

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :14.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 17737 OF 2013

D.L.Raja

..Petitioner

- Vs -

1. The State of Tamil Nadu,
Rep by its. Secretary to Government,
Home (Courts) Department,
Secretariat, Fort St.George,
Chennai 600 005.
 2. The Director of Prosecution,
Directorate of Prosecution,
Slum Clearance Board Building,
2nd floor, No.5, Kamarajar Salai,
Chennai 600 005.
- ...Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the 1st respondent to promote him as Deputy Director of Prosecution with effect from 1.9.2009 and also to extend all promotional benefits with effect from 1.9.2009.

For Petitioner : Mr.R.U.Dinesh Rajkumar
For Respondents : Mr.S.Thangavel, Spl.G.P.

ORDER

The Writ petition was filed by the petitioner to direct the 1st respondent to promote him as Deputy Director of Prosecution with effect from 1.9.2009 and also to extend all promotional benefits with effect from 1.9.2009.

2.The case of the petitioner is that the petitioner joined the State Government services as Assistant Public Prosecutor Gr. II in the year 1988 and in due course, he was promoted as Assistant Public Prosecutor Gr.I and then as Asst. Director of Prosecution. At the time of filing the writ petition, he was in the rank of Asst. Director of Prosecution /Additional public prosecutor and posted as Legal Advisor to DGP/Chair Person, TNUSRB, Chennai. The petitioner has completed 24 years of unblemished service and due to retire on 30.06.2013. In the mean while the State Government gave concurrence for appointment of 11 posts of Deputy Director of Prosecution vide G.O.No.(2D)

No.2 Home (Courts-VI) Department dated 07.01.2011 and the petitioner's name figured as 9th in the said list containing 23 names in all, who were fit for appointment as Deputy Director of Prosecution. The said list was prepared by the second respondent for filling up the posts of Deputy Director of Prosecution. Though the said panel was sent to the 1st respondent in the year 2011, no order was passed and the posts of Deputy Director at various places are lying vacant right from the year 2011 onwards and no candidate was appointed in the said post. The petitioner further averred that one Udayakumar, another person in the rank of Assistant Director of Prosecution, whose name figures as 11 in the panel, filed a Writ petition for directing the 1st respondent to promote him as Deputy Director of Prosecution. In the said writ petition the 2nd respondent herein filed a counter stating that a proposal was sent by them to the 1st respondent dated 09.01.2013 and the same was followed by a communication dated 04.03.2013 and that the same has not been approved. This Court by an order dated 25.04.2013, directed the 1st respondent take a decision and to pass appropriate orders within 3 weeks. In the mean while, the petitioner made a representation dated 10.05.2013 to the 1st respondent requesting the 1st respondent to fill up the posts of Deputy Director of Prosecution, so that he can enjoy the benefit. However no order was passed. Hence the present petition has been filed with the above said prayer.

3. The respondent has filed a counter affidavit and submitted that the Estimate of Vacancy for the post of Deputy Director of Prosecution was approved in G.O.(2D) No.2, Home (Courts VI) Department, dated 07.01.2011 and consequently a panel of Assistant Director of Prosecution/Additional Public Prosecutor fit for promotion as Deputy Director of Prosecution was prepared by the 2nd respondent vide letter dated 25.02.2011 and it is submitted that the name of the petitioner was not included in the above said panel proposal. Further it is submitted that the revised proposal was prepared by the second respondent vide the Director of Prosecution letter dated 13.09.2012 and the petitioner stood at 9th position in the above list and the same was sent to the first respondent. It is further submitted that the Madurai Bench of Madras High Court in its order dated 26.11.2009 in W.P. (MD) No.222 of 2009, has observed that the post of Deputy Director of Prosecution should be filled up strictly in accordance with Section 25 A of Criminal Procedure Code, 1973. In this connection, the Government of Tamil Nadu passed LA Bill No.33 of 2006 on 23.09.2006 to omit Section 25-A and have sent the Bill for obtaining the assent of His Excellency the President of India. The said bill was still pending with the Government of India for obtaining the assent of the President. In view of the legal hurdle persisting in promoting Assistant Director of Prosecution

as Deputy Director of Prosecution, no decision was taken in the appointment of Deputy Director of Prosecution. However pursuant to the contempt petition (MD) NO.594 of 2013, the Government has passed G.O.Ms.NO.618 Home (Courts VI) Department, dated 27.08.2013 promoting 15 Assistant Director of Prosecution as Deputy Directors of prosecution and further at the time of passing the said G.O.Ms.NO.618, dated 27.08.2013, the petitioner had retired on superannuation on 30.06.2013 and, hence his name was not included in the above said G.O., and further this petition was filed only on 02.07.2013 claiming notional promotion. It is further submitted that after filing of the Writ petition No.222 of 2009, no one was promoted and posted as Deputy Director of Prosecution.

4.A careful consideration of the above contentions reveal that legal hurdle was persisting from the year 2010 itself and from the year 2010 to 2013, no one was promoted as Deputy Director of Prosecution. Nowhere in the affidavit it is averred by the petitioner that any person junior to him has been promoted. It is also not the case of the petitioner that even any promotion was granted to any person during the said period as Deputy Director of Prosecution. That being the undisputed position, as put forth by the respondents, the claim of the petitioner for promoting him as Deputy Director of Prosecution does not merit acceptance. G.O.(Ms)No.618 Home (Courts VI) Dept. dated 27.08.2013 was passed by the Government only in pursuance to the directions of the Madurai Bench of this Court in the writ petition filed before it. Therefore, in the above backdrop, the claim for promotion made by the petitioner is unsustainable.

5. For the reasons aforesaid, this petition lacks merit and, accordingly, the same is dismissed. However there shall be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

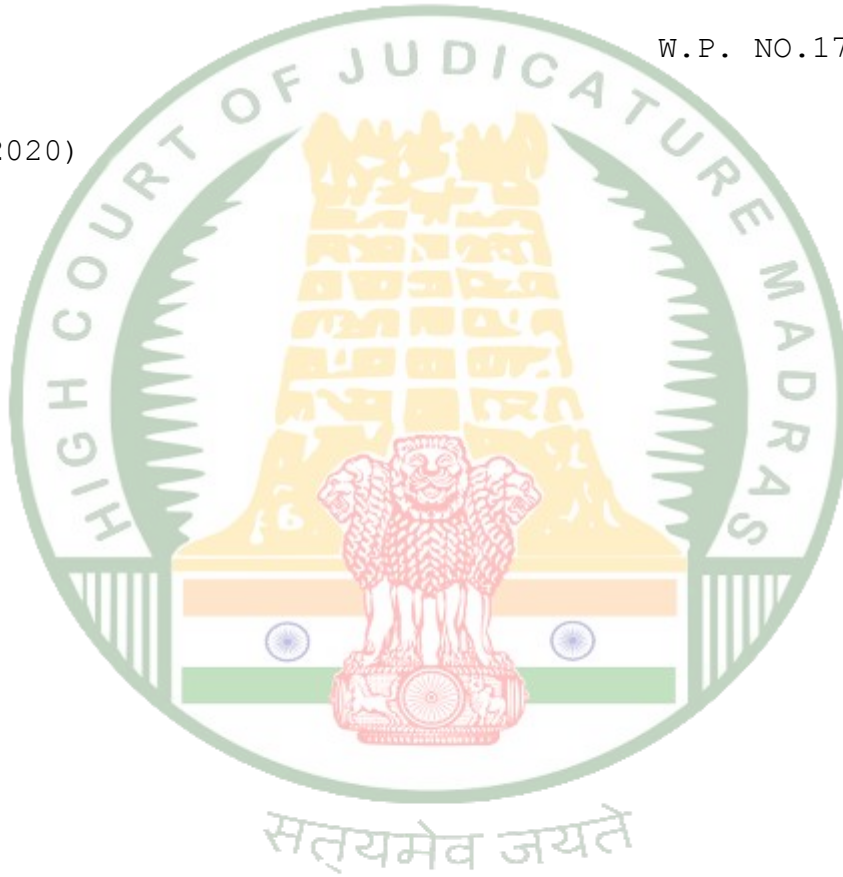
1. The Secretary to Government,
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2. The Director of Prosecution,
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Slum Clearance Board Building,
2nd floor, No.5, Kamarajar Salai,
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+1cc to Mr.R.U.Dinesh Rajkumar, Advocate in SR.NO..30665
+1cc to the Government Pleader, Advocate in SR.NO..30257

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VG-II(CO)
RV(15/10/2020)



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