

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1407 of 2016

N.Sudaliandi

.. Petitioner

vs.

1.Tamilnadu Govt Rep. by
The Secretary,
Labour and Employment Department,
Secretariat, Chennai - 600 009.

2. The Director of Employment and Training
Guindy, Chennai - 600 032.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the concerned records relating to the Impugned order No.R.C.No.51512/Estt/2013, dated 29.06.2015 passed by the 2nd respondent and quash the same and direct the respondents to grant promotion to the petitioner with retrospective effect considering his case for promotion for the year 2011-2012 vacancies.

For Petitioner : Mr.S.Ramaswamy Rajarajan

For Respondents: M/s.A. Sri Jayanthi,
Special Government Pleader.

O R D E R

The relief sought for in this writ petition is to quash the order of rejection passed by the second respondent in proceedings dated 29.06.2015 in respect of the claim of the writ petitioner for retrospective promotion in the post of Administrative Officer.

2. The learned counsel appearing on behalf of the writ petitioner Mr.S.Ramaswamy Rajarajan contended that the writ petitioner is fully qualified and eligible for the promotion to the post of Administrative Officer. The panel of Officers fit for the promotion to the post of Administrative Officer had

also been prepared by the respondents. In fact, 11 vacancies were notified and the name of the writ petitioner was considered for promotion to the post of Administrative Officer. However, the respondents have filled up only 8 posts of Administrative Officer and failed to fill up the remaining 3 posts of Administrative Officer, as per the vacancy position. Meanwhile, the petitioner attained the age of superannuation on 30.06.2013 and allowed to retire from service. The grievances of the writ petitioner is that, the respondents have failed to fill up all 11 posts, within the period of expiry of the panel, which resulted denial of promotion to the writ petitioner. If the vacancies notified were filled up in time, the writ petitioner could have been promoted to the post of Administrative Officer. Because of the administrative delay, the claim of the writ petitioner cannot be nullified. In other words, the learned counsel for the petitioner is of an opinion that the authorities are bound to fill up the post as per the vacancy position notified and within the time limit of one year prescribed for the panel. Thus, there was an administrative delay and because of the delay, the writ petitioner cannot be penalized.

3. The Learned Special Government Pleader appearing on behalf of the respondents opposed the contention by stating that no doubt the writ petitioner is fully eligible and qualified for promotion to the post of Administrative Officer and his name was also considered along with all other eligible persons in accordance with the seniority. However, 8 posts alone were filled up, during the relevant point of time and the writ petitioner's name was placed in Sl.No.9 and therefore, he was not promoted to the post of Administrative Officer and meanwhile, he attained the age of Superannuation and retired from the service on 30.06.2013.

4. In respect of the said factual position, the respondents narrated the same in paragraph 8 of the counter affidavit, which reads as under:-

"8. With regards to the averments in the grounds of the affidavit, it is submitted that;

1. The petitioner's contention that his name should have been considered for promotion as Administrative Officer in the panel year 2010-11 is erroneous, since, the Government had approved only 8 vacancies to be filled up for that year. As the petitioner had not attained the requisite seniority for consideration his name was not included in the promotion panel. The estimates are approved based on the actual vacancies occurred in the check period of the panel year. Even though the number of vacancies

were 11, the estimate of vacancies approved by the Government for the year 2010-11 was 8. The petitioner was in 9th position in seniority in the panel prepared for 2010-11. Accordingly, 8 employees senior to the petitioner were promoted as Administrative Officer for the 8 estimated vacancies. As he had not reached the requisite seniority, his name was not recommended to Government for promotion as Administrative Officer for the panel year 2010-11. It is also submitted that, whenever, a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. Similarly, when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions of the candidates for promotion. Therefore, the claims of petitioner are not maintainable in the eyes of law."

5. This Court is of an opinion that promotion can never be claimed as a matter of legal right. However, consideration for promotion is a fundamental right of an employee. It is needless to state that all eligible employees are to be considered for promotion. However, grant of promotion, filling up of vacancies are the administrative pre-rogative of the competent authorities and an employee cannot claim that all the vacant posts must be filled up, as per the vacancy position. It is the administrative decision to be taken by the competent authorities in respect of filling up of the number of posts. The persons whose names were included in the panel cannot claim that all the vacancies must be filled up.

6. The employees have no right to interfere with such administrative decisions taken by the competent authorities. In the event of promoting juniors then alone the right of the seniors will arise. In other words, if a senior is overlooked and the junior is promoted, then the senior will get a right to claim retrospective promotion on par with his junior.

7. In the present case on on hand, admittedly, the name of the writ petitioner had been included in the panel. He was fully qualified for promotion to the post of Administrative Officer. 11 number of vacancies were notified and all eligible persons were included in the panel. However, an administrative decision was taken to fill up 8 posts and meanwhile, the writ

petitioner attained the age of superannuation and retired from service on 30.06.2013. Such an unfortunate event cannot be attributed against the administrative authorities. This apart the writ petitioner has not impleaded any junior, so as to establish that any such junior was promoted before his date of retirement. If a junior was promoted after the date of retirement, then also the writ petitioner cannot claim. However, if a junior is promoted, prior to the date of retirement of the writ petitioner, then the writ petitioner is entitled to claim retrospective promotion on par with his junior in the post of Administrative Officer.

8. This being the principles to be followed this Court is of an opinion that the order impugned passed by the respondent in proceedings dated 29.06.2015 is in accordance with law and there is no infirmity as such. The learned counsel for the writ petitioner states that some of the juniors to the writ petitioner were promoted, if any such junior was promoted, prior to the date of his retirement, the claim of the writ petitioner shall be considered on par with the juniors.

9. With these observations, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS Audit)

//True Copy//

Sub Assistant Registrar

vsi 2/pkn
To

1. The Secretary,
Labour and Employment Department,
Secretariat,
Chennai - 600 009.
2. The Director of Employment and Training
Guindy,
Chennai - 600 032.

+1cc to the Government Pleader Sr.55050

srg 4/9/2018

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