
(2008) 02 MAD CK 0120
In the Madras High Court
Case No : Writ Appeal No. 70 of 2007

The State of Tamil Nadu

APPELLANT

Vs

R. Jayanthi

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Citation : (2008) 02 MAD CK 0120

Hon'ble Judges : R. Regupathi, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : K. Ilango, Spl.G.P, for the Appellant; L. Chandrakumar, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The above appeal is directed against the order dated 6.2.2006 made in W.P. No. 26922 of 2005, filed by the respondent herein.

2. For the purpose of convenience, parties are arrayed as per their rank in the writ petition.

3. The brief facts which paved way for filing the above appeal are as under.

(a) The petitioner was appointed as a Record Clerk on 10.12.1982 through Employment Exchange. Thereafter, she was promoted as Junior

Assistant by the proceedings of the second respondent dated 19.7.1988, specifically stating that the said promotion was temporary and the same

would not confer any right as against the candidates selected through the Tamil Nadu Public Service Commission and she would be reverted to the

post of Record Clerk as and when postings were issued to the candidates selected from the Tamil Nadu Public Service Commission. The

petitioner did not join the promotional post as she was suffering 50% disability and requested the second respondent to post her in and around Coimbatore.

(b) By proceedings of the second respondent dated 4.8.1988, the promotion given to the petitioner was cancelled and she was reverted to the post of Record Clerk. Nearly after thirteen years, the petitioner made a representation, through her husband, on 10.8.2001 to cancel the order of reversion dated 4.8.1988 and to promote her to the post of Junior Assistant notionally with effect from 19.7.1988. However, the second respondent, by proceedings dated 31.8.2001, rejected the request made on behalf of the petitioner on the ground that the promotion given to the petitioner was temporary and subject to the condition that she would be reverted back as and when postings were issued to the candidates selected from the Tamil Nadu Public Service Commission.

(c) The petitioner made a further representation on 19.3.2002 and the same was also rejected by the second respondent, by proceedings dated 23.4.2002 on the grounds stated in their earlier proceedings dated 19.3.2002 and further stating that the promotion to the post of Junior Assistant from Record Clerk was cancelled even before the petitioner joined the duty in the promotional post.

(d) In the meanwhile, the petitioner was given regular promotion from the post of Record Clerk to the post of Junior Assistant on 6.1.1995.

(e) However, aggrieved by the proceedings of the second respondent dated 31.8.2001 and 23.4.2002, the petitioner filed O.A. No. 6260 of 2002 before the Tamil Nadu Administrative Tribunal, relying upon G.O.Ms. No. 502, P & AR Department, dated 10.6.1987. Thereafter, the said O.A. was transferred and re-numbered as W.P. No. 26922 of 2005,

(f) The second respondent resisted the writ petition reiterating the reasons stated in their impugned orders dated 31.8.2001 and 23.4.2002.

(g) The learned single Judge, by order dated 6.2.2006, holding that the petitioner was entitled to be promoted as Junior Assistant from the post of Record Clerk as per G.O.Ms. No. 502, P & AR Department, dated 10.6.1987, quashed the proceedings of the second respondent dated 31.8.2001 and 23.4.2002 and directed the respondents to give notional promotion to the petitioner with effect from 19.7.1988. Hence, the

present appeal by the respondents.

4. Heard Mr. K. Ilango, learned Special Government Pleader for the appellants and Mr. L. Chandrakumar, learned Counsel for the respondent,

who reiterated their submissions made before the learned single Judge.

5.1. It is not in dispute that the petitioner was appointed as Record Clerk on 10.12.1982 and promoted to the post of Junior Assistant temporarily

by proceedings dated 19.7.1988, which is subject to the condition that she would be reverted back as and when postings are issued to the

candidates selected by the Tamil Nadu Public Service Commission. The petitioner did not join the promotional post as she wanted to continue at

Coimbatore itself. In the meanwhile, she was reverted to the post of Record Clerk by proceedings dated 4.8.1988. Nearly after thirteen years, the

petitioner, without challenging the impugned proceedings of the second respondent, had chosen to make representations requesting to promote her

to the post of Junior Assistant notionally with effect from 19.7.1988 and the same were rejected by the impugned proceedings of the second

respondent.

5.2. No doubt, G.O.Ms. No. 502, P & AR Department, dated 10.6.1987 provides that persons who are having more than five years of service in

the lower category are entitled to get promotion as Junior Assistant based on seniority. But, in the instant case, the petitioner has relinquished her

promotion to the post of Junior Assistant by not joining the promotional post. Having abdicated her promotion, the petitioner is not entitled to stake

her claim of promotion to the post of Junior Assistant notionally relying on G.O.Ms. No. 502, P & AR Department, dated 10.6.1987. Assuming

the petitioner is promoted as Junior Assistant notionally, the same, in our considered opinion, would disrupt the vested rights with regard to the

seniority, rank and promotions that had been accrued by others during the intervening period of the order of reversion and the impugned orders of

rejection, apart from financial burden.

5.3. The petitioner had chosen to stake her claim to promote her to the post of Junior Assistant notionally, after thirteen years. In the cases where

the litigant approaches with inordinate delay or laches, the Courts, while exercising their discretion, are loath to grant relief, especially in service

matters relating to seniority, in order to ensure that settled seniority is not

disturbed. Unsettling such seniority would result in administrative chaos, inconvenience and lead to considerable incoherence in the system of administration, apart from financial repercussions.

5.4. It is true that the relief claimed, after an abnormal delay, cannot be denied to the aggrieved merely on the ground of laches. However, if the

delay and laches would have the effect of seriously affecting the fundamental rights of a third party, the relief can be refused for valid reasons.

Similarly, grant of relief can also be denied if the long delay would result in throwing public administration out of gear vide P.V.S.V. Prasada Rao

and Others Vs. Andhra University and Others, .

5.5. Of course, the rule, which says that the Court may not enquire into belated and stale claims, is not a rule of law but a rule of practice based on

sound and proper exercise of discretion. The delay, by itself, no doubt, would not defeat the claim for relief on account of lapse of time. But, it

depends upon an examination of the facts of each case. In the instant case, apart from the fact that there is no plausible explanation by the

petitioner for the abnormal delay in making the representation that the lapse of time is not attributable to any laches or negligence on her part, the

petitioner lost her locus to stake her claim for promotion to the post of Junior Assistant, based on G.O.Ms. No. 502, P & AR Department, dated

10.6.1987, as a matter of right, as, admittedly, she refused to join the promotional post in spite of the proceedings dated 19.7.1988, which was

subsequently cancelled to accommodate the candidates selected by the Tamil Nadu Public Service Commission, a condition incorporated in the

order of promotion itself. Therefore, the conduct of the petitioner relinquishing her promotion, coupled with laches, disentitle her to stake her claim

based on G.O.Ms. No. 502, P & AR Department, dated 10.6.1987, even notionally.

5.7. Further, it is apparent on a perusal of the proceedings of the second respondent dated 19.7.1988 that the promotion given to the petitioner

was temporary and subject to the condition that the same would not confer any right on her as against the candidates selected through the Tamil

Nadu Public Service Commission and she would be reverted to the post of Record Clerk as and when postings were issued to the candidates

selected from the Tamil Nadu Public Service Commission. Therefore, we do not see any error on the part of the second respondent in reverting

the petitioner to the post of Record Clerk, even before her joining in the promotional post.

6. For all these reasons, we are unable to agree with the reasons and findings of the learned single Judge in allowing the writ petition. Hence, the order of the learned single Judge is set aside. The writ appeal is allowed.