



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P.(MD)No.16566 of 2021

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L.Chithambara Thanu Pillai

... Petitioner

vs.

1.The Director,
Public Health and Preventive Medicine Department,
Teynampet,
Chennai-600 006.

2.The Project Officer,
National Filaria Control Unit,
Krishnankovil,
Nagercoil-1,
Kanyakumari District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 21.12.2020 and to provide notional promotion as Non-Medical Supervisor and Health Educator and to provide revised pension and other monetary benefits within the time frame to be fixed by this Court.

For Petitioner : Mr.M.R.Sreenivasan

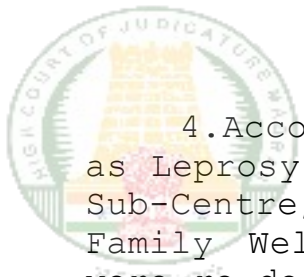
For RR1&2 : Mr.S.Shanmugavel
Standing Counsel

O R D E R

This petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 21.12.2020 and to provide notional promotion as Non-Medical Supervisor and Health Educator and to provide revised pension and other monetary benefits within the time frame to be fixed by this Court.

2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.



4. According to the petitioner, the petitioner was appointed as Leprosy Inspector from 07.03.1988 at Government Leprosy Control Sub-Centre, Manavalakurishi. While so, as per G.O.Ms.No.320/1997, Family Welfare Department dated 27.06.1997 Leprosy Inspectors were re-designated as Health Inspector Grade-1B and the petitioner was also re-designated as such and transferred to Kurunthancode Primary Health Centre on 01.08.1997. Later, he underwent training for the post of Food Inspector and during the said period, the Government has obtained bond for Rs.50,000/- from him. After completion of his training, the petitioner was designated as Food Inspector, and vide proceedings dated 14.12.2009 of the Director of Public Health and Preventive Medicine Department, he was transferred to Tirunelveli District and served as a Food Inspector from 20.06.2010 at Sangnapuram Primary Health Centre, Valliyoor. As per proceedings dated 20.09.2011 of the Commissioner of Food Safety Department, the petitioner was re-designated from Food Inspector to Food Safety Officer and transferred to Thuckalay Block from 23.09.2011. Thereafter, the petitioner was transferred to the Department of Food Safety and Drugs Administration in the year 2011 and he was redesignated as Food Safety Officer and served from 2011 to 2019. Thereafter, he was transferred to National Filaria Control Unit at Nagercoil and served as Health Inspector Grade-1/Multipurpose Health Supervisor from 01.02.2019 and after completion of 32 years of service, he retired on 30.04.2020 after attaining the age of superannuation.

5. Now, the grievance of the petitioner is that his junior, whose name has been placed in Serial no.5152 was given promotion to the higher post as Non-Medical Supervisor while the petitioner's name was in serial no.5010 in the Seniority list. Thereafter, the said junior was promoted to the post of Health Educator and he was paid pension and other monetary benefits. Hence, the petitioner made a representation on 21.12.2020, to provide notional promotion as Non-Medical Supervisor on par with his juniors. Since no action is forthcoming, the petitioner has come forward with the present Writ Petition.

6. The point involved in the present writ petition is that whether the writ petitioner is entitled for notional promotion as claimed by him?

7. The petitioner has relied upon the seniority list issued by the Director of Public Health and Preventive Medicine, Chennai vide his proceedings in R.No.40029/MP2/2013/S1 dated 25.10.2013. In the aforesaid seniority list, he was placed at Sl.No.5010 while his junior, one P.Rangarajan was placed at Sl.No.5152. Based on this, the petitioner claimed that while his junior was promoted as Non-Medical Supervisor, but he was not promoted as such.



8. In fact, in similar Writ Petition in W.P.No.14092 of 2015, this Court having considered followed the decision of the Delhi High Court in WP(C) No. 8102/2012 (Union of India & Another Vs.K.L.Taneja,various) and also various other High Courts and the Supreme Court, has held as under in paragraph 28, which is extracted as under:

"28. Considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court and High Courts cited supra and also considering the fact that there are no materials to establish that the respondents have wantonly delayed the petitioner's promotion and there is no taint of malice for the delay, this Court is of the firm view that the petitioner has not satisfied the criteria for considering the notional promotion and therefore, the claim of the petitioner seeking notional promotion and other benefits cannot be considered on the ground of delay due to administrative reasons at the hands of the respondent Department, as contended by the learned counsel for the petitioner and the same is liable to be rejected on the following grounds;

(i).No juniors to the petitioner were given promotion during service period of the petitioner, therefore there would not be any monetary loss to the petitioner during his service period.

(ii).Promotion is not a fundamental right of a person and it is a condition of service, which has been very much observed by the Hon'ble Supreme Court in the case of S.B. Bhattacharjee Vs.S.D.Majumdar, cited supra.

(iii). Even though, the promotions were made by the 1st respondent after the date of superannuation of the petitioner due to administrative reasons, no materials have been placed before this Court to prove the malafide or illegality on the part of the respondents for the delay in finalising the promotion panel."

9. The similarly placed persons who were transferred to the newly created Department, i.e. Tamil Nadu Food Safety and Drugs Administration Department, were again transferred to parent department while the petitioner was not transferred and he had not taken any initiative to get transferred to parent department and further, the petitioner admittedly executed the bond for 10 years. It is also to be noted that the petitioner has not agitated the case till his retirement. After the period of 10



months of his retirement, the petitioner raised issue of seniority and claimed promotion on par with his junior since his junior was promoted as Non Medical Supervisor and Health Educator. A Constitution Bench of the Hon'ble Supreme Court, in "**Ramchandra Shanker Deodhar & ors. Vs. State of Maharashtra & ors.**", AIR 1974 SC 259, considered the effect of delay in challenging the seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. While deciding the said case, the Apex Court placed reliance upon its earlier judgments, particularly in "**Tilokchand Motichand Vs. H.B. Munshi**", AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reasons of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay.

10.No juniors to the writ petitioner were given promotion during his service period. Thus, the writ petitioner is not entitled to seek such relief to grant notional promotion on par with his juniors. Hence, *prima facie* no case is made out to entertain the writ petition. Consequently, the same is liable to be dismissed.

11. In view of the above facts and circumstances and decision cited supra, the Writ Petition is dismissed on the ground of delay and laches. No costs.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

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1.The Director,
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2.The Project Officer,
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Nagercoil-1, Kanyakumari District.



+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-29152[F] dated 15/09/2021)

+1 CC to M/s.SPL. GP (SR-29346[F] dated 16/09/2021)

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