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W.P.(MD) No.2841 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.2841 of 2021

P.Sundar

... Petitioner

-VS-

- 1.The Principal Secretary
to Government
Government of Tamil Nadu
Home Department
Secretariat, Chennai-600 009
- 2.The Joint Secretary
Home Department
Secretariat, Chennai-600 009
- 3.The Director
Forensic Sciences Department
Chennai
- 4.The Accountant General (A&E)
Office of the Accountant General
361, Anna Salai, Teynampet
Chennai-18

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the 1st respondent in G.O.No.340 dated 31.12.2020 (received on 07.01.2021) in confirming the impugned order of the 2nd respondent in his communication dated 26.02.2020 and quash the same with a consequential direction directing the respondents to grant notional promotion to the petitioner as “Photographer” on 16.10.2016 and as a “Scientific Assistant (Photo)” on 16.10.2019 with all consequential monetary benefits in the pay band of PB-2 Rs.9300-34800+GP 4800.

For Petitioner : Ms.Porkodi Karnan
for M/s.Polax Legal Solutions

For Respondents : Mr.C.Satheesh
Government Advocate for R1 to R3
Mr.P.Gunasekaran
Standing Counsel for R4

ORDER

This writ petition has been filed challenging the impugned orders dated 26.02.2020 and 31.12.2020, passed by the respondents 2 and 1 respectively, rejecting the petitioner's request for grant of notional promotion as Photographer as on 16.10.2016 and as a Scientific Assistant (Photo) as on 16.10.2019 with all consequential monetary benefits.



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2. The second respondent, under the impugned order, has rejected the petitioner's request, on the ground that during the relevant point of time, the juniors of the petitioner were not promoted and therefore, notional promotion cannot be granted. But, the petitioner claims that since the charges framed against him in the disciplinary proceedings were subsequently dropped by the order of the Government dated 23.09.2017, if the petitioner was promoted to the post of Photographer in the year 2016 itself, he would have been promoted to the post of Scientific Assistant (Photo) in the year 2019 after having completed three years of service in the post of Photographer. The petitioner, after the Government had passed an order on 23.09.2017 dropping the earlier punishment imposed on him, has made representations to the respondents between the years 2017 and 2019 seeking for notional promotion to the post of Photographer with effect from the year 2016. The second respondent rejected the petitioner's claim for notional promotion on 26.02.2020. A review petition was also filed by the petitioner before the first respondent on 20.03.2020. Subsequently, the petitioner retired from service on attaining the age of superannuation on 31.03.2020. Thereafter, the first respondent has passed the impugned order dated 31.12.2020 confirming the



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order of the second respondent rejecting the petitioner's request for notional promotion by giving reasons as stated supra.

3. At the outset, learned Government Advocate appearing for the respondents 1 to 3 and the learned Standing Counsel appearing for the fourth respondent have placed reliance on the decision of the Honourable Supreme Court in the case of **Government of West Bengal and others vs. Dr.Amal Satpathi and others**, reported in **2024 SCC OnLine SC 3512** and would submit that in view of the decision rendered by the Honourable Supreme Court, the present writ petition is not maintainable, since the petitioner is seeking for notional promotion after his retirement.

4. However, learned counsel for the petitioner would submit that the aforesaid decision of the Honourable Supreme Court is not applicable to the case of the petitioner. She would submit that even when the petitioner was in service several representations were made by him seeking for notional promotion immediately after the charges framed against him in the disciplinary proceedings were dropped by the Government by its order dated 23.09.2017. She would submit that the facts involved in **Dr.Amal Satpathi's**



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case rendered by the Honourable Supreme Court are distinguishable from the facts of the present case. The petitioner claims that for no fault of the petitioner, he has been penalized by the respondents by not granting promotion at the relevant point of time. Therefore, learned counsel for the petitioner would submit that if the petitioner was promoted in the year 2016 itself to the post of Photographer, he would have achieved the next promotion to the post of Scientific Assistant (Photo) after completing three years of service in the post of Photographer.

5. Learned counsel for the petitioner would also submit that it is the responsibility of the respondents to draw seniority panel every year, which they have failed to do so for the year 2016. She would also submit that even though the respondents have not promoted any employee to the post of Photographer in the year 2016 through the seniority list prepared by the respondents, that cannot be a ground for rejecting the petitioner's request, since the petitioner was eligible to be promoted to the post of Photographer in the year 2016 itself. She also drew the attention of this Court to the Tamil Nadu Public Service Commission's recommendation of the year 2016, which if it was accepted, the petitioner would have been promoted to the post of



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Photographer in the year 2016, after the Government, through its order dated 23.09.2017, set aside the punishments imposed on the petitioner.

6. On the other hand, learned Government Advocate appearing for the respondents 1 to 3 and the learned Standing Counsel appearing for the fourth respondent would reiterate that the ratio laid down by the Honourable Supreme Court in ***Dr.Amal Satpathi***'s case squarely applies to the case of the petitioner as he is seeking for notional promotion after his retirement. They also would submit that there is no discrimination, as it is clear that at the relevant point of time, when the petitioner claims that he ought to have been promoted to the post of Photographer, the respondents have not promoted any of the juniors of the petitioner to the post of Photographer in the year 2016 – 2017.

7. The following is the undisputed fact:

- (a) In the year 2016, when the petitioner claims that he ought to have been promoted to the post of Photographer, the respondents have not promoted any of the juniors of the petitioner to



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the post of Photographer in the year 2016 – 2017.

8. Admittedly, disciplinary proceedings were initiated against the petitioner and punishments were also imposed on the petitioner. The said punishments were set aside by the order of the Government dated 23.09.2017 only. Immediately after the punishments were set aside i.e., on 23.09.2017, seniority panel for the post of Photographer was released by the respondents. The petitioner had also joined the post of Photographer on being promoted to the said post on 26.12.2017. When the petitioner was promoted to the post of Photographer on 26.12.2017, while he was in service, he did not choose to challenge his belated promotion to the post of Photographer. The petitioner only gave representations to the respondents between 2017 and 2019, and the same were rejected by the second respondent on 26.02.2020, on the ground that the petitioner is not entitled for notional promotion. The petitioner thereafter filed a review petition before the first respondent on 20.03.2020. Subsequently, the petitioner also retired from service on 31.03.2020 after attaining the age of superannuation. Thereafter, the first respondent also rejected the petitioner's review petition by the impugned order dated



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31.12.2020. The petitioner having not challenged his promotion to the post of Photographer with effect from 26.12.2017, when the petitioner claims that he ought to have been promoted much earlier, he cannot plead that the decision relied upon by the learned Government Advocate appearing for the respondents 1 to 3 and the learned Standing Counsel appearing for the fourth respondent, namely, **Dr.Amal Satpathi's** case rendered by the Honourable Supreme Court cannot be entertained by this Court. Having accepted the promotion to the post of Photographer without any protest on 26.12.2017, when the petitioner was in service and having not challenged the same at the first instance before this Court while the petitioner was in service, the plea of the petitioner that **Dr.Amal Satpathi's** case will not have any bearing for the facts of his case has to be rejected by this Court, since he thought it fit to challenge the date of his promotion to the post of Photographer with effect from 26.12.2017 only after his retirement i.e., only after 31.03.2020. The Honourable Supreme Court, in **Dr.Amal Satpathi's** case, has made it clear that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. The Honourable Supreme Court has also made it clear, based on its past precedents, that no retrospective promotion can be granted



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nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits, who have been appointed validly in the meantime.

9. In the case on hand, when the petitioner has accepted to be promoted as Photographer and having accepted the effective date of his promotion as Photographer immediately on being promoted to the post of Photographer in the year 2017, the question of entertaining this writ petition after his retirement will not arise, as, if the same is entertained, it will be contrary to the ratio laid down by the Honourable Supreme Court in **Dr.Amal Satpathi**'s case, referred to supra. It is also an admitted fact that no junior of the petitioner was promoted to the post of Photographer in the year 2016, when the petitioner claims that he ought to have been promoted to the post of Photographer, but was promoted only belatedly in the year 2017. There has been no discrimination between the petitioner and his juniors, which is also an admitted fact. Immediately after the petitioner became eligible to be promoted after the Government set aside the punishments imposed on the petitioner, he has been promoted to the post of Photographer in the year 2017.



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The seniority panel was also prepared for the post of Photographer in the year 2017 and in terms of the said seniority panel, the petitioner has been promoted to the post of Photographer and based on the said promotion, the petitioner has also accepted the same by not challenging the effective date of promotion found in the promotion order granted to him at the first instance. But, instead, he has chosen to challenge the date of promotion only after he retires from service i.e., on 31.03.2020, the date of superannuation. Being notional promotion sought after the petitioner's retirement from service, the decision relied upon by the learned counsels appearing for the respective respondents in **Dr.Amal Satpathi's** case rendered by the Honourable Supreme Court squarely applies to this case as well.

10. For the foregoing reasons, this Court does not find any merit in this writ petition and the same is, accordingly, dismissed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Principal Secretary
to Government,
Government of Tamil Nadu,
Home Department,
Secretariat, Chennai-600 009.
- 2.The Joint Secretary,
Home Department,
Secretariat, Chennai-600 009.
- 3.The Director,
Forensic Sciences Department,
Chennai.



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ABDUL QUDDHOSE, J.

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