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WP No. 21753 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-03-2025

CORAM

THE HONOURABLE MR JUSTICE **C.V. KARTHIKEYAN**

WP No. 21753 of 2024

and

WMP No.23731 of 2024

S.Vaithilingam

Petitioner(s)

Vs

The Transport Commissioner,
Chepauk, Chennai-5.

Respondent(s)

PRAYER :Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the respondent herein passed in his Proc. No 23346/RA1/2023 (E.O.No.23/2024) dated 12.01.2024 rejecting the petitioner's request for temporary relinquishment of promotion as Personal Assistant and to quash same and consequently direct the respondent herein to pass orders accepting the petitioner's temporary relinquishment of promotion as Personal Assistant for a period of three years in accordance with Section 57(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.



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WP No. 21753 of 2024



For Petitioner(s): Mr.Ravi Shanmugam,
Senior Counsel
For Mr.R.Naresh Kumar

For Respondent(s): Mr.Haja Nazirudeen, AGP
Assisted by Mr.V.Nanmaran,
AGP

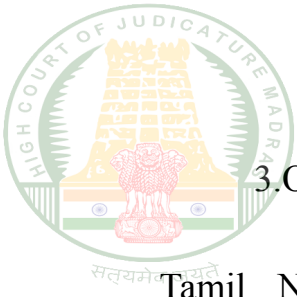
ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to an order of the respondent, the Transport Commissioner, Chennai – 600 005 dated 12.01.2024 rejecting the request of the petitioner for temporary relinquishment of promotion as Personal Assistant for the year 2022 - 2023 and direct the respondent to pass orders accepting the application of the petitioner seeking temporary relinquishment to be promoted as Personal Assistant for a period of three years. The petitioner not only places reliance on Section 57(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 but also seems to be a legally literate person as he has quoted judgments of this Court in his representation.



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2. In the affidavit filed in support of the writ petition, it had been contended that the petitioner had been promoted as Motor Vehicles Inspector (Non-Technical) on 08.03.2019. The petitioner is due to be promoted to the next post namely, Personal Assistant to the Road Transport Officer. He is due for promotion in the panel 2022 - 2023. His name had also been included in the panel. However, the petitioner had given a representation on 23.06.2023 expressing relinquishment temporarily for a period of three years from being considered to be promoted to the post of Personal Assistant to the Road Transport Officer. In the representation, the petitioner had quoted as reason his family circumstances. The petitioner had also stated that such a representation had been given, and it must be accepted by the respondent and the respondent has no other option. In this connection, petitioner had also referred to a series of judgments in his representation emphasising that as a matter of right, he can give his representation seeking relinquishment from being considered to be promoted and that as a matter of right, the respondent must accept it and that the respondent have a duty to accept the same.



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3. On behalf of the petitioner, it had been contended that Section 57 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 contemplates two particular instances when relinquishment from being considered for promotion can be given. Sub clause (1) of the aforementioned provision contemplates a situation where relinquishment is permanent in nature and sub clause (2) contemplates a situation where, for a temporary period of not less than three years, a public servant can exercise his option not to be considered for being promoted. There is also interpretation to the said provision, wherein it had been stated that the relinquishment should not be opposed to public interest and if it is temporary, it should be for a minimum of three years and can be revoked before it is accepted. There are also further interpretations given that the period of relinquishment should not be counted for seniority with respect to promotion to higher post and if the relinquishment is on permanent basis, and if it is accepted, it cannot be revoked.

4. It is also contended on behalf of the petitioner that having exercised this particular option and since the legislation provides for the same, the respondent



are duty bound to accept the relinquishment given by the petitioner for a period of three years from being promoted to the post of Personal Assistant to the Road Transport Officer.

5. In this connection, quite apart from exhibiting his legal knowledge in the representation, the petitioner appears to have also inspected that reference also be made to a judgment of the Division Bench of this Court in ***S. Padmavathy and others Vs. Registrar General, High Court Madras and Another, CDJ 2017 MHC 3726***, wherein the Division Bench had examined the case of the petitioners who were working as Steno Typist Grade – III in the Judicial Ministerial Service at Kanniyakumari District and when a seniority list was prepared and the District and Sessions Judge, Kanniyakumari had sought their consent to work as Steno Typist Grade – II in the District Court or to otherwise submit the letter of relinquishment, the petitioners had given their letters of relinquishment to be considered for promotion to the post of Steno Typist Grade – II. However, it is stated that the District and Sessions Judge had passed an order accepting the relinquishment and declared that the petitioners



are not to be considered for promotion to the post of Steno Typist Grade – II.

Further, in the order, he stated that they are permitted to relinquish their rights for further promotion for three years with effect from 07.08.2013. An appeal had been preferred on the administrative side, which had been rejected and therefore, the writ petition had been instituted.

6.The Division Bench while examining the case of the petitioners therein, had pointed out Rule 49 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and had held as follows:

“15.We, feel, that Rule 49 will have applicability when a person gives up his promotion. In other words he does not wish to accept promotion order in his favour. That was the reason why two separate contingencies were contemplated and provided for in Clauses (1) and (2) of Rule 49. Sub-Clause (1) talks to giving up/waiving the promotion on a permanent basis while clause (2) talks of giving up/waiving the promotion for a temporary period of duration of not less than three years. The Rule making authority is, therefore, conscious that for certain compelling and valid reasons an employee can waive his own promotion. It is not very difficult



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for us to imagine that there could be some compelling circumstances which can prevent an employee from accepting promotion and then shoulder higher responsibilities. The factors such as the health condition of the employee concerned or any other family member requiring greater attention to be paid to their peculiar needs and requirements also can compel an employee to forgo promotion. Similarly, one might not be willing to take up promotion for a shorter period. To illustrate this, we can easily think of the educational requirements of the children of the employee, at that stage, compelling him not to accept promotion and defer it for a duration of not less than three years. Therefore, Rule 49 will have applicability only for the purpose of forgoing / waiving the promotion but not for consideration of promotion altogether.”

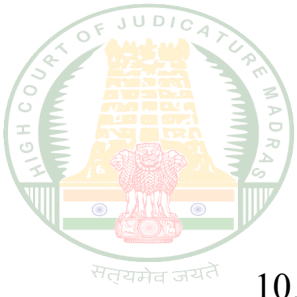
7. It had been observed that such rule would come into force and could be invoked only to forgo or waive the promotion but not for consideration of promotion altogether. After the period of relinquishment is over, the applicant could be considered for promotion.



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8. The learned Additional Advocate General, however, pointed out the reasons why the respondent had taken a conscious decision to reject the application given by the petitioner. In the order justifying such rejection, it had been stated that if the request is accepted, it would affect smooth functioning of the administration of the department since the services of senior persons are essential for the department. It had also been stated that it would also affect the promotional opportunity of the Superintendent. It had been further stated that therefore, the interest of the administration of the department, the request given by the writ petitioner seeking relinquishment of his right for further promotion was rejected.

9. This particular order had been questioned on behalf of the petitioner by putting forward an argument that the only reason given is that in the interest of the administration and for smooth functioning of the administration, the request had been rejected and it was pointed out that in the interpretation to Section 57 it had been stated that relinquishment should not be opposed to public interest and that could only be the reason why it could be rejected.

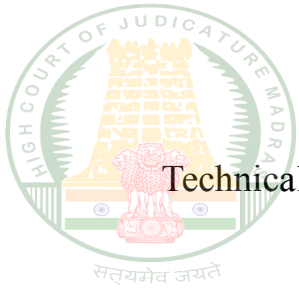


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10. In the counter affidavit, the said reason had been expanded to a little bid, but fundamentally, it had been stated that the smooth functioning of the administration of the department would be affected if the petitioner is to relinquish his promotion.

11. I have given my careful consideration to the arguments advanced on both the sides.

12. This is a case where the petitioner who had been promoted as Motor Vehicle Inspector (Non-Technical) and was due to be promoted to a further post had given a letter expressing relinquishment from being considered for promotion to the post of Personal Assistant to the Road Transport Officer. Even though it had not been stated by the petitioner or in the order, rejecting that particular application the reasons are obvious. The petitioner wants to occupy the seat where he is now occupying without moving out and preventing anybody else from occupying the post of Motor Vehicle Inspector (Non-



Technical).

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13. In the counter affidavit, the duties to be performed by the petitioner had been expanded. They involved what could be normally called, interaction with offenders of motor vehicle offences. Naturally, the petitioner would be interested in discharging that particular work rather than being tied up to a desk work as Personal Assistant to the Road Transport Officer. It is purely in his personal interest that the petitioner had given this particular application seeking relinquishment for promotion. If he had any small sense to discharge duty or be grateful that he had been ever recruited to the post to which he had been initially recruited and subsequently promoted to the post of Motor Vehicle Inspector (Non-Technical), then he would not harped on all these legal technicalities and should have willingly taken up the further promotion post.

14. It is clear that the petitioner can even be called in for insubordination if, he refuses to discharge the duties expected of him as senior officer. The petitioner should have taken up this particular opportunity of being promoted to



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the next post. He cannot remain and stagnate in a particular post and continue to discharge the duties which he wants to discharge. He is also preventing the promotional aspect of others who are awaiting for the promotion. There are Superintendent who have to be promoted as Motor Vehicle Inspector (Non-Technical), but the petitioner is occupying the place and is refusing to move for a period of three years. There are Superintendent who would have been eligible to be so promoted to the post of Motor Vehicle Inspector (Non-Technical) and who will now have to wait for another three years till the petitioner is promoted to the post of Personal Assistant to the Road Transport Officer.

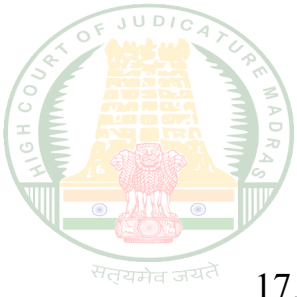
15. The reasons given, namely that his health is not proper or that his family circumstances warrant him to continue in the same post are reasons which could very well be advanced to resign and walk away from the posts. There is no necessity for him to even continue as Motor Vehicle Inspector (Non-Technical). The department would not collapse, if the petitioner resigns from the post and walks away. He must realize he is not required, if he is not willing to



discharge his duties. The department would continue and there would be more willing persons to discharge the duties, which the petitioner is discharging.

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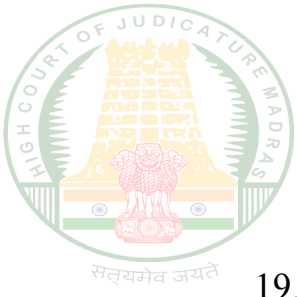
16. The argument advanced that the reasons stated in the counter affidavit do not fall within the four corners of being opposed to public interest is rejected by me. Public interest requires a person to move upwards in the scale and not to occupy that particular post for any reason whatsoever ostensibly in this case for family reasons and health issues. It had been very clearly stated in the impugned order that the smooth functioning of the administration of the respondent is affected by the petitioner continuing to occupying the post of Motor Vehicle Inspector (Non-Technical). When the functioning of an administration is affected, particularly when such department is a public department, then there is public interest involved and when it is affected by a person sitting in his particular seat without opting for promotion and without moving out and without giving an opportunity for others to be promoted and without lending his experience for the higher post, then public interest suffers and his letter seeking relinquishment for promotion is opposed to public interest.



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17.The Division Bench judgment is distinguishable on facts, as that was concerned with the order of the District and Sessions Court at Kanniyakumari who passed an order that the petitioners therein would not be considered for promotion. The scope was only whether to accept the letter seeking relinquishment of promotion.

18.Here, the respondent have rejected the letter. They are well within their right to so reject the letter. If the petitioner refuses to be promoted as observed above, he could very well be charged for insubordination and he could very well take up any other avocation to his pleasure and to the pleasure of this family and to take care of his health at any place he wants. He can take rest. He can have his food. He can relax but he should not be a nuisance to the department.



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19. With the above observations, this Writ Petition stands dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

28-03-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To,

The Transport Commissioner,
Chepauk, Chennai-5.



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C.V.KARTHIKEYAN J.

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