



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.7449 of 2010

WEB COPY

Mr.D.Ananthasainam

... Petitioner

vs.

1.Director (HR)

Corporate Office,
Bharat Heavy Electrical Limited,
BHEL House,
Siri Fort,
New Delhi-110 049

2.The Executive Director,

Bharat Heavy Electrical Limited,
Trichy-4.

3.The General Manager,

Bharat Heavy Electrical Limited,
Trichy-14.

... Respondents

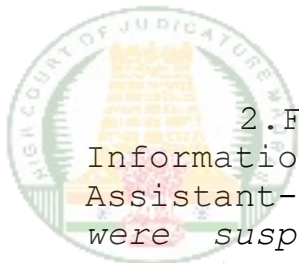
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, calling for the original records pertaining to the impugned Order No.TR/CPIO/08/0024 dated 16.08.2008 passed by the respondents and quash the same and further direct the respondents to consider granting the petitioner's promotion to the post of Assistant, Grade-I with effect from 25.06.1997 to the post of Senior Assistant-III with effect from 25.06.2004 and to the post of Senior Assistant - II with effect from 25.06.2009 and to pay the arrears of salary and further to pay compensation of Rs.5,00,000/- for causing harassment, mental and psychological torture by denying the petitioner promotion on due dates and to issue such other suitable orders or directions as this Court.

For Petitioner :Mrs.T.Banumathy

For R1 to R3 :Mr.AV.Arun

O R D E R

The order dated 16.08.2008 issued by the respondents Company providing reply to the queries asked by the writ petitioner under the Right To Information Act, is under challenge in the present writ petition.



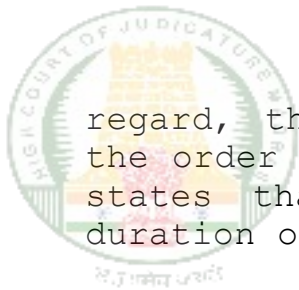
2. First question asked by the writ petitioner before the Information Officer was that the reason for non promotion as Assistant-I from 25.06.1997, the reply furnished is that " you were suspended from 01.03.1995 to 29.05.1996 (14 months) on account of a criminal case registered against you under Section 498(A) IPC vide Crime No.1 of 1995 by Thiruppur All Women Police Station (North). You were due for Assistant I (B6) promotion on 25.06.1997. The period of the suspension was treated as 'dies non'. Hence, you did not complete the eligibility period of seven years for consideration as Assistant Gr.I as on 25.06.1997".

3. With reference to the said reply furnished under the Right to Information Act, the writ petitioner has filed the present writ petition to quash the said reply and for a direction to direct the respondent to consider his case for grant of promotion to the post of Assistant Grade-I with effect from 25.06.1997 and Senior Assistant Grade-III with effect from 25.06.2004 and senior Assistant Grade-II with effect from 25.06.2009.

4. On perusal of the reply the same reveals that the petitioner was placed under suspension during the relevant point of time and a criminal case was also registered against him under Section 498(A) IPC. However, it is brought to the notice of this Court that the criminal case was compromised, as it was a matrimonial dispute between the writ petitioner and his wife. Though, the criminal case was compromised subsequently, the case of the writ petitioner was considered for further promotion to the post of Assistant Grade-II in the year 2001 and Senior Assistant Grade-III in the year 2008.

5. The learned counsel appearing for the respondent made a submission that the writ petition is liable to be rejected on the ground of laches. The petitioner seeks to alter the settled position by filing the writ petition, after a delay of 13 years. The petitioner accepted the promotion to the post of Assistant Grade-I in the year 2001 without any protest or demand and subsequent to that further promotion to the category of Senior Assistant Grade-III also given to the writ petitioner in the year 2008. The petitioner kept silence for 9 years and having acquiesced to the subject matter of promotion in the year 2001 and also subsequent in the year 2008, he cannot file the present writ petition under Article 226 of the Constitution of India, after a lapse of more than 13 years.

6. The learned counsel for the writ petitioner made a submission that even as per the Rules as applicable to the respondents Management, they are bound to consider the case of the writ petitioner for promotion from the year 1997 onwards. In this



regard, the learned counsel for the writ petitioner relied upon the order passed by the respondent in proceeding dated 04.07.1997, states that the case of those employees for promotion their duration of suspension may be added to their eligible period.

7.It is disputed by the learned counsel for the respondents by stating that the order of the rejection itself was issued in the year 1997 itself. The order dated 11.08.1997, which is filed by the respondent states that the period of suspension was treated as on duty and in this regard, the petitioner preferred an appeal as well as submitted repeated representation to the Management. However, the fact remains that the issues were adjudicated and decided by the respondent during the year 1997 itself. Thereafter, the writ petitioner was promoted to the post of Assistant Grade-I in the year 2001 and the Senior Assistant Grade-III in the year 2008. However, the petitioner has not disputed his promotion from the year 1997. Mere submission of the representation for long years would not provide any cause of action for filing the writ petition after a lapse of 13 years from the cause of action.

8.Cause arose for the writ petitioner in the year 1997. Thus, the claim for promotion ought to have been adjudicated within a reasonable period of time. The writ petition itself is filed in the year 2010 after a lapse of 13 years and in the meanwhile, two promotions were granted to the writ petitioner and he accepted the promotions without any protest and was working in the promotional post. This being the factum, the writ petition is devoid of merits and accordingly, stands dismissed on the ground of laches. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. Director (HR)
Corporate Office,
Bharat Heavy Electrical Limited,
BHEL House,
Siri Fort,

New Delhi-110 049

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Executive Director,
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Trichy-4.

3.The General Manager,
Bharat Heavy Electrical Limited,
Trichy-14.

+1 cc to Mr.T.Banumathy , Advocate SR.No.84113
+1 cc to Mr.A.V.Arun , Advocate SR.No.83844

W.P. (MD) No.7449 of 2010
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