

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2019

DELIVERED ON : 25.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.30447 of 2014

and

M.P.No.1 of 2015

M.Manikandan

..Petitioner

Vs

- 1.The Government of Tamil Nadu
Rep. by its Secretary to Government
School Education Department,
Fort St.George
Chennai-9
- 2.The Director of Elementary Education
College Road, Chennai-6
- 3.The District Elementary Educational Officer
Tiruvannamalai
- 4.The Assistant Elementary Education Officer
Jawadhu Union
Jamunamarathur
Polur Taluk, Tiruvannamalai District

.. Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records in Na.Ka.No.552/A1/03, dated 13.06.2003 of the fourth respondent and Moo.Mu.No.4319/A2/2014, dated 09.10.2014 of the third respondent to quash the same, with consequential direction to refix original seniority and to include the petitioner's name in the seniority list for promotion to the post of Middle School Head Masters.

For Petitioner : Ms.K.Jenitha

For Respondents : Mr.K.Karthikeyan, Govt.Advocate
for R1 to R4.

ORDER

This Writ Petition is filed challenging the order dated 13.06.2003 passed by the fourth respondent and dated 09.10.2014 of the third respondent and seeks to quash the same, with consequential direction to refix original seniority and to include the petitioner's name in the seniority list for promotion to the post of Middle School Head Masters.

2. The Petitioner was working as B.T.Assistant and was initially appointed as Secondary Grade Teacher on 06.12.2000 at Nagalur, Jawathu Hills Union. The petitioner's service was regularized on 02.12.2002. The Petitioner was assigned with duty Incharge of Headmaster, due to additional duty, his health condition required treatment and at that time, as per seniority, he was selected for promotion to the post of Elementary School Head Master and posted at Alanjanur Panchayat Union Primary School. Since Petitioner was undergoing treatment, he informed his inability to join duty at Alanjanur Panchayat Union Primary School, as it was a Hill Station. The 4th respondent, based on Petitioner's letter dated 11.06.2003, passed an order by proceedings in Na.Ka.No.552/A1/03, dated 13.06.2003 stating that the Petitioner's request for relinquishment of promotion is accepted. The Petitioner submitted a letter to the Assistant Elementary Education Officer, on 05.08.2003 to cancel the aforesaid order. But, no reply was received and he was denied promotion for three years, without considering the petitioner's representation.

3. The learned counsel for the Petitioner contends that the relinquishment period expires on 13.06.2005, after four years, the petitioner was promoted as Elementary School Head Master on 27.11.2006 and posted at Jawadhu Hill Melseply Panchayat Union Primary School and thereafter, promoted as B.T.Assistant on 01.06.2008. The Petitioner submitted his representation requesting to revise his original seniority and to give retrospective effect from the date of promotion to the post of Primary school Head Master, on par with his juniors. However, the Petitioner's request was rejected on the ground of his temporary relinquishment for promotion.

4. The Petitioner also preferred an appeal against the order of the fourth respondent dated 13.06.2003 by which the Petitioner's relinquishment of promotion was accepted. Since the appeal was not taken up, the Petitioner filed W.P.No.20732 of 2014 seeking a direction to dispose of the statutory appeal. By order dated 18.08.2014, this Court directed the third respondent to dispose of the appeal on merits and in accordance with law, within a period of eight weeks. The third respondent, accordingly, passed the impugned order dated 09.10.2014

rejecting the petitioner's claim. Assailing the impugned order, this Writ Petition is filed by the Petitioner.

5. A counter affidavit has been filed by the 4th respondent. The learned Government Advocate, appearing for the respondents would submit that as per existing rules, relinquishment is effective for three years from the date of relinquishment. It is further reiterated by the learned Government Advocate, as stated in the counter affidavit that after three years of relinquishment, Petitioner was promoted as Elementary School Headmaster and joined duty on 27.11.2006. Subsequently the petitioner was promoted as B.T.Assistant and joined duty on 01.06.2008 at Panchayat Union Middle School, Irulamparai. The service particulars extracted from the Service Register of the Petitioner has been mentioned in the counter affidavit as under:-

Date	Particulars
06.12.2000	Appointed as Secondary Grade Teacher
13.06.2003	Relinquishment of Promotional Post of Elementary School Headmaster (seniority with reference to 01/01/2003) effective period of relinquishment is three years (i.e., from 13.06.2003 to 12.06.2006)
27.11.2006	Promoted as Elementary School Headmaster and joined duty (seniority with reference to 01/01/2006)
01/06/2008	Promoted as B.T.Assistant (Maths)

It is submitted that subsequently, promotion panel has been prepared for the post of Middle School Head Master based on the seniority as on 01/01/2014. Further, the feeder posts for the promotional post of Middle School Head Master are Elementary School Headmaster and B.T.Assistant, but not from the Secondary Grade Teacher Post.

6. In the counter affidavit, it is further stated that for promotion to the Post of Middle School Head Master, the seniority list as on 01.01.2014 has been prepared by the 3rd respondent and it had been published on 29.04.2014 and in that seniority list, the petitioner's name was listed in Serial No.11, but his juniors names had been included in Serial No.1 to 10 and the reason is that they were juniors with reference to the initial appointment viz., Secondary Grade Teacher but the Promotional Panel had been prepared based on the seniority list in the Posts of Elementary School Headmaster and B.T.Assistant, but not from the seniority list of Secondary Grade Teacher.

7. The learned Government Advocate, appearing for the respondents would submit that in this case, delay and laches on the part of the petitioner is apparent and invited this court's attention to the decision of Apex Court in the case of P.S.Sadasivaswamy Vs. State of Tamil Nadu [AIR 1974 SC 2271], wherein it is held that a person aggrieved by an order promoting a junior over his head should approach the court at least within six months or at the most, a year of such promotion.

8. Thus, according to the respondents, as the petitioner had relinquished the promotion to the post of Elementary School Headmaster whereas his Junior had joined the duty as Elementary School Headmaster in the year 2003 itself and since the petitioner was promoted as Elementary School Headmaster only on 27.11.2006, the petitioner was listed below in the promotional panel to the post of Middle school Head Master. Under these circumstances, the petitioner is not entitled for the claim sought for by him.

9. Heard both sides and perused the records carefully.

10. Rule 47 of the General Rules for Tamil Nadu State and Subordinate Services, provides for relinquishment of any right by a person, entitled to such right or privilege. Rule 47(1) reads as follows:-

"(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."

11. The learned counsel for the Petitioner would submit that pursuant to the entry in the Service Register dated 19.06.2003 of the 4th respondent, the Petitioner has sent a representation on 05.08.2003 making it clear that he only expressed his inability to join duty as Elementary School Headmaster in the Hill station at the time of posting but thereafter requested the 4th respondent to cancel the consequent proceedings dated 13.06.2003. The learned counsel by citing the provision under Rule 47 of the General Rules for Tamil Nadu State and Subordinate Services, stated that relinquishment has to be in writing and specific and the mere inability stated could not construed as relinquishment. In support of the said contention, the learned counsel relied upon the judgment of this court reported in CDJ 2007 MHC 008 [K.P.Rajendran Vs. The Secretary to Government, Tamil Development-Culture Department and others].

12. A perusal of the records shows that at the time of counselling, the petitioner expressed his inability to join duty in the Hill station and informed the same to the authorities in writing. Taking into consideration the above said reason, the 4th respondent issued proceedings dated 19.06.2003. Again, the petitioner by letter dated 05.08.2003 sought to cancel the order dated 13.06.2003 and stated that he has not relinquished his promotion for three years. However, there is no material placed before this court to show that subsequent to the representation of the Petitioner dated 05.08.2003, any order is passed by the 4th respondent by cancelling the order dated 13.06.2003. Further on perusal of the entries in the Service Register shows that the relinquishment made by the Petitioner was entered in the record. As such, after Petitioner's representation dated 12.05.2014 and the same being rejected by the 3rd respondent in his proceedings dated 15.05.2014, the petitioner has not made any representation requesting to consider him for promotion. In the meantime, Panel for promotion to the post of Middle School Head Master in the seniority list as on 01.01.2014 has been prepared by the 3rd respondent and it had been published on 29.04.2014 and in the seniority list, the petitioner's name was listed in Serial No.11 as per the seniority in the posts of Elementary School Headmaster and B.T.Assistant, but not from the Secondary Grade Teacher. It is further seen that in the said promotion panel, No.1 to 10 were seniors to the petitioner who were joined as Head Master during the year 2003.

13. At this stage, Petitioner submitted an appeal to the 3rd respondent to refix the original seniority and to include his name in the seniority list and the same has also been disposed of, subsequent to the order passed by this court. By the impugned order dated 09.10.2014, the 3rd respondent, had stated that the petitioner relinquished the promotion to the post Elementary School Headmaster, when the promotion order had been issued in the year 2003 whereas his juniors have joined in the promotional post viz., Elementary School Head Master and therefore, seniority cannot be revised. It has been further stated that as per rules, relinquishment is effective for three years, thereafter, the petitioner was promoted as Elementary School Headmaster and joined duty on 27.11.2006.

14. As far as the Judgment reported in CDJ 2997 MHC 008 [cited supra], relied upon by the learned counsel for the Petitioner, is concerned, the same cannot be applied to the case on hand, as in the said judgment, it is clearly stated that the petitioner sought for District transfer, but the same had been construed by the second respondent as a relinquishment of promotion whereas in the case on hand, the Petitioner informed his inability to join duty in the promotional post in writing to the authorities concerned and the said fact is admitted by the

Petitioner in the affidavit, filed in support of the Writ Petition.

15. Furthermore, the Writ Petitioner approached this court with inordinate delay of almost 8 years after his Promotion to the post Elementary School Headmaster. Apart from the reason stated in the earlier paragraphs, the delay and laches further extinguish the right of the petitioner to put forth his claim.

16. Having regard to all the above aspects, the Writ Petition lacks merit and the same is liable to be dismissed. The Writ Petition is accordingly, dismissed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Secretary to Government
School Education Department,
Government of Tamil Nadu
Fort St.George, Chennai-9
- 2.The Director of Elementary Education
College Road, Chennai-6
- 3.The District Elementary Educational Officer
Tiruvannamalai
- 4.The Assistant Elementary Education Officer
Jawadhu Union
Jamunamarathur
Polur Taluk, Tiruvannamalai District.

+lcc to Mr.K.Jenitha, Advocate, S.R.No.39797

+lcc to the Government Pleader, S.R.No.41256

VSN II (CO)

RRS (08/07/2019)

WP.30447 of 2014