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W.P.No.19837 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.19837 of 2017

S.Muthulakshmi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Higher Education Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

3.Tmt.K.Rajeswari,
Bursar,
Government Arts & Science College,
Karimangalam – 635 1111.

4.Thiru.P.Mohan,
Bursar,
Chiikkanna Government Arts College,
Konganagiri, Vivekananda Nagar,
Tiruppur – 641 602.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to



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issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of 2nd respondent in Na.Ka.No.65243/B1/2013-4 dated 25.04.2016 and the subsequent order passed in the Appeal Petition by the 1st respondent in Letter No.5399/G2/2016-2 dated 29.05.2017 and to quash the same and consequently direct the respondents to rectify the fixation of seniority in the order issued by 2nd respondent in Na.Ka.No.65243/B1/2013 dated 11.02.2016 and to restore the seniority of the petitioner in the post of Assistant on par with juniors, with all consequential and other attendant benefits including further promotion to the post of Bursur within a time to be fixed by this Court.

For Petitioner : Mr.G.Murugan

For R1 & R2 : Mr.C.Jayaprakash
Government Advocate

For R3 & R4 : No appearance
* * * *

ORDER

This Writ Petition is filed to call for the records relating to the proceedings of 2nd respondent in Na.Ka.No.65243/B1/2013-4 dated 25.04.2016 and the subsequent order passed in the Appeal Petition by the 1st respondent in Letter No.5399/G2/2016-2 dated 29.05.2017 and to quash the same and consequently direct the respondents to rectify the fixation of seniority in the order issued by 2nd respondent in Na.Ka.No.65243/B1/2013 dated 11.02.2016 and to restore the seniority of the petitioner in the post of Assistant on par with



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her juniors, with all consequential and other attendant benefits including further promotion to the post of Bursur within the time frame to be fixed by this Court.

2.The petitioner was initially appointed as Typist in Collegiate Education on 18.06.1990. The petitioner's name was included in the panel for promotion to the post of Assistant in the panel year 2000 vide the promotion order dated 31.07.2000. However, the petitioner relinquished promotion as per representation dated 24.10.2000. According to the petitioner, as the relinquishment of promotion operated for 3 panel years namely 2000, 2001 & 2002, only, the petitioner was eligible to be considered for promotion for the panel 2003. The petitioner was not included in 2003 panel prepared on 15.03.2003, on the premise that the 3 year period commenced from the date of relinquishment (i.e) 24.10.2000 and hence the relinquishment operated till 24.10.2003 i.e. beyond 15.03.2003, the crucial date for preparation of 2003 panel. The petitioner stated that number of persons junior to her were included in 2003 panel and given promotion overlooking the petitioner. The petitioner further stated that the name of one Tmt.Rajeswari, who was junior to her was included in the seniority list at SI.No.34 for all the years, but suddenly placed in SI.No.2 of Seniority list and the petitioner dropped to S.No.34, as per the proceedings of the second respondent dated 11.02.2016. The petitioner



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aggrieved by the seniority list, submitted a representation on 24.03.2016, to the second respondent and the second respondent vide order dated 25.04.2016, rejected the petitioner's representation on the premise that the petitioner's junior K.Rajeswari passed the Departmental Test in May 1999 itself and therefore her seniority was revised. The petitioner therefore submitted that an appeal petition to the 1st respondent on 12.06.2016, against the order of the 2nd respondent dated 25.04.2016 and sought restoration of her seniority to the post of Assistant by including her name in the 2003 panel, as well as, to rectify the anomaly as against Tmt.K.Rajeswari, who was her junior. As the petitioner's appeal petition was not considered, the petitioner filed a Writ Petition in W.P.No.4086 of 2017 and this Court by order dated 20.02.2017 directed the 1st respondent to pass orders on the appeal petition after affording opportunity to the parties concerned, within a period of 10 weeks from the date of receipt of the order. The petitioner stated that the respondent even without affording an opportunity of hearing to her passed the impugned order rejecting her appeal.

3.The respondent filed a detailed counter stating, interalia, that the crucial date for drawing the panel for promotion to the post of Assistant was 15.03.2003. According to the respondent, the petitioner's name was included in



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the promotional panel for Assistant in the year 1998 and the order for promotion was issued on 31.07.2000. On 24.10.2000, the petitioner relinquished her promotion to the post of Assistant and her relinquishment was accepted by the 2nd respondent on 28.11.2000. According to the respondent, the relinquishment was valid for three panel years 2001, 2002 and 2003. The respondent stated that the petitioner's junior was placed above her in the seniority list because the petitioner relinquished her promotion. The respondent further stated that the petitioner had relinquished her promotion due to personal reasons and hence, she could not claim seniority as a matter of right after relinquishment. The respondent therefore prayed that the writ petition be dismissed as meritless.

4.The learned counsel for the petitioner submitted that the respondent reckoned the period of relinquishment from the date of the petitioner's relinquishment letter dated 24.10.2000, and erroneously stated that the relinquishment was operative for three panel years 2001 to 2003. The learned counsel submitted that the relinquishment in fact operated for the panel years 2000 to 2002 and as per the law settled by this Court, the relinquishment of promotion would relate to panel year and not to the date of the relinquishment



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letter. The learned counsel further submitted that the relinquishment period operated for three panel years, i.e. 2000, 2001 & 2002 and so the petitioner became eligible for inclusion in the panel year 2003 and hence her non-inclusion in the panel year 2003 affected her seniority.

5.The learned counsel relied on the Judgment of this Court in W.P.(MD).No.2649 of 2011 dated 15.03.2012 in support of his submission. The learned counsel therefore submitted that impugned order deserved to be set aside and the writ petition allowed.

6.The learned Government Advocate on the other hand submitted that the writ petition was hit by the equitable principles of delay and latches. The learned Government Advocate for the respondents submitted that the petitioner accepted promotion during 2004 and also the subsequent promotion to the post of Superintendent and it was only thereafter that she raised the issue (i.e.) in 2016. The learned Government Advocate submitted that the writ petition deserved to be dismissed on the short ground of delay and latches. He further



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submitted that the relinquishment was to be reckoned from the date of the relinquishment letter and, if so reckoned, the promotion given to petitioner in the Panel Year 2004 was valid. The learned Government Advocate therefore submitted that the writ petition had no merits and the same deserved to be dismissed.

7.I have heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and I have perused the materials placed on record.

8.As far as the first submission of the learned Government Advocate regarding delay and laches is concerned, the same deserves to be rejected on the short ground of absence of plea. If the respondents had raised the plea the petitioner would have explained the same. Therefore, the said submission of the respondents is rejected for want of plea. As far as the merits of the case are concerned, it is seen that the petitioner was promoted to the post of Assistant vide promotion order dated 31.07.2000. On 24.10.2000, the petitioner relinquished her promotion to the said post and her relinquishment was



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accepted by the 2nd respondent on 28.11.2000. The said relinquishment was valid for three panel years. The dispute in the writ petition is how the three panel years have to be reckoned. According to the respondent, the panel years have to be reckoned from the date of the relinquishment letter i.e. 24.10.2000, but according to the petitioner, the date of the relinquishment letter has no relevance. The relinquishment had to be considered only with regard to the panel years and if so considered, the three panel years for which the relinquishment would be operative are the panel years 2000 to 2002.

9.Before considering the rival submissions the rule position is visited. Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules is referred to. The said Rule reads as follows:

“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



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or privileges shall not be entertained.”

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10.The petitioner was given promotion as Assistant on 31.07.2000. The petitioner relinquished her promotion vide letter dated 24.10.2000. Therefore as rightly contended by the learned counsel for the petitioner, the relinquishment will operate for panel years 2000, 2001 and 2002 only. The petitioner will be eligible for promotion for the Panel year 2003.

11.In this regard, the Judgment relied on by the learned counsel for the petitioner in W.P.(MD).No.2649 of 2011 dated 15.03.2012 can be usefully referred to. This Court in similar circumstances held as follows:

“3.The petitioners request was rejected by the impugned order dated 8/10/2010, wherein it is mentioned that the petitioners having submitted their relinquishment letter on 26/4/2006, three year period can be counted only from that date and not from 1/4/2006.

4.According to the learned counsel for the petitioners, the said stand taken by the respondents cannot be accepted in view of the Rule position as well as the relinquishment



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letter given by the petitioners. Petitioners have given up their right for promotion for 2006 - 2007, 2007 - 2008 and 2008 - 2009 i.e., from 1/4/2006. Three year period having been expired on 31/3/2009, the petitioners are entitled to get their names included in the panel for promotion in terms of Rule 47 (2) of the Tamil Nadu State and Subordinate Service Rules. The said Rule reads as follows:-

"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."

5.Applying the said Rule, the impugned order is set aside and the second respondent is directed to consider the



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names of the petitioners for inclusion in the panel from 1/4/2009 and pass fresh orders. The revised order is directed to be passed by the second respondent within a period of six weeks from the date of receipt of a copy of this order.”

12. Therefore, applying the aforesaid Judgment, it is seen that the respondent's plea that the relinquishment would operate for the panel year 2001 to 2003 from the date of relinquishment letter dated 24.10.2000 cannot be countenanced. I am therefore of the view that the impugned order cannot be sustained and hence the same is set aside. The learned counsel for the petitioner submitted that the petitioner retired and therefore a direction may be issued to the respondent to fix the notional seniority of the petitioner in the post of Assistant for the panel year 2003, on par with her juniors.

13. In view of the above discussions, the respondents 3 and 4 are directed to give notional promotion to the petitioner for the Panel Year 2003 and grant all consequential and attended benefits including further promotion within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the petitioner shall not be entitled to all monetary benefits consequent on the refixation of her seniority and promotion in the panel year 2003 -2004.



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WEB COPY 14. Accordingly, this writ petition stands allowed. However there shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order
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To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Higher Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

3. Tmt. K. Rajeswari,
Bursar,
Government Arts & Science College,
Karimangalam – 635 1111.

4. Thiru. P. Mohan,
Bursar,
Chiikkanna Government Arts College,
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N.MALA, J.
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