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W.P.(MD) No.12229 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.12229 of 2017

K.Subramanian

... Petitioner

-VS-

1.State of Tamil Nadu
rep.by its Principal Secretary
Rural Development and
Local Administration Department
Secretariat, Chennai

2.The Director
Department of Rural Development
Panagal Maligai
Saidapet, Chennai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the impugned proceedings of the second respondent in Na.Ka.No. 27037/2017/J.E.2.1 dated 26.05.2017 and quash the same as illegal and consequently direct the respondents to grant the petitioner notional promotion



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as Assistant Director in the Department of Rural Development with effect from the date on which his immediate junior Mr.M.Subramanian (Seniority Sl.No. 1745) was promoted to the said post along with attendant monetary benefits.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Ms.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the second respondent, dated 26.05.2017, rejecting the petitioner's request for grant of notional promotion as Assistant Director in the Department of Rural Development with effect from the date on which his immediate junior Mr.M.Subramanian, Seniority Sl.No.1745, was promoted to the said post.

2. Under the impugned proceedings, the petitioner's representation has been rejected, on the ground that his case cannot be considered for promotion in the year 2000-2001 in view of Section 7(1) Schedule XI Part A II (11) of the Tamil Nadu Government Servant (Conditions



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of Service) Act, 2016 and as per the said Section, if a Government Servant is subjected to check period, he will not be considered for promotion during the said period.

3. Learned counsel for the petitioner would submit that denial of promotion citing check period is illegal pursuant to the orders passed by the Full Bench of this Court and therefore, the reason for rejection of the petitioner's representation is not proper.

4. However, it is an admitted fact that the petitioner had earlier given a representation on 17.04.2001 seeking a similar request, which has been rejected by the second respondent, on 27.04.2001. Aggrieved by the same, the petitioner chose not to prefer any appeal before the first respondent in terms of Rule 38 of the Tamil Nadu State and Subordinate Services Rules. The petitioner was not allowed to retire from service due to the pendency of the charges against him. Finally, according to the petitioner, he was allowed to retire from service on 07.02.2006. The petitioner did not also choose to file the writ petition seeking for a similar relief immediately, after the date when he was allowed to retire from service in the year 2006.



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5. The petitioner has given reasons in his affidavit for not having filed the writ petition earlier. He has stated that he got superannuated on 30.11.2001 and even thereafter, some charges were pending against him and his retirement benefits were not paid to him and during the interregnum period, he was only paid with provisional pension. According to him, only based on G.O.(D) No.88, Rural Development (E6(2)) Department, dated 07.02.2006, issued by the first respondent, he was discharged from the charges pending against him and thereafter only, terminal benefits and full pension were disbursed to him. According to him, because of getting pension and other benefits belatedly, he found it difficult to manage his commitments and he could not complete his commitments properly. According to him, only under those circumstances, he was unable to pursue his claim for notional promotion at that point of time. He also expressed his financial difficulty in fighting with the Government to pursue his claim for notional promotion before this Court.

6. Admittedly, there is an inordinate delay on the part of the petitioner to pursue his case for notional promotion, which pertains to the



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year 2001. Even the reasons given by the petitioner for not filing this writ petition on time are not satisfactory, as sufficient cause has not been shown. The only reason given by the petitioner was that he was allowed to retire only in the year 2006 through G.O.(D) No.88, Rural Development (E6(2)) Department, dated 07.02.2006. But, no reason whatsoever has been given by him with regard to the delay from the year 2006 upto the date of filing of this writ petition. The petitioner's representation was already rejected by the second respondent in the year 2001 itself. No reason has been given as to why the petitioner did not prefer any appeal as against the said order passed in the year 2001. Rule 38 of the Tamil Nadu State and Subordinate Services Rules enables the petitioner to prefer an appeal, if he is aggrieved by the order of the second respondent, dated 27.04.2001, rejecting his earlier representation, dated 17.04.2001. However, he had not preferred any appeal challenging the rejection of his request by the second respondent.

7. Learned counsel for the petitioner drew the attention of this Court to a Division Bench Judgment of this Court dated 19.09.2023, passed in W.A.(MD) No.1250 of 2020, in the case of ***The Principal Secretary to Government and others vs. K.Senthil Vel*** in support of his contention that



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despite the delay, this writ petition is maintainable and can be entertained by this Court.

8. In the aforesaid decision of the Honourable Division Bench of this Court, there was no delay on the part of the petitioner therein in approaching the Court. Only under those circumstances, the said writ petition was entertained. But, in the instant case, as observed earlier, no sufficient cause has been shown by the petitioner for the inordinate delay in filing this writ petition and as seen from the petitioner's own case, there is an inordinate delay, as even according to him, he has given reasons only upto 2006. But, thereafter, no reasons have been given from 2006 to 2017 for the delay in filing this writ petition.

9. For the foregoing reasons, there is no merit in this writ petition.

Accordingly, this writ petition is dismissed. No costs.

12.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

- 1.The Principal Secretary,
Rural Development and
Local Administration Department,
State of Tamil Nadu,
Secretariat, Chennai.
- 2.The Director,
Department of Rural Development,
Panagal Maligai,
Saidapet, Chennai.



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ABDUL QUDDHOSE, J.

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