

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4756 of 2018

and

WMP.Nos.5873 & 5874 of 2018

1.D.Arjun Raj

2.K.Ponnuraj

... Petitioners

Versus

1.The Director of Local Fund Audit,
The Directorate of Local Fund Audit Department,
Anna Salai, Nandanam,
Chennai - 600 035.

2.R.Muthuvel

3.G.Thamaraiselvan

4.S.Senthil

5.A.A.Arun

6.R.Jayavelu

... Respondents

[R2 to R6 impleaded as per order
dated 27.04.2018 in WMP.No.10474/2018
in W.P.No.4756 of 2018]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the first respondent forthwith issue panel for promotion to the post of Inspector of Local Fund Audit and Internal Audit Department for the year 2017-2018 in order to fill up all the vacancies that arose and are estimated to arise from 01.09.2017 to 31.08.2018 and include the names of the petitioners in the said panel and promote them as Inspector of Local Fund Audit and Internal Audit Department, as they are otherwise qualified and eligible and to grant them all consequential benefits within a limited time frame as deem fit by this Hon'ble Court.

For Petitioners : Mr.M.Ravi

For R1 : Mr.J.Ramesh,
Additional Government Pleader.

For R2 to R6 : Mr.L.Chandrakumar

O R D E R

The relief sought for in this writ petition is for direction to direct the first respondent to forthwith issue a panel for promotion to the post of Inspector of Local Fund Audit and Internal Audit Department for the year 2017-2018 in order to fill up all the vacancies that arose and are estimated to arise from 01.09.2017 to 31.08.2018 and including the names of the petitioners in the said panel and promote them as Inspector of Local Fund Audit, as they are otherwise qualified and eligible for all consequential benefits.

2. The petitioners claims that they were initially appointed in the post of Assistant Inspector in the Local Fund Audit in the year, 2010. Further, they were promoted in the post of Deputy Inspector in the Local Fund Audit on 26.05.2014 by virtue of the order passed by the second respondent. The petitioners further claims that they have passed the pre-requisite Departmental tests as well as Subordinate Account Service test, therefore the petitioners are fully qualified for further promotion to the post of Inspector of Local Fund Audit. In spite of acquisition of the required qualification, the case of the Writ petitioners had not been considered by the respondents. With these grievances, the present writ petition is filed.

3. The learned counsel appearing on behalf of the petitioners submitted that though the writ petitioners and many seniors are qualified, their names are not included in the panel of the year 2016-2017, as they had not cleared all the tests as on the crucial date i.e., 01.09.2016 and the same is mentioned in paragraph no.7 of the affidavit. Many seniors including the petitioners are fully qualified and eligible for empanelment and promotion to the post of Inspector of Local Audit Fund for the year 2017-2018. Thus, the names of the petitioners were not included in the panel of year 2016-2017, in respect of 19 vacancies arose during the year 2016-2017. However, the petitioners are now fully qualified for promotion of Local Fund Audit for inclusion in the panel of the year 2017-2018, thus, their names could have been considered.

4. The learned counsel appearing for the impleaded respondents 2 and 6 contended that when the petitioners themselves admitted the fact that they were not qualified for promotion to the post of Inspector of Local Fund Audit in the panel of the year 2016-2017, the question of considering the case of the writ petitioners in this writ petition does not arise at all. This apart, in respect of next year panel, it is for the competent authority to initiate action and the relief now sought for by the petitioners cannot be granted. Promotion can never be claimed as a matter of right. However, consideration for promotion is a fundamental right, preparation of panel is an administrative affair and the competent authorities have to initiate action for preparation of panel in accordance with the rules in force. No employee can file a Writ petition seeking direction to prepare a panel. The panel is to be prepared, whenever the decision is taken for filling up the posts. Thus, the employees have no right to seek a direction for preparation of panel or to grant promotion. These are all the policy decisions to be taken at the administrative level and the employees can move the writ petition, if any service conditions are violated. In the present case, the relief sought for a direction to direct the respondents to issue a panel for promotion to the post of Inspector in the Local Fund Audit and Internal Audit Department for the year 2017-2018.

5. First of all, the decision to fill up the post is to be taken by the competent authorities of the department and in the event of any such decision, thereafter the proposals for preparation of panel shall be commenced. In the absence of any such administrative decision, there cannot be any direction for preparation of panel. Moreover, the writ petitioners being public servants cannot seek any such direction for preparation of panel or for promotion. In the event of preparation of panel, the names of all the eligible persons, who are awaiting for promotion, are to be considered in the order of seniority and based on the rules in force. This being a legal principle to be followed. The writ petition filed seeking prayer to direct the respondents to prepare the panel, is not only premature and the writ petitioners are not established any legal right for considering the prayer as sought for.

6. With these observations this Writ Petition stands dismissed. Hence, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

klt/ah

To

The Director of Local Fund Audit,
The Directorate of Local Fund Audit Department,
Anna Salai,
Nandanam,
Chennai - 600 035.

+lcc to Mr.L.Chandrakumar, Advocate sr.no.31856

+lcc to Mr.M.Ravi, Advocate sr.no.32012

+lcc to Government Pleader sr.32259

W.P.No.4756 of 2018

nr 07/06/2018



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