

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.35951 of 2019

Tmt.Anusuya Annamalai

Petitioner

vs.

1. State of Tamil Nadu rep by the
Principal Secretary to Govt.,
Commercial Tax (H-1) Department,
Fort St. George,
Chennai - 600 009.
2. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamum, calling for the entire records relating to the letter No.8882/H/2018-2 dated 16.10.2019 of the first respondent and addressed to the petitioner, and as communicated by the 2nd respondent in his Registered Letter No.M.A.No.54873/A1/2015 dated 29.10.2019, to the petitioner, quashing the same and consequently directing the respondents to accept the 3 years period of relinquishment of the petitioner expired on 23.06.1996 under Rule 47(1) of the T.N. State and Subordinate Services Rules computing the period of Relinquishment from 24.06.1993 and further directing the respondents to consider the petitioner for Notional promotion as Assistant Inspector General of Registration for the year 1996-1997 with consequential benefit of higher pay and increases pension to the petitioner.

For Petitioner : Mr.P.Chandrasekaran

For Respondents: Mr.T.M.Pappiah

Special Government Pleader

O R D E R

This writ petition was filed challenging the proceedings of the 1st respondent dated 16.10.2019 and for a consequential direction to the respondents to regularize the relinquishment

period as directed by this Court in W.P.No.38420 of 2015 and consider the petitioner for notional promotion as Assistant Inspector General of Registration for the year 1996-97 and to give all the other consequential benefits.

2.The case of the petitioner is that she was serving in the Registration Department as a District Registrar. Her next stage of promotion is to the post of Assistant Inspector General. While the petitioner was working as a District Registrar, a charge memo came to be issued against her on 27.01.1995 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The charges were dropped and the petitioner was also allowed to retire from service on 31.10.1997.

3.The further case of the petitioner is that she was eligible for the post of Assistant Inspector General of Registration and she submitted a letter to the 1st respondent relinquishing her right of promotion to the said post temporarily for three years in view of the compulsion for the petitioner to take care of her husband who was taking treatment at Chennai. The said letter was accepted by the 1st respondent on 31.05.1994. However, while doing so the period of relinquishment of the petitioner was wrongly computed. The petitioner therefore, approached this Court and filed W.P.No.38420 of 2015. This Court passed final orders in the said writ petition on 02.04.2019. The relevant portions in the said order are extracted hereunder:

10. According to the respondents, the above said request of the petitioner dated 24.06.1993 is a conditional one. A careful perusal of the said request made by the petitioner would first of all show that it is not an application seeking permission to relinquish, but the said communication itself is relinquishing her right of promotion for 3 years. Further, it is seen that it is not a conditional one and on the other hand, the same only explained the reasons for making such relinquishment. The petitioner through her subsequent communication dated 10.05.1994 reiterated that her relinquishment made through application dated 24.06.1993 is as per Rule 47 of the Tamil Nadu State and Subordinate Services Rules. Therefore, the second communication of the petitioner dated 10.05.1994 cannot be construed as a fresh application.

11. It is true that the said request made by the petitioner has subsequently resulted in passing G.O.Ms.No.159 dated 31.05.1994, wherein and whereby,

the 1st respondent permitted the petitioner to relinquish her rights for promotion to the post of Assistant Inspector General of Registration, temporarily for a period of 3 years. At this juncture, it is to be noted that Rule 47 of the Tamil Nadu State and Subordinate Services Rules, deals with relinquishment of rights by the members, does not speak about any permission to be granted by the competent authority and on the other hand, Sub Rule 2 of Rule 47 the Tamil Nadu State and Subordinate Services Rules, only indicates that the relinquishment of a right for a temporary period shall be "accepted" if it is made for a period of not less than three years. For better clarity, Rule 47 of the Tamil Nadu State and Subordinate Services Rules, is extracted here under:-

47. Relinquishment of rights by members -
(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. [(2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration or original seniority. If relinquishment of right or privilege is made permanently and is accepted, subsequent claim of the relinquished rights or privileges shall not be entertained.]

12. When Sub-Rule 2 of Rule 47 the Tamil Nadu State and Subordinate Services Rules, contemplates only the acceptance of the relinquishment, needless to say that such acceptance shall have the effect of reckoning the period of such relinquishment from the date of such application and not from the date of such

acceptance. Otherwise, there will be no meaning for granting such liberty to the employee to relinquish his/her right for a particular period of 3 years of their choice due to various reasons. Further, it is to be noted that while Sub-Rule 1 of Rule 47 grants discretion to the employee to exercise relinquishment of rights or privileges, to which, he/she may be entitled to under the said Rules and when such right is exercised by such person, the scope of exercise of duty contemplated under Sub-Rule 2 would make it clear that such relinquishment of right or privilege for a temporary period shall have to be accepted by the concerned authority, if it is made for a period of not lesser than three years, of course, by imposing other conditions with regard to the status of such person post relinquishment. In other words, while the relinquishment is the discretionary right of the employee, acceptance of the same by the employer is mandatory. When such being the statutory position, granting permission to relinquish does not arise as has been done in this case, by passing G.O.Ms.No.159 dated 31.05.1994. Certainly, there is a difference between the act of "acceptance" and "permission".

13. Under the above stated circumstances, If the period of 3 years is reckoned from the date of the said application, as rightly contended by the petitioner, such relinquishment period expired on 23.06.1996 and therefore, there would have been no impediment for the respondents to consider the application of the petitioner for the post of Assistant Inspector General of Registration for the year 1996- 1997 in the absence of any other legal impediment for them to do so.

14. Accordingly, I find that both the impugned proceedings are liable to be set aside and consequently, the matter needs to be remitted back to the respondents to reconsider the claim of the petitioner and pass appropriate orders accordingly, by taking note of the fact that the period of relinquishment had expired on 23.06.1996. Thus, this Writ Petition is allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the respondents to consider the claim of the petitioner for notional promotion for the post of Assistant Inspector General of Registration for the year 1996- 1997 and pass appropriate orders. Such

exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

4.Subsequent to the above orders, the petitioner once again made a representation to the respondents seeking for notional promotion to the post of Assistant Inspector General and the same was rejected by the respondents. Aggrieved by the same, the present writ petition has been filed before this Court.

5.Mr.P.Chandrasekaran, learned counsel appearing on behalf of the petitioner, submitted that the impugned order passed by the respondents completely negates the findings given by this Court in the earlier orders that were passed in W.P.No.38420 of 2015. The learned counsel submitted that the petitioner was entitled for consideration for notional promotion to the post of Assistant Inspector General of Registration for the year 1996-97. The preparation of the panel being issued at a later point of time on 27.01.1998 cannot be put against the petitioner, more particularly, when the petitioner was entitled for consideration immediately after the period of relinquishment in the year 1996-97. Therefore, the learned counsel submitted that the impugned order passed by the respondents is liable to be quashed and respondents must be directed to consider the notional promotion of the petitioner along with all other consequential benefits.

6.Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents, submitted that the claim that was made by the petitioner could not be considered, since, by the time the panel was issued on 27.01.1998, the petitioner had already retired from service on 31.10.1997. Therefore, even though as per earlier order passed by this Court, the petitioner was entitled to be considered for the promotion to Assistant Inspector General immediately after the expiry of the three years period, the panel itself came to be issued later and therefore, the respondents were not in a position to grant notional promotion to the petitioner as Assistant Inspector General of Registration for the year 1996-97. The learned counsel submitted that there are absolutely no grounds to interfere with the impugned order passed by the respondents.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.It is clear from the above facts that the petitioner, due to the circumstances beyond her control, had to take care of her ailing husband and therefore, she relinquished her right of promotion for a period of three years. The period of relinquishment was wrongly assessed and therefore, the

petitioner has approached this Court. This Court, on considering the entire facts and circumstances of the case and the relevant rule, had found that, as per Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules, what is insisted is only acceptance of relinquishment and the same will have effect from the date of which the application was made for relinquishment. This Court on interpretation of the said rule found that the period of relinquishment had expired on 23.06.1996. The writ petition was allowed and the matter was remitted back to the respondents to consider the claim made by the petitioner for notional promotion to the post of Assistant Inspector General of Registration for the year 1996-97.

9.The 1st respondent has rejected the claim made by the petitioner on the ground that the panel for the post of Assistant Inspector General of Registration was issued only on 27.01.1998. This ground that has been put against the petitioner is unsustainable. The petitioner should not have been deprived of the notional promotion just because there was a delay in the submission of the panel. However, one important factor will have to be taken into consideration and decided in the writ petition. Mr.T.M.Pappiah, learned Special Government Pleader submitted that the crucial date for consideration for promotion to the post of Assistant Inspector General of Registration was 01.04.1996. The learned counsel submitted that the petitioner should have, at least, become eligible as on the crucial date even to be considered for notional promotion. However, in the present case, the period of relinquishment of the petitioner came to an end only on 23.06.1996. Therefore, the learned counsel submitted that even if the petitioner had continued in the service, she could not have been considered for promotion since, the relinquishment date fell after the crucial date. Therefore, at the best, the petitioner could have been considered for promotion only in the next panel.

10.This Court is able to find force in the submission made by the learned Special Government Pleader. Even though, the petitioner is entitled for notional promotion, it is important that the petitioner should have become qualified for consideration as on the crucial date. Admittedly, as on the crucial date, relinquishment period of the petitioner had not come to an end. Therefore, there is no question of considering the petitioner's claim for notional promotion.

11.In view of the above discussion, even though this Court is not in agreement with the ultimate findings of the 1st respondent, this Court finds that the petitioner was not entitled to be considered for promotion as on the crucial date. Therefore, the claim made by the petitioner cannot be granted by this Court.

12.In the result, this writ petition stands dismissed. No Costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

ssr

To

1. The Principal Secretary to Govt.,
Commercial Tax (H-1) Department,
Fort St. George,
Chennai - 600 009.
 2. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.
 3. The Public Prosecutor,
High Court, Madras.
- +2 Ccs to Mr. Chandrasekaran, Advocate sr 9709.
+1 CC to Govt. Pleader sr 10850.

W.P No.35951 of 2019

MG(CO)
SP(20/02/2020)

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