
(1996) 06 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No"s. 239 and 7293 of 1996

K. Narayani

APPELLANT

Vs

The Registrar, High Court and Others

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Evidence Act, 1872 — Section 115

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 47(2)

Citation : (1997) 1 CTC 660 : (1996) 2 LW 520 : (1996) 2 MLJ 325

Hon'ble Judges : Raju, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : V.K. Vijayaraghavan, for the Appellant;

Final Decision : Dismissed

Judgement

Raju, J.

W.P. No.239 of 1996 :-

1. The above writ petition has been filed for the following relief:-

.....certiorarified mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records of the 1st respondent

pertaining to the order in Roc. No. 5901 of 1992/C1, dated 4.3.1993 and quash the same as illegal and unreasonable and direct respondents to

promote the petitioner as per relevant rules from the date of her application seeking promotion....

2. The impugned order of the High Court made on the Administrative Side reads as hereunder-

On a careful consideration of the petition of Tmt. K. Narayani, copyist, District Court, Thanjavur, the remarks of the District Judge, West

Thanjavur, and other connected records of the case, the High Court passes the following order:-

In view of the earlier acceptance of the permanent relinquishment and Rule 47 (2) of the Tamil Nadu State and Subordinate Service Rules, the request of Tmt. K. Narayani, Copyist, District Court, Thanjavur, cannot be acceded to

High Court, Madras 600 104

Dated : 4th March 1993

Sd. T. Krishnamoorthy,

Additional Registrar (Judl)

3. Heard the learned counsel appearing for the petitioner. The excuse now sought to be urged to wriggle out of the undertaking given, relinquishing

the future right of promotion, cannot be either appreciated or accepted. As a matter of fact, even while accepting the application with an

undertaking relinquishing the right for promotion permanently, the learned District Judge, Thanjavur, in his proceedings, on 20.6.1990, has also

specifically brought to the notice of the petitioner in the form of a note to the said order that subsequent claim of the relinquished rights is not

entertainable as per G.O. referred to therein. In view of the above position that the petitioner who voluntarily relinquished her claim for further

promotion to secure a benefit and obtained an Order, cannot turn round and make a grievance by a mere change of mind, at any rate in these

proceedings under Article 226 of the Constitution of India. If anything she suffers the same had been brought about by her own conduct and not by

any action of the Authorities.

4. In view of the above, we do not see that the petitioner could legitimately make a grievance against the impugned order. As a matter of fact, the

petitioner cannot be said to have any legal grievance against the order passed on her own request and, therefore, cannot be said to be a person

aggrieved, to maintain the writ petition. The writ petition is consequently liable to be dismissed.

5. Writ petition No. 7293 of 1996. The petitioner, in a desperate attempt to get over the hurdle of the Statutory Rule and the principles enshrined

in Rule 47 (2) of the Tamil Nadu State and Subordinate Services Rules has chosen to file the above writ petition (W.P.No. 7293 of 1996) for a

declaration declaring that the said Rule prohibiting persons permanently from claiming promotion is ultra vires, unconstitutional and arbitrary, and

for a consequential relief of direction directing respondents 1 and 2 give promotion to the petitioner on and from the date of her revocation of the relinquishment of promotion as per letter dated 18.6.1992.

6. Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules 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.

7. In the affidavit filed in support of the writ petition, it is contended that the respondents ought to have considered in exercise of their discretion

that the acceptance of a permanent relinquishment of promotional rights and opportunities would result in great prejudice and that the letter of

revocation of her request for permanent relinquishment ought to have been considered. The challenge to the said Statutory Rule is made on the

ground that those Rules are violative of Articles 14 and 16 and by vaguely stating of various other Articles of the Constitution. Learned counsel,

except reiterating the above, was not able to substantiate the constitutional infirmity, if any, undermining the validity of the Rule, by any concrete

submission.

8. A careful perusal of the Rule would show that it only purports to give effect to the option or choice of the Government servants concerned and

provide a legal basis for the departmental head concerned to accord sanction to the leave to request made by a Government servant, acting merely

on the choice expressed by such Government Servant. The Rule does not compel by itself any Government servant to give a permanent

relinquishment. On the other hand, the Rule postulates and permits the giving of such relinquishment for a temporary period or permanently, leaving

the choice to the discretion of the officer concerned, to opt for either temporary

or permanent relinquishment. If a particular Government Servant like the petitioner has chose to exercise her option in favour of a permanent relinquishment and obtained an order also in that regard from the competent authority, it does not lie in her mouth to challenge the rule itself. The indiscretion or want of prudence on the part of a Government servant cannot be a ground to challenge the constitutional validity of a Rule. There is noting per se illegal or arbitrariness or unreasonableness in the rule itself and, therefore, the alleged violation of Articles 14 and 16 of the Constitution of India has no meaning or merit whatsoever. The further general plea that it offends the other provisions of the Constitution, without even stating elaborately on each head needs mention to be rejected only.

9. For all the reasons stated above, we are not satisfied that the challenge made to Sub-rule (2) of Rule 47 of the Tamil Nadu State and

Subordinate Service Rules deserves our acceptance and the same shall stand rejected.

10. In the result, both the writ petitions fail and shall stand dismissed. Consequently, the W.M.Ps. are also dismissed.