



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.1278 of 2019

S.Irudhayaraj ... Appellant/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/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order passed in W.P.(MD)No.10489 of 2013 dated 29.08.2019 on the file of this Court.

Prayer in WP(MD). 10489/ 2013 :

Writ Petition under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondent NO. 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 within the time stipulated by this Court.

For Appellant	: Mr.S.Rajasekar
For R1 and R2	: Mr.S.Angappan Government Advocate
For R3	: Mr.P.Gunasekaran



JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

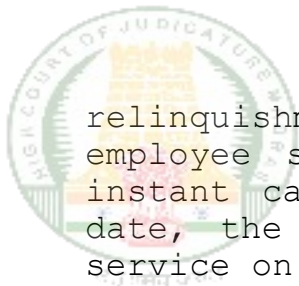
Heard Mr.S.Rajasekar, learned counsel for the appellant, Mr.S.Angappan, learned Government Advocate for the first and second respondents and Mr.P.Gunasekaran, learned counsel for the third respondent. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal filed by the writ petitioner is directed against the order made in W.P.(MD)No.10489 of 2013, dated 29.08.2019. The writ petition was filed by the appellant seeking for a direction to the respondents to promote him to the post of Office Assistant from the post of Village Assistant with effect from 04.07.2012 and accordingly to refix his pension.

3. The appellant's claim that he should be employed as Office Assistant from 04.07.2012, is predicted on the statement that one of his senior namely, Mr.U.Kumarasamy, has relinquished his promotion, consequently, there arose a vacancy and the appellant was required to be promoted on 04.07.2012 in the said vacancy and his pay and allowances should be refixed in the post of Office Assistant and consequently upon his retirement on 31.08.2012, he should be paid the pension payable to the post of Office Assistant.

4. The first respondent / District Collector has categorically stated in the counter affidavit filed in the writ petition that the vacancy arose in the promotional post on account of relinquishment of an employee one Mr.U.Kumarasamy only on 25.09.2012. In the interregnum, a small mistake had been committed by the Tahsildar, Shenkottai Taluk by granting notional benefit to the appellant with effect from 28.09.2012. Having noticed this error, the same was cancelled by proceedings, dated 10.04.2013. However, this order was not questioned by the appellant, but he prayed only a writ of mandamus to promote him to the post of Office Assistant with effect from 04.07.2012.

5. The learned Single Bench after considering the facts found that the resultant vacancy arose only on 25.09.2012, much after the appellant had retired from service on 31.08.2012. The petitioner's case is that the vacancy is deemed to occur with effect from 04.07.2012, because his senior Mr.U.Kumarasamy relinquished his promotion and the same was reported to the District Collector on 04.07.2012. This contention is not acceptable, because unless and until the relinquishment is accepted and orders are passed declaring the resultant vacancy in service jurisprudence, it cannot be deemed that the vacancy arose from the date on which, the employee made the



relinquishment or when the employer / superior Officer of the employee sent proposal to the Head of the Department. In the instant case, the vacancy arose only on 25.09.2012 and on that date, the appellant was no longer in service as he retired from service on reaching the age of superannuation on 31.08.2012.

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6. In the light of the above, we find no reason to interfere with the order passed in the writ petition. Accordingly, this writ appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

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

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

+1 CC to Mr.P. GUNASEKARAN, Advocate (SR-99692[F] dated 20/11/2019)

+1 CC to M/s.SPL GP (SR-100366[F] dated 21/11/2019)

ORDER MADE IN
W.A. (MD)No.1278 of 2019
20.11.2019

VB(05.12.2019) 3P 5C