

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.11756 of 2015

S.Ravi, Assistant Producer (Video)

Information and Public

Relations Department

Fort St.George, Chennai-9

Petitioner

Vs

1.State of Tamil Nadu by

Secretary to Government

Tamil Development, Religious Endowment and

Information Department,

Fort St.George, Chennai-9

2.The Director, Information and

Public Relation Department

Fort St.George, Chennai-9

Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the 1st Respondent to regularize the Petitioner in the upgraded post of Assistant Producer (Video) by creating promotional avenues for the post of upgraded Assistant Producer (Video) by framing appropriate rules and to consider the Petitioner for promotion thereafter taking into consideration the Petitioner's experience and qualification.

For Petitioner : Mr.L.P.Maurya

For Respondents : Mr.S.Gunasekaran, AGP

ORDER

In this Writ Petition, the Petitioner seeks for a direction to the 1st Respondent to regularize the Petitioner in the upgraded post of Assistant Producer (Video) by creating promotional avenues by framing appropriate rules.

2. The only grievance of the Petitioner is that initially he has been appointed as the Video Cameraman and for the past 20 years, he has been in the same post and he has not been given any promotional aspect. In fact, there is no promotional avenue available. At a later point of time, the post of Video Cameraman was upgraded as Assistant Producer (Video) in the year 2008, which, however, has also not been

regularized. Therefore, he would contend that as there is no promotional avenue at all, at least, he should be given the post of Chief Producer and a direction be given in this regard.

3. The learned counsel for the Petitioner would contend that in 2008 5 SCC 100 (FCI and others Vs. Parashotam Das Bansal and others), the Honourable Supreme Court has held that if there is no channel of promotion, resulting in stagnation for long years, the courts although may not issue any direction as to the manner in which a scheme should be formulated, could issue a direction to make a scheme providing promotion. Following the said decision of the Honourable Supreme Court, this Court also issued similar directions in 2011 SCC OnLine Mad 1734 (Muthurani Vs. the District Collector) to the concerned authorities to pave way for creating some nominal post. Relying on the said decisions cited supra, the learned counsel for the Petitioner prayed for similar directions in this case also.

4. The learned Additional Government Pleader for the Respondents, by filing a counter affidavit, would contend that the Petitioner cannot be considered for promotion, as the position held by the Petitioner is not a feeder category. Even the post of Assistant Producer (Video), which is a upgraded post, given to the Petitioner, as a special case for 20 years, cannot be regularized, since it is a technical post and not a feeder category and hence, the Petitioner is not entitled to seek for such a relief.

5. This Court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

6. It is, no doubt, true that if an employee is stagnated for long years (in the case on hand 20 years) and there is no promotional avenue open for him in his career, though he has no fundamental right of promotion, promotion being a normal incidence of service, it is necessary to provide an opportunity of advancement, by creating promotional avenue. However, the court can give a direction only to a limited extent to the State to consider as to whether any promotional avenues could be opened, as has been held in the decisions cited supra.

7. In 2008 5 SCC 100 (FCI and others Vs. Parashotam Das Bansal and others), it has been held as follows:-

"9. Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service.

10. This Court in Dr. Ms. O.Z. Hussain v. Union of India [1990 Supp. SCC 688], opined :

"7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.

12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that he fell within a category of employees excluded from promotional prospect, the Superior Court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior Court of the country."

8. In 2011 SCC OnLine Mad 1734 (Muthurani Vs. the District Collector), it has been held as follows:-

"11. The Apex Court has categorically held in para 13 of the aforesaid judgment that if there is no channel of promotion in respect of a particular group of employees, resulting in stagnation over the years, the superior courts although may not issue any direction as to in which manner a scheme

should be formulated, could issue direction to make scheme providing promotion.

12. While declining to grant the relief as prayed for by the petitioners, the 1st respondent is directed to send necessary proposals to the Government of Tamilnadu to grant at least one promotional avenue to the post of Conductress, as in the case of Office Assistants, Record Clerks and others, in the light of the judgment of the Apex Court, referred to above, within a period of 12 weeks from the date of receipt of a copy of this order."

9. In view of the above decisions, this court cannot give a specific direction to give a particular post, but however, considering the facts that the Petitioner has been languishing in the same post for 20 years and that even after upgradation of the post of Video Cameraman as Assistant Producer (Video), it has not been regularised as a promotional post and when there is no promotional avenue, this court has no other option except to follow the decisions cited supra.

10. Accordingly, while declining to grant the relief as prayed for in this Writ Petition, this court can only recommend the 1st Respondent to follow the decisions of the Honourable Supreme Court and this court cited supra and to consider and send a proposal to the State either for regularization of the Petitioner in the upgraded post by creating promotional avenues or to consider the Petitioner for promotion to any other post so as to give a quietus to the issue and it is for the State to decide the issue. Accordingly, this Writ Petition is disposed of. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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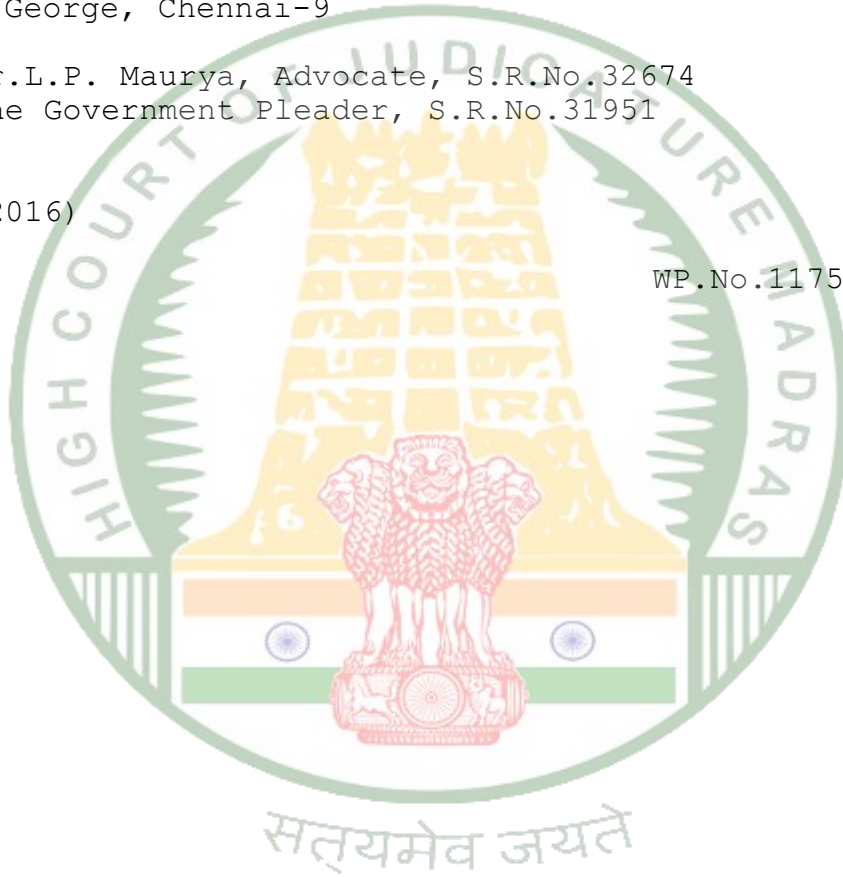
1.State of Tamil Nadu by Secretary to Government,
Tamil Development, Religious Endowment
and Information Department,
Fort St.George, Chennai-9

2.The Director, Information and
Public Relation Department
Fort St.George, Chennai-9

+1cc to Mr.L.P. Maurya, Advocate, S.R.No.32674
+1cc to the Government Pleader, S.R.No.31951

MSM(CO)
EU(11/07/2016)

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