IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-10-2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19951 of 2014
And
M.P.Nos.1 and 2 of 2014

M.Mohanarengan .. Petitioner

-vs-

1.The Chief Secretary,
Government of Puducherry/Chairman,
Pandit Jawaharlal Nehru College of Agriculture
and Research Institute,
Karaikal,
Puducherry.

2.The Dean,
Pandit Jawaharlal Nehru College of Agriculture
and Research Institute,
Karaikal,
Puducherry.

3.The Under Secretary to Government,
Personnel and Administrative Reforms Department,
Government of Puducherry,
Puducherry. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Circular issued by the third respondent in No.A-35016/10/2003-DPAR/SS-II(2) dated 27.6.2014 and quash the same and direct the respondents to consider the petitioner for promotion to the post of Upper Division Clerk as per the Recruitment Rules and grant him all consequential benefits.

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For Petitioner - Mr.P.Rajendran

For Respondents - Mr.R.Syed Mustafa,
Additional Government Pleader.

ORDER

The relief sought for in this writ petition is to quash the Circular issued by the third respondent in proceedings A-35016/10/2003-DPAR/SS-II(2) dated 27.6.2014 and for a direction to direct the respondents to consider the name of the writ petitioner for promotion to the post of Upper Division Clerk as per the Recruitment Rules in force.

2. The learned counsel appearing for the writ petitioner made a submission that the Circular dated 27.6.2014 is directly in violation of the Recruitment Rules in force. The impugned Circular states that the Pandit Jawaharlal Nehru College of Agriculture and Research Institute, Serumavilangai, Karaikal, requires the services of LDCs to fill up two posts of UDC in the Institute, on deputation basis. Accordingly, an effort has been taken to fill up the post of UDC by way of deputation from amongst the persons working the cadre of LDC. Such an action of the third respondent in deputing the persons working in the cadre of LDC to the post of UDC, is directly in violation of the rules in force.

3. As per the rules, the post of UDC is a promotional post to the post of LDC. In other words, the LDC is a feeder category to the persons to be promoted to the post of UDC. Thus, the post of UDC to be filled up in accordance with the Service Rules in force by considering all the eligible candidates working in the cadre of LDC and fit for promotion to the higher post of UDC.

4. This Court directed the third respondent viz, The Under Secretary to Government, Personnel and Administrative Reforms Department, Government of Puducherry, Puducherry to be present. Accordingly, Mr.M.Kannan, Under Secretary to Government, Personnel and Administrative Reforms Department, Government of Puducherry, Chief Secretariat, Puducherry, is present. This Court asked a question as to why a counter statement in this regard in this writ petition has not been filed for the past about three years. There is no convincing reply either from the Officer, who is present or from the learned counsel, appearing on behalf of the respondents.

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5. When a writ petition is filed showing that a Circular was issued contrary to the Service Rules in force, this Court has to draw an inference that the authorities have resorted to exercise the power in order to favour a particular person or to show some additional consideration to some employees.

6. At the outset, such Circulars, issued directly in violation of the Service Rules in force, are issued only to show some favouritism and nepotism to some candidates.

7. Under these circumstances, the authorities have to file a counter statement without any further delay. However, in the case on hand, no counter statement has been filed for the past about three years for the reasons known only to the respondents. The non-filing of the counter statement was due to the laxity on the part of the respondents or there may be some intention. May that it be, now this Court has to consider the merits involved in this writ petition.

8. No doubt, all promotions to the Higher Post of UDC have to be undertaken only by following the Service Rules in force. Further, it is not disputed that the post of LDC is a feeder category for promotion to the post of UDC.

9. This apart, a panel of eligible persons fit for promotion to the post of UDC is to be prepared in accordance with the Service Rules and the same is to be published and thereafter, promotions are to be effected in accordance with the Rules.

10. Such being the procedure to be adopted by the competent authority in the matter of promotion, this Court is of the opinion that the Circular issued, which is impugned in this writ petition, dated 27.6.2014 is unsustainable.

11. At this juncture, the learned counsel, appearing for the respondents, made a submission that the impugned Circular dated 27.6.2014 will be withdrawn. In this regard, suitable orders will be passed by the respondents, within a period of two weeks from today. Further, an assurance is placed before this Court that all promotions to the post of UDC will be effected only by following the Service Rules in force.

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12. In view of the undertaking given by the learned counsel appearing on behalf of the respondents in this regard, no further adjudication on merits is required to be undertaken in this writ petition. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Chief Secretary,
Government of Puducherry/Chairman,
Pandit Jawaharlal Nehru College of Agriculture
and Research Institute,
Karaikal,
Puducherry.

2.The Dean,
Pandit Jawaharlal Nehru College of Agriculture
and Research Institute,
Karaikal,
Puducherry.

3.The Under Secretary to Government,
Personnel and Administrative Reforms Department,
Government of Puducherry,
Puducherry.

+1cc to the Government Pleader, S.R.No. 75891
+1cc to Mr.P.Rajendran Advocate, S.R.No. 75540

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