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W.P.No.2797'



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.27979 of 2013

Dr.K.Karunakaran

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary,
Municipal and Water Supply Department,
Fort St.George, Chennai – 09.
2. The Commissioner,
Corporation of Chennai,
Chennai – 600 003.
3. The Council,
Corporation of Chennai,
Chennai – 600 003.
4. Dr.P.Kuganatham

... Respondents

Prayer: Writ Petition is filed 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 2nd respondent in his proceedings Po.Thu.Na.Ka.No.E/39236/2012 dated 28.03.2013 and quash the same and consequently direct the 1st to 3rd respondent herein to forthwith pass an order of promotion promoting the petitioner as 'Additional Health Officer' with retrospective effect from the date on which the 4th respondent got his promotion as 'Additional Health Officer' with all monetary other attendant benefits and consequently enhance



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the pensionary benefits and monthly pension to the petitioner.

For Petitioner

: Mr.K.Raja

For R1

: Mr.S.Premkumar,
Additional Government Pleader

For R2 & R3

: M/s.K.Aswini Devi

ORDER

The petitioner herein was initially appointed as 'Assistant Health Officer' in the Respondent/ Corporation on 14.09.1989 and voluntarily retired from service on 22.10.2007. However, after retiring from service, the petitioner made a claim for promotion to the post of 'Health Officer' on the ground that the Respondent No.4 therein, though was ineligible for being appointed to the post of 'Additional Health Officer and Health Officer', was erroneously considered for promotion to the said post and he was appointed in the year 2007. According to the petitioner, the Respondent No.4 was initially appointed as 'Assistant Health Officer' in the year 1987, but later, he opted appointment to the post of 'Superintendent, Communicable Diseases Hospital' in the year 1991 by way of direct recruitment, thereby his services in the post of 'Assistant Health Officer' has come to an end and he has started his fresh career as 'Superintendent'.

2. It is thereafter, the post of 'Superintendent' was re-designated as 'Director, Communicable Diseases Hospital' and he was kept in-charge of the 'Additional



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Health Officer and Health Officer'. It is the further case of the petitioner that the Respondent No.4, while holding in-charge of the post of 'Additional Health Officer and Health Officer', manipulated and created certain records to show that the petitioner was continuously working in the post of 'Assistant Health Officer', since the year 1987 and thereby, claimed seniority over the petitioner and successfully secured promotion to the post of 'Additional Health Officer and Health Officer' in the respondent Corporation. The petitioner, purportedly having aggrieved by the promotion of the Respondent No.4, ignoring the seniority of the petitioner, stated to have took voluntary retirement in the year 2007. After taking voluntary retirement, the petitioner claims to have made a claim for promotion to the post of 'Additional Health Officer and Health Officer', as was provided to the Respondent No.4. Having failed to get any response, the petitioner approached this Court by filing W.P.No.32840 of 2012 and this Court, by an order dated 13.12.2012 directed the respondents to consider the claim of the petitioner. It is pursuant to the said order dated 13.12.2012 passed by this Court, the respondents have considered the claim of the petitioner and passed the impugned order dated 28.03.2013, rejecting the claim of the petitioner on the ground that the claim of the petitioner for seniority over and above the Respondent No.4 is barred by time in the light of Rule 35(f) of the Tamil Nadu State and Sub-ordinate Service Rules. It is aggrieved by the said



order dated 28.03.2013, the petitioner approached this Court by filing the present Writ Petition.

3. Admittedly, the petitioner has voluntarily retired from service on 22.10.2007, but has made a claim for seniority against the Respondent No.4 only in the year 2012 by approaching this Court and the petitioner has explained the reasons for delay in Paragraph No.13 of the affidavit filed in support of the Writ Petition, which reads as under:-

“13. I humbly submit that when I brought to the notice of the 1st to 3rd respondents herein in the year 2007 and 2009 itself, the 4th respondent blocked everything and threatened me that my retirement benefits would not be settled and as such, I could not approach the court in time. With greatly difficulty, after undergoing ordeal of fire, I got retirement of benefits in piecemeal only in the year 2010. Delay in settlement of retirement benefits incurred at the instance of the 4th respondent only, anyhow, after receiving my retirement benefits, I preferred representation to the 1st to 3rd respondents on 10.02.2011 and the same was kept pending; therefore, I was constrained to file W.P.No.32840/2012 before this



Honourable Court.”

4. A perusal of the reasoning given by the petitioner for the delay cannot be taken into consideration for the simple reason that the petitioner himself has chosen to retire from service voluntarily on 22.10.2007 and then only he made a claim for seniority over the Respondent No.4. Absolutely, there is nothing on record to show that the petitioner has made any claim for seniority over the Respondent No.4 or for promotion to the post of 'Additional Health Officer or Health Officer', while he was in service.

5. As seen from the counter-affidavit filed by the Respondent Corporation, contended that the Respondent No.4 herein, who was appointed as 'Assistant Health Officer' i.e., 4 years prior to the date of appointment of the petitioner as 'Assistant Health Officer', was transferred to the post of 'Superintendent' and then, re-transferred to the post of 'Assistant Health Officer' and the post of 'Superintendent, Communicable Diseases Hospital' and the post of 'Assistant Health Officer' are inter-changable and the claim of the petitioner for seniority over and above Respondent No.4, who was appointed in the year 1987 is totally misconceived.



6. In the light of the above, this Court is of the considered view that the respondent Corporation is justified in rejecting the claim of the petitioner by placing reliance on Rule 35(f) of the Tamil Nadu State and Sub-ordinate Service Rules and does not find any error or illegality in the impugned order.

7. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Connected Miscellaneous Petitions, if any shall stand closed.

06.09.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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