



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
W.P. (MD)No.14036 of 2019
and
W.P (MD)No.19922 of 2019
and
W.M.P (MD)Nos.16421 & 22236 of 2019

Ramar

... Petitioner
(in both writ petitions)

Vs.

- 1.The Secretary to Government,
Department of School Education,
St. George Fort,
Chennai.
- 2.The Director of School Education,
College Road,
Chennai-9.
- 3.The Joint Director of School Education,
College Road,
Chennai-9.
- 4.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

... Respondents
(in both writ petitions)

PRAYER in W.P(MD)No.14036 of 2019: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.30668/அ3/௮1/2018, dated 26.12.2018 and quash the same as illegal and consequently direct the respondents to notionally promote the petitioner with effect from 26.03.2013 and disburse all service & monetary benefits forthwith.

PRAYER in W.P(MD)No.19922 of 2019: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned charge memo issued by the



third respondent in Na.Ka.No.036787/அ3/இ3/2019, dated 09.07.2019 and quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Chellapandian
(in both the W.Ps)
For Respondents : Mr.Veera Kathiravan
(in both the W.Ps) Senior Standing Counsel for
Government
Assisted by
Mr.P.Subbaraj
Government Advocate

COMMON ORDER

W.P(MD)No.14036 of 2019:-

This writ petition is filed to quash the impugned order, dated 26.12.2018, made in Na.Ka.No.30668/அ3/இ1/2018 passed by the third respondent and consequently, direct the respondents to notionally promote the petitioner with effect from 26.03.2013 and disburse all service & monetary benefits forthwith.

2.According to the petitioner, he was temporarily appointed as Typist on 19.12.1986 and later, he was recruited in the Special Test conducted by the Tamil Nadu Public Service Commission and appointed as Typist on 07.02.1997 in regular time scale of pay at Education Department. He was promoted to the post of Assistant on 29.05.2002, based on the seniority list, dated 11.01.1999 published by the Tamil Nadu Public Service Commission. The respondents published the seniority list of qualified Assistants to be promoted to the post of Superintendent (Desk) on 15.03.2012. According to the petitioner, in the said seniority list, he was placed at Sl.No.194, instead of keeping him at Sl.No.124 in the seniority list, his juniors were kept over and above him. Hence, the petitioner gave objections to the same. Without considering the objection, final list was published and counselling was scheduled to be held at District Headquarters on 26.03.2013. The fourth respondent, the Chief Educational Officer prevented the petitioner from participating in the counseling and treated the petitioner unfairly as he gave objection to the seniority list. The petitioner left away from the counselling and made representation on 23.04.2015 to the respondents. The respondents did not pass any orders on the representation. Subsequently, in the year 2016, he received a communication of the fourth respondent, dated 03.03.2016. In the said proceedings, the third respondent has stated that the counseling for the post of Superintendent (Desk) was held on 26.03.2013 at District Headquarters and orders were also issued to all the eligible participants. The petitioner temporarily relinquished his right to the post of Superintendent (Desk) due to the family circumstances and hence, the petitioner was not promoted to the said post. The fourth respondent also has stated that the



petitioner's case will be considered and empanelled after three years for subsequent promotion as per the prevailing rules.

3. According to the petitioner, he has not relinquished his right of promotion to the post of Superintendent (Desk). The petitioner was struggling for his claim from the year 2016 and made a representation, dated 29.11.2017. Finally, the respondents empanelled the petitioner in the seniority list of Assistants to the post of Superintendent (Desk) for the year 2017-2018. The petitioner was promoted to the post of Superintendent (Desk) on 23.02.2018. Due to medical emergency, he joined duty only on 28.03.2018. The petitioner sent representations on 25.01.2018 and 30.05.2018, seeking notional promotion to the post of Superintendent (Desk) from the year 2013 with effect from 26.03.2013. The respondents rejected the same. Hence, the petitioner has come out with the present writ petition in W.P(MD)No.14036 of 2019.

4. The learned counsel appearing for the petitioner submitted that by order, dated 06.12.2014, referred in the order, dated 03.03.2016, the petitioner has not relinquished his right of promotion to the post of Superintendent (Desk) and therefore, the reference made by the respondents on the so-called relinquishment, is perverse. The reference, dated 06.12.2014, in the letter, dated 03.03.2016, cannot be taken as a proof for relinquishment of promotion by the petitioner. The respondents erroneously placed the petitioner below his juniors and promoted him only in the year 2018 and prayed for allowing the writ petition.

5. The respondents filed counter affidavit. The learned Senior Standing Counsel appearing for the respondents submitted that in the counseling held on 26.03.2013 the petitioner gave a letter relinquishing his right of promotion for a period of three years, due to his family circumstances. The petitioner has also signed the proceedings wherein, he relinquished his right. The relinquishment of the petitioner was accepted and he was not promoted in the year 2013. Suppressing the same, the petitioner sent representation to the respondents and obtained an order, dated 03.03.2016. Subsequently, the petitioner was placed in the panel year 2017-2018 and he was placed at Sl.No.8 and promotion was given to him. The petitioner has also joined in the promotional post. Again, he gave representation and the same was rejected by the impugned order, by giving cogent and valid reason and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondents and perused the entire materials available on record.

7. From the materials available on record, it is seen that when the seniority list for Assistants was published on 15.03.2012, the petitioner's name was found at Sl.No.194. According to the



petitioner, he ought to have been placed at Sl.No.124 and hence, he gave objection to the seniority list. Without considering his objection, counseling was held on 26.03.2013. When the petitioner participated in the counseling, due to the objection given to the seniority list, the fourth respondent treated the petitioner unfairly and hence, the petitioner left the place of counseling. On the other hand, it is the case of the respondents that the petitioner relinquished his right due to his family circumstances and gave a letter, dated 26.03.2013, to that effect and also signed the proceedings on the same day. The fourth respondent has also issued Online order and it was served on the petitioner. The respondents have produced these proceedings in the typed set of papers. In view of the relinquishment by the petitioner, he was not promoted at that time. In the present writ petition, the petitioner has taken a stand that he did not relinquish his right of promotion. The petitioner has not denied the letter, dated 26.03.2013, given by him and his signature in the proceedings. The petitioner also denied the receipt of online order. The issue is whether the petitioner has temporarily relinquished his right of promotion or not. The fact remains that the petitioner was not promoted in the counseling held in the year 2013. The petitioner has not challenged the denial of promotion in the year 2013 itself. On the other hand, it is the case of the petitioner that due to the attitude of the fourth respondent, he left the counseling centre on 26.03.2013 and subsequently has given a representation, dated 23.04.2015, to the respondents.

8. From the above, it is seen that the petitioner has not challenged his non-promotion or has given representation with regard to attitude of the fourth respondent and for his promotion in the year 2013 itself. Only after two years, on 23.04.2015, he gave a representation. Subsequently, the fourth respondent has sent communication, dated 03.03.2016, informing the petitioner that all eligible persons who participated in the counseling were promoted and the petitioner was not promoted, as he relinquished his right of promotion on 26.03.2013. Again, the petitioner has also not challenged the said communication, dated 03.03.2016. On the other hand, he again, gave representation, dated 29.11.2017.

9. From the above facts, it is seen that the petitioner has relinquished his right of promotion on 26.03.2013 and the respondents have produced the documents to substantiate the same. When a person temporarily relinquished his right of promotion in a particular year as per the Rules, he will not be considered for promotion for three years. The respondents after expiry of three years, empanelled the petitioner to the post of Superintendent (Desk) for the year 2017-2018 and he was promoted to the post on 23.02.2018. After being promoted and joining in the promotional post, the petitioner has given representation for retrospective promotion from 26.03.2013 with all monetary benefits. The



subsequent proceedings, rightly rejected the request of the petitioner and passed the impugned order and the same is valid and there is no reason to interfere with the impugned order.

10. In the result, the writ petition in W.P(MD)No.14036 of 2019 is dismissed. No costs.

W.P(MD)No.19922 of 2019

This writ petition is filed to quash the impugned order, dated 09.07.2019, made in Na.Ka.No.036787/அ3/இ3/2019, passed by the third respondent.

2. According to the petitioner, when the writ petition in W.P (MD)No.14036 of 2019 came up for hearing on earlier occasions, this Court directed the respondents to produce the letter given by the petitioner relinquishing his right of promotion, dated 06.12.2014, which was referred in the order of the third respondent, dated 03.03.2016 and in impugned order of the third respondent, dated 26.12.2018 in W.P(MD)No.14036 of 2019. The respondents failed to produce the said letter before this Court.

3. According to the petitioner, in view of exposing displeasure by this Court earlier, the respondents issued chargememo dated 09.07.2019 to the petitioner, which is impugned in W.P(MD)No.19922 of 2019. From the impugned chargememo, it is seen that the petitioner has committed misconduct by suppressing the earlier order of relinquishment in the year 2013. The petitioner has approached the respondents after issuing another order dated 03.03.2016. From the above charge, alleging that due to oral request made by the petitioner, he committed misconduct, by making the fourth respondent to pass an order dated 03.03.2016. When the petitioner made oral request in the year 2016, the respondents ought to have given a copy of the earlier order, dated 26.03.2013, instead of sending the communication, dated 03.03.2016. The oral request made by the petitioner, in the year 2016 cannot be treated as misconduct committed by him. For the above reason, the chargememo, dated 09.07.2019 impugned in the writ petition is quashed.

4. In the result, the writ petition in W.P(MD)No.19922 of 2019 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
The Department of School Education,
St. George Fort,
Chennai.

2. The Director of School Education,
College Road,
Chennai-9.

3. The Joint Director of School Education,
College Road,
Chennai-9.

4. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

+1 CC to M/s.S.CHELLA PANDIAN, Advocate (SR-23087[F] dated
19/07/2021)

+1 CC to M/s.SPL GP (SR-23203[F] dated 19/07/2021)

+1 CC to SPL GP SR No. 23194

W.P. (MD) No.14036 of 2019

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