

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.09.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.17751 of 2019

and

WMP No.17165 of 2019

S.Sudhakar

...Petitioner

vs

1. The Transport Commissioner
Ezhilagam, Walaja Road
Chepauk, Chennai 600 005

2. The Regional Transport Office
Chennai Thiruvallur High Road
Chinna Ekkadu, Jaya Nagar
Thiruvallur 602 001

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in proceedings No.18164/RA2/2019 (E.O.No.249/2019) dated 29.05.2019 and quash the same and direct the respondent to reconsider the representations dated 09.05.2019, as per section 57 of the Tamilnadu Government Servants (Conditions of service) Act, 2016 for a period of 3 years considering the family circumstances and pass such further or other orders.

For Petitioner

: Mr. Prakash Paul

For Respondents

: Mr.R.S.Selvam, Government Advocate

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ORDER

The case of the petitioner is that he has joined in the Government Service on 01.12.2002 as a fireman and worked till 31.01.2010. Thereafter, the petitioner has written TNPSC Group IV Examination held in the year 2010 and was selected as entry level typist and joined duty at Chief Judicial Magistrate at Vellore and thereafter at District Munsif Court at Arakkonam

from 01.02.2010 till 21.03.2013. Thereafter, he was transferred to STAT, Chennai and was working there and his wife D.Deepa was working as Assistant in the Subordinate Court at Thiruvannamalai. He further submitted that his wife and his daughter were living at Thiruvannamalai, without any support and he remain posted in Chennai, the entire family was subjected to serious hardship and sufferings therefore, the petitioner had given representation to the Principal Secretary / Transport Commissioner, Chepauk, Chennai 600 005 and also to the Secretary, State Transport Appellate Tribunal to transfer him to the place where his wife was working on the ground of spouse working, but, the same was rejected. The petitioner had filed a writ of certiorarified mandamus against the order of rejection before this Court accordingly this court transferred the petitioner to Thiruvannamalai Regional Transport Office.

2. The petitioner further submitted that he was working in the Thiruvannmalai RTO for one and half years and subsequently he was transferred to the second respondent's office as an assistant on 08.10.2018 forenoon and stated that he was discharging his duties smoothly and used to visit his family twice in a week at Thiruvannamalai to look after his two girl children and widowed mother. Thereafter, the petitioner gave a further representaion on 07.05.2019 under Section 57 of the Tamilnadu Government Servants (Conditions of Service) Act, 2016 to temporarily relinquish his name to be recommended for the accountant work, which is a prerequisite to consider for the promotion as superintendent or transfer him to any other place due to his family circumstances. However, the same was rejected by the first respondent's office vide order dated 29.05.2019 through the proceedings No.18164/RA2/2019 (E.O.No.249/2019) stating that "the reasons adduced by the individual for temperory relinquishment of his rights for further promotion had no valid grounds. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner had given his representation on 07.05.2019 for temporary relinquishment under Section 57 of the Tamilnadu Government Servants (Conditions of Service) Act, 2016 and the petitioner has right to relinquish his promotional post temporarily for the period of 3 years. However, without considering the family circumstances and the reasons adduced in the representation, the first respondent mechanically rejected the application, which is unsustainable in law.

4. The learned Government Advocate would submit that the representation submitted by the petitioner had no valid grounds to consider under Section 57 of Tamilnadu Government Servants

(Conditions of Service) Act, 2016, and if the same is accepted it would affect the smooth functioning of administration and also affect the promotional opportunities of the feeder category of the Assistant. He further submitted that Section 57(1) of Tamilnadu Government Servants (Conditions of Service) Act, 2016 clearly states that "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", from which it is very clear that the temporary relinquishment is subjected to the opinion of the appointing authority to consider or not, in the interest of administration. The learned counsel also submitted that if the application of the petitioner is agreed to, similar requests may arise in future, which will defeat the powers of the appointing authority, which leads to much administrative inconvenience. The learned counsel would further submit that the relinquishment of right for further promotion cannot be claimed as a right during the course of employment and according to Rule 30 (b) of Special Rules for Tamilnadu Ministerial Service, every Assistant in the Transport Department should render service for a period of not less than two years in the State Transport Authority, Deputy/Joint Transport Commissioner's Office / State Transport Appellate Tribunal / Assistant Accountants Office (Audit) and one year as Accountant in any of the office of Regional Transport Office of the Transport Department. If the representation of the petitioner is accepted, it would cause huge hardship for the respondent department to fill up the accountant posts in the Regional Transport Offices and the Assistants posts in the Administrative offices and hence the order issued by the first respondent in Proc.R.No.18164/RA2/2019 (E.O.249/2019) dated 29.05.2019 is valid under law and sustainable.

5. Considering the facts and circumstances of the case, when it is found that the petitioner is working at Palavakkam @ Uthukottai checkpoint, Thiruvallur District and when it is also not in dispute that the family of the petitioner is residing in Thiruvannamalai and the petitioner is used to travel from Uthukottai to Thiruvannamalai twice, the reasons adduced in the representation for relinquishment that he has to take care of his widow mother and his two girl children is not feasible. Since the petitioner is not working in Thiruvannamalai and he is working only in Uthukottai, the reasons adduced by the individual for temporary relinquishment of his rights for further promotion had no valid grounds and rightly rejected by the first respondent stating that in the interest of administration and also for smooth flow of administration and without causing any type of impediment to the next promotees from the feeder category, the relinquishment application was

rejected and I do not find any error in the impugned order passed by the first respondent. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

Bga

Copy to

1. The Transport Commisioner
Ezhilagam, Walaja Road
Chepauk, Chennai 600 005
2. The Regional Transport Office
Chennai Thiruvallur High Road
Chinna Ekkadu, Jaya Nagar, Thiruvallur 602 001

+1cc to Mr.Prakash Paul, Advocate SR.No.78271

+1cc to Government Pleader SR.No.78448

W.P.No.17751 of 2019

VBA (CO)
GMY (03/10/2019)

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