



Rev.Aplw.No.53 of 2024
in W.P.No.29949 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.BHARATHA
CHAKRAVARTHY**

**Rev.Aplw.No.53 of 2024
in W.P.No.29949 of 2011**

C.V.Viswanathan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Tourism and Culture Department,
Fort St.George, Chennai – 600 009.

2. The State of Tamil Nadu,
Rep. by Secretary to Government,
P & A R Department,
Fort St.George, Chennai – 600 009.

... Respondents

PRAYER: Review Application filed under Order XLVII Rule 1 read with Section 114 of C.P.C. seeking to review the order dated 08.12.2023 in W.P.No.29949 of 2011.

For Petitioner : Mr.C.V.Subramanian

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader



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ORDER

The review is filed with a prayer to review the judgment of this Court dated 08.12.2023 in W.P.No.29949 of 2011.

2. On the basis of a relinquishment of promotion, the petitioner was denied promotion. Originally, the petitioner challenged the same on two grounds. It was the contention of the petitioner that the right to be considered for promotion being a fundamental right, cannot be waived. The second ground was that in any event, the Governor is entitled in relaxing of the Rules under Special Rule 48. The said two grounds were considered by this Court on merits and was held against the petitioner.

3. In this review, the petitioner has now come up with the additional material that, the State of Andhra Pradesh has a similar Rule and a Division Bench judgment in the case of ***M.V.R.L.S. Ravikanth Vs. The State of Andhra Pradesh*** reported in ***2017 SCC Online Hyd 184*** had in paragraph 13 has categorically held that a relinquishment, which is made in respect of the vacancy cannot be held to be final. It is held not to



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be final even in respect of the same vacancy or even in respect of subsequent vacancy. In view thereof, the findings of this Court has to be revisited.

4. The learned counsel further contends that the Division Bench of the Andhra Pradesh High Court has made an interpretation, based on which, even the Government of Andhra Pradesh has amended the Rule itself and therefore, this Court can reconsider the judgment and review the order.

5. The learned counsel himself has produced the comparison of both the Rules, which reads as under:

<u>Rule 28 of the Andhra Pradesh Rules</u>	<u>Rule 47 of th Tamil Nadu Rules</u>
Relinquishment of rights by members: Any member of a service may, in writing, relinquish any right or privilege to which he may be entitled to, under these rules or the special rules, if in the opinion of the appointing authority such relinquishment is not opposed to public	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



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<u>Rule 28 of the Andhra Pradesh Rules</u>	<u>Rule 47 of th Tamil Nadu Rules</u>
interest. Such relinquishment once made will be final and irrevocable. 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: Provided that no conditional relinquishment of relinquishment of right for a temporary period shall be permitted.	to public interest; and nothing contained in these rules or the Special rules shall be deemed to required 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 of 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. [Inserted in G.O.Ms.No.494, P. & A.R., [Per-S] dt. 20.09.1988, w.e.f. 20.09.1988].

6. On a perusal thereof, it can be seen that as far as the Andhra Pradesh Rule is concerned, there was no relinquishment for a temporary



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period. But only spoke of relinquishment of a right and relinquishment once made will become final and irrevocable and there cannot be any conditional relinquishment of right. Especially it is made clear that there cannot be any conditional relinquishment for a temporary period. Only on considering the said Rule, the Division Bench held that the relinquishment made at one point of time by the employee cannot be final for all circumstances.

7. As far as the Rule of the Tamil Nadu is concerned, it is very clear that temporary relinquishment can also be made and it can be for a minimum period of three years. Therefore, in view of the difference in both the Rules, I am unable to accept the contentions of the learned counsel for the petitioner. I am also of the view that the other grounds raised in the review petition are not grounds for review and are appeal in the guise of a review.



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D.BHARATHA CHAKRAVARTHY, J.

8. Accordingly, finding no merits, this Review Application is
dismissed. No costs.

17.04.2024

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
mp

To

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