



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD).No.3904 of 2011

N.Nagalingam

... Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home (Courts VI) Department,
Secretariat, Chennai 600 009.

2.The Director of Prosecution,
Office of the Director of Prosecution,
Tamil Nadu Slum Clearance Board Complex,
II Floor, No.5, Kamarajar Salai,
Chennai 600 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in R.C.No.0360/A1/DOP/2011, dated 12.02.2011 and quash the same as being arbitrary, illegal and capricious and direct the respondents to consider the petitioner for notional promotion to the post of Deputy Director of Prosecution in the then existing vacancy with effect from 2009 on par with already promoted individuals in the year 2009 by taking into account of the seniority and eligibility of the petitioner.

For Petitioner : Mr.P.Ganapathi Subramanian

For R1 : Mr.G.Arjunan
Government Advocate

ORDER

The order of rejection, dated 12.02.2011, rejecting the claim of the writ petitioner for grant of notional promotion to the post of Deputy Director of Prosecution, is under challenge in the present writ petition.

2.The writ petitioner was appointed as Assitant Public Prosecutor Grade on 07.06.1982 and promoted as Additional Public Prosecutor. Then he was posted as Assistant Director of Prosecution on 12.10.2004. The writ petitioner served at

<https://hcservices.e-courts.gov.in/hcservices/>



various places and attained the age of superannuation and retired from service on 31.05.2010.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that 10 posts of Deputy Director of Prosecution had been left vacant from the year 2005 onwards. The name of the writ petitioner was included in the list prepared by the Director of Prosecution during the year 2006-07. However, promotions were not granted. Contrarily, the post of Deputy Director of Prosecution was allowed to continue by the in-charge officials and therefore, the writ petitioner states that he should have been promoted to the post of Deputy Director of Prosecution arising of vacancy in the year 2005.

4.The learned Government Advocate appearing on behalf of the first respondent disputed the said contentions by stating that the promotions were not granted to any of the juniors of the writ petitioner, the vacancy arose in the year 2005 and the claim of the writ petitioner for notional promotion is from the year 2006. The writ petitioner retired from service in the year 2010 and the writ petition is filed in the year 2011. Therefore, the writ petitioner is not entitled for any notional promotion as such sought for in the writ petition.

5.Promotion per se cannot be claimed as a matter of right. However, consideration for promotion is a fundamental right of an employee. All officials who all are aspiring to secure promotion are to be considered, whenever the process of preparation of panel is undertaken by the competent authorities. Consideration alone is right, which can be questioned. Promotion is to be granted strictly in accordance with the rules and by providing opportunity to all the eligible candidates, who all are waiting for promotion in accordance with the rules in force and as per the seniority. Thus, mere arising of vacancy would not confer any right on the employees to claim promotion. Filling up of the vacancy is the administrative prerogative of the Government. Employees cannot have any right to seek promotion merely on the ground of vacancy in the post of Deputy Director of Prosecution was available. The employees have no right to interfere with the administrative matters of the Department and the right of the employees are only with reference to the service conditions in force.

6.In the present case, the writ petitioner states that vacancy in the post of Deputy Director of Prosecution arose in the year 2005 and names were considered in the year 2006. However, no promotions were made. Contrarily, the post was also held by in-charge officials. In fact, the writ petitioner retired from service on 31.05.2010 and the writ petition is filed in the year 2011, after his retirement. Thus, there is a long delay in pursuing the remedy. The writ petitioner was working as Assistant Director of Prosecution. Thus, he would be aware of his rights during the relevant point of time, when the writ petition was preferred.



However, he has chosen to file the writ petition belatedly after one year from the date of his retirement. Such an attitude of the litigants can never be encouraged by the Courts. The Government employees are bound to approach and redress their grievances within a reasonable period of time in the manner prescribed under law. Contrarily, he cannot slept over his rights and wake up one fine morning and knock the doors of the Court for redressal of his grievances. The right which were not exercised within a reasonable time would lapse and thereafter, the petitioner cannot approach the Court for the relief and the Courts cannot entertain such writ petitions and the same is to be dismissed on the ground of laches also.

7.The writ petitioner has not established any acceptable legal grounds to consider his case on merits, as the availability of vacancy is not a ground to claim promotion in a particular post. This being the factum, this Court is of the considered opinion that the writ petitioner has not established any acceptable grounds for the purpose of considering the relief as such sought for in the present writ petition. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

sjj

To

The Secretary to Government,
State of Tamil Nadu,
Home (Courts VI) Department,
Secretariat, Chennai 600 009.

+1 CC to SGP (SR-19767[F] dated 12/10/2020)

W.P. (MD) .No.3904 of 2011

09.10.2020

NA (CO)

NR (22/10/2020) 3P : 3C