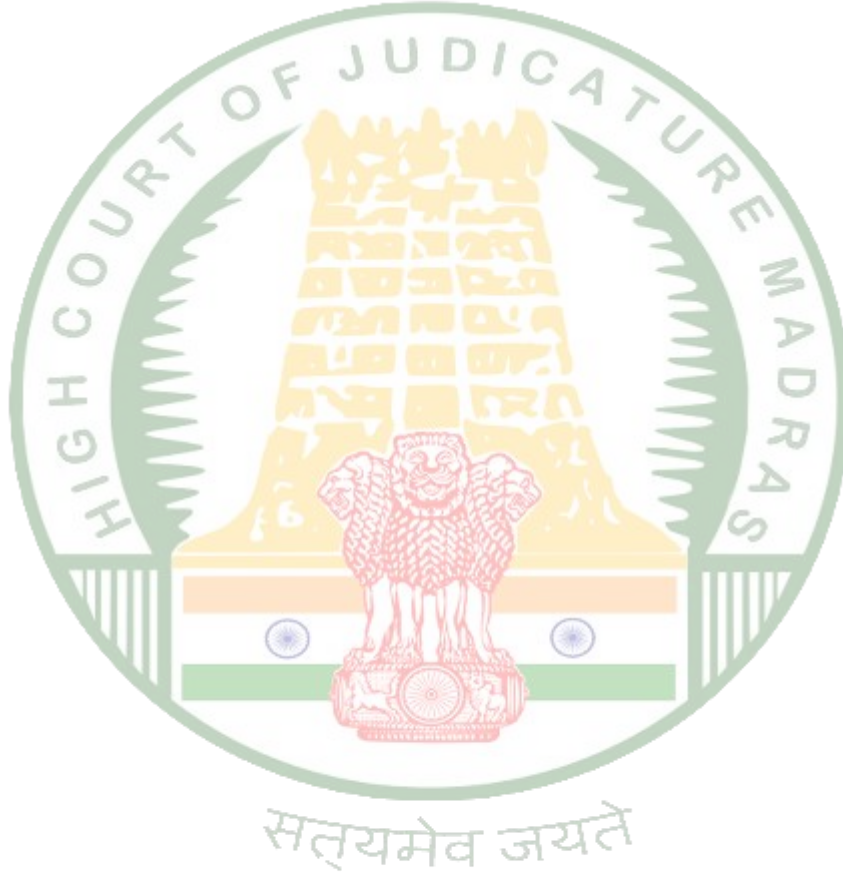
2. The Inspector General of Registration,
Santhome High Road,
Madras - 600028.

+1 cc to M/s.P.Chandrasekaran, Advocate, Sr.No. 31426

+1 cc to The Government Pleader, Sr.No. 33406

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RR(CO)
CSL/29.04.2019



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