



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.10489 of 2013

and

W.M.P. (MD) .No.16839 of 2017

S.Irudhayaraj

... Petitioner

Vs.

1.The District Collector,
Collectorate, Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Taluk Office,
Shengottai Taluk,
Tirunelveli District.

3.The Principal Accountant General (A&E)
Chennai-18

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent N.1 to promote the petitioner from the post of Village Assistant to the post of Office Assistant with effect from 04.07.2012 and accordingly, directing the respondents No.1 and 2 to re fix the pension with tin the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For R1 & R2 : Mr.D.Muruganantham, AGP

For R3 : Mr.P.Gunasekaran

ORDER

The relief sought for in the present writ petition is for a direction to direct the first respondent to promote the petitioner from the post of Village Assistant to the post of Office Assistant with effect from 04.07.2012 and accordingly, direct the respondent Nos.1 and 2 to re fix the pension.

<https://hcservices.courts.gov.in/hcservices/> 2. The writ petitioner was appointed as Village Assistant and



the petitioner claims that he is fully qualified for promotion to the post of Office Assistant. As per the Government Order in force, the Village Assistant on completion of 10 years of service or eligible for promotion to the post of Office Assistant. The ground raised in the writ petition is that the immediate senior of the writ petitioner viz., Mr.U.Kumarasamy, who was working as Village Assistant at Chindupondurai, Tirunelveli Taluk, was given promotion to the post of Office Assistant and he relinquished his right of promotion to the post of Office Assistant and the said fact was reported in proceedings dated 04.07.2012 on the file of the Tasildhar, Tirunelveli. Thus, the writ petitioner ought to have been accommodated in the place of his senior Mr.U.Kumarasamy, who relinquished his right of promotion.

3.In this regard, the first respondent/ District Collector filed a counter affidavit by stating that the relinquishment of senior of the writ petition was examined with reference to the Tamil Nadu Subordinate Service Rules and accepted only on 25.09.2012 after observing the formalities. Immediately, the writ petitioner was given promotion on 28.09.2012 since the vacancy arose only on 25.09.2012 i.e., the date on which the relinquishment was accepted. Thus, there was no delay in issuing the promotion order as contended by the writ petitioner and accordingly, the case of the writ petitioner was not considered. This apart, in para No.9 of the counter affidavit also it is clarified as follows:

"9.It is submitted that the individual's name was included in the promotees list. Since the vacancy referred to by the writ petitioner arose only on 25.09.2012 due to relinquishment of his senior, he was given promotion and appointment ordered on 28.09.2012. The fact of writ petitioner's retirement was not brought to the notice of the Collector by the Tahsildar, Shencottai as he is the appointing authority and issued retirement order to the writ petitioner on 31.08.2012. It cannot be said that the promotion was issued to him belatedly whereas the order issued to him within 3 days as soon as the vacancy arose."

4.The writ petitioner admittedly reached the age of superannuation and retired from service on 31.08.2012. However, the post became vacant only on 25.09.2012 after the retirement of the writ petitioner. This being the factum, the writ petitioner did not reach his chance to get promotion to the post of Office Assistant.

5.Promotion per se cannot be claimed as a matter of right. Promotions are to be made in accordance with the Rules. However, consideration for promotion is a fundamental right of an employee. The case of the writ petitioner was considered by the respondent and his senior was promoted, however, the senior relinquished his right of promotion, meanwhile, the writ petitioner reached the age of superannuation. Thus, the writ petitioner was unable to get an appointment to the post of Office Assistant. However,



the writ petitioner has not established any other illegality or irregularity in the matter of grant of promotion. This being the facts and circumstance, the writ petitioner has not established any acceptable legal grounds as such sought for in the present writ petition cannot be granted.

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6. In view of the above, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CrI.Side)

// True Copy //

Sub Assistant Registrar(CS)

Ns

To

1.The District Collector,
Collectorate, Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Taluk Office,
Shengottai Taluk,
Tirunelveli District.

3.The Principal Accountant General (A&E)
Chennai-18

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-84690[F] dated
30/08/2019)

+1 CC to M/s.T. LAJAPATHIROY, Advocate (SR-84821[F] dated
03/09/2019)

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and
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JMN(26.09.2019) 3P : 6C