



W.P.(MD).No.6310 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.6310 of 2016
and
W.M.P.(MD).No.5561 of 2016**

M.Arockiasamy

... Petitioner

Vs.

- 1.The Principal Accountant General (A&E),
O/o the Principal Accountant General (A&E),
Tamil Nadu,
Chennai – 600 018.
- 2.The Director of School Education,
Directorate of School Education,
DPI Compound,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
O/o the Chief Educational Office,
Collectorate Campus,
Virudhunagar,
Virudhunagar District.
- 4.The District Educational Officer,
O/o. the District Educational Office,
Collectorate Campus,
Virudhunagar,
Virudhunagar District.



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5.The Secretary,
Kshathriya Vidya Sala Higher Secondary School,
Virudhunagar,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fourth respondent in his proceedings in ந.க.எண்.700 / அ1 / 2016 dated 22.03.2016 and quash the same as illegal and consequently to direct the fourth respondent to sanction one bonus increment to the petitioner for having rendered more than 30 years of service in the cadre of P.G.Assistant (Chemistry) in terms of G.O.Ms.No.562 Finance (Pay Cell) Department dated 28.10.1998 and pay the arrears thereof and revised proposal to the first respondent so as to revise the petitioner's pensionary benefits along with arrears within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohamed Imran,
For M/s.Ajmal Associates.

For R-1 : Mr.P.Gunasekaran

For R-2 to R-4 : Mr.V.Omprakash,
Government Advocate.



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ORDER

This Writ Petition is filed to quash the order dated 22.03.2016 and consequently direct the fourth respondent to sanction one bonus increment to the petitioner for having rendered more than 30 years of service in the cadre of P.G. Assistant (Chemistry) in terms of G.O.Ms.No.562 Finance (Pay Cell) Department dated 28.10.1998 and pay the arrears thereof and revised proposal to the first respondent so as to revise the petitioner's pensionary benefits along with arrears.

2. The petitioner was appointed as P.G. Assistant (Chemistry) on 20.06.1981 at St. Mary's Higher Secondary School, Dindigul. By way of redeployment, the petitioner was transferred and posted at Kshathriya Vidya Sala Higher Secondary School, Virudhunagar on 06.06.1988 and has served in the said post for the past 33 years. The post of Headmaster became vacant in 2005 due to the retirement of the erstwhile incumbent. The contention of the petitioner is that he was forced to give up the right of promotion in the year 2005. Consequently, another person namely, S.Chandra Mohan was given promotion as “in-charge”. In the month of June 2011 again the petitioner was forced to give up his right for promotion, thereby the said S.Chandra Mohan

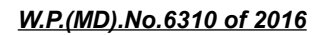


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was promoted from “in-charge Higher Secondary HM” to “permanent Higher Secondary HM”. It is only under the compulsion of the school the petitioner has given up his right for promotion. In the year 2011, the petitioner preferred representation informing the respondents that he is relinquishing his right of promotion only under compulsion. In the meanwhile, the petitioner attained superannuation and retired on 31.12.2014 and he was also given all retirement benefits. However, the petitioner was not granted one bonus increment for having rendered 30 years of service in the same post. Hence the present writ petition.

3. Heard Mr.H.Mohamed Imran, for M/s.Ajmal Associates the Learned Counsel appearing for the petitioner, Mr.P.Gunasekaran, the Learned Standing Counsel appearing for the 1st respondent and Mr.V.Omprakash, the Learned Government Advocate appearing for the 2nd to 4th respondents and perused the records.

4. The Government issued G.O.Ms.No.562 Finance (Pay Cell) Department dated 28.10.1998 granting one bonus increment to employees stagnating in a post beyond 30 years of service. The relevant portion of the G.O. is extracted hereunder:



5. Both petitioner and the respondents accept that the petitioner was serving in the same P.G. Assistant post for more than 30 years without promotion to the HM post. But the contention of the first respondent is that the petitioner is not entitled to any stagnation increment, since G.O.Ms.No.562 is passed for persons who are stagnating in the said post for more than 30 years which post has no promotion opportunity and in order to keep the employees vibrant and active during the fag end of their service, but not for post which has promotional opportunity. In the present case, the petitioner is having opportunity for promotion to the post of Headmaster but the petitioner has deliberately given up the opportunity twice, therefore, it cannot be said the



petitioner is stagnating in the said post. When the opportunity of promotion is available, then the aforesaid Government Order is not applicable. The learned counsel appearing for the respondents relied on the Division Bench judgment rendered in W.A.(MD)No.1284 of 2021 dated 06.07.2021 and the relevant portion is extracted hereunder:

“4. The learned Writ Court took note of the fact that the appellant had relinquished her promotion and consequently, the Department held that she has not been stagnating without promotion, but it is the case where when the promotion was offered, she was not willing to go to the promoted post and relinquished her promotion. Therefore, the learned Writ Court held that the purpose of grant of bonus increment is to alleviate the sufferings of employees stagnating for 30 years, especially, without avenue of promotion and the appellant who chose to relinquish her promotion, has actually stagnated out of choice and not out of chance. Thus, the reason assigned by the learned Writ Court does not call for any interference.

5. The learned counsel appearing for the appellant submitted that the letter of relinquishment is non-est, such an argument cannot be advanced by the appellant, because when promotion was offered to her, she has relinquished and only when the recovery was made, such a stand was taken. Further, it is submitted that the order of recovery was passed without notice and the recovery was effected sometime in the year 2003 to 2004. Hence, at this distance of time, the question of entertaining a challenge to the order of recovery as being one without notice, does not arise. That apart, the writ petition has also been filed by the writ petitioner after a period of ten years. There was a delay in filing the appeal also and the delay was inordinate. However, since the learned counsel for the appellant submitted that the appellant was suffered from dementia and produced the Doctor certificate, we exercise



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discretion and condone the delay, so that the appeal can be heard on merits.

6. In the light of the above reasons, we find that there is no ground made out by the appellant to interfere with the order passed in the writ petition. In the result, the Writ Appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed”.

However, the learned counsel for the petitioner submitted that since the petitioner was forced to give up the promotion, there is no other option for the petitioner except to give up his promotion.

6. The respondents also relied on the clarification issued in Circular dated 11.10.2001, wherein it is stated that if the employee is not availing promotion, then they are not entitled to stagnation increment and the relevant portion is extracted hereunder:

(இ) 30 ஆண்டுகள் பதவி உயர்வு பெறாமல் தேக்கம் கண்டுள்ளவர்களுக்கு ஒரு சலுகையாகவே போனஸ் ஊக்க ஊதிய உயர்வு வழங்கப்படுகிறது. முறையாகக் கிடைத்த பதவி உயர்வை துறந்தவர்கள் இச்சலுகையைக் கோர உரிமையில்லை.

On perusing the said circular this Court is of the considered opinion that the Circular is totally against the G.O. The G.O. only states whoever stagnate in the same post for more than 30 years in order to keep them vibrant and active during the fag end of their service the bonus increment is granted. But through



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Circular the eligibility criteria are being scuttled down and narrowed. But such a circular cannot be sustained in the eye of law, because whenever the Circular is inconsistent with G.O., then the G.O. would prevail. If the respondents intended to narrow down the eligibility, then the said G.O.Ms.No.562 ought to have been amended. When the Government Order is specifically stating the stagnating increment is allowed, the right accrued to a person under this G.O. cannot be scuttled down by issuing an executive order. Moreover, when the Government Order is in existence, the Government Order will prevail over the executive order. Therefore, this circular cannot be accepted.

7. Further this Court is of the considered opinion that the judgment cited supra is not applicable to the present case, since in the present case the private school had forced the petitioner to give up the promotion in order to accommodate the candidate of their choice. This Court also of the opinion that if any person is giving up the promotional opportunity on his own and is intending to service in the same post for 30 years he is entitled to the stagnating increment, since the Government Order is its plain terms granting stagnating increment without any such conditions. It is only through the circular the respondent is trying to restrict. The said G.O. is not prescribing any condition as interpreted by the 1st respondent. When Government Order is



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unambiguous, then the interpretation of the 1st respondent by supplement words in the G.O. would attract the principles of "*Casus Omissus*". Hence the said judgment cited may not be applicable.

8. It is seen that it is a normal practice in all aided Schools to choose the person of their choice and the HM post would be given to persons who are having conducive relationship with the Correspondent in order to have smooth administration. The aided Schools whether minority or non-minority, have every right to appoint the person of their choice. In the present case, the said Shool where the petitioner was working, had chosen to promote one Chandra Mohan. Thus, the school had either forced or requested the petitioner to give up the promotional opportunity. Therefore, in the present case, the petitioner was forced to give up promotion and the petitioner has not given up the promotion on his own. Moreover, the respondents have not filed any counter denying the contention that the petitioner was forced to give up the promotion. Therefore, the plea of the respondents is rejected.

9. Moreover, relinquishing promotion is not alien to service jurisprudence. The employee is entitled to relinquish promotion and the same is applicable for 3 years. When relinquishment is not alien, when relinquishment



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is permissible under rules, then such a condition cannot be imposed as well.

Therefore, for all these reasons, the impugned order is quashed. The respondents are directed to confer 30 years stagnation increment to the petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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To

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S.SRIMATHY, J.

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