

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.10.2018

CORAM

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

W.P.No.38351 of 2016

W.M.P.Nos.32866 & 32867 of 2016

S.Nallakannu

..Petitioner

vs

1. The Secretary,
Ministry of Commerce & Industry,
Government of India,
Udyog Bhavan, New Delhi - 110 001.

2. Spices Board,
Represented by its Secretary,
Sugandha Bhavan,
N.H.By-Pass, P.B.No.2277,
Palarivattam P.O.,
Cochin- 682025.

3. The Chairman,
Spices Board,
Sugandha Bhavan,
N.H.By-Pass, P.B.No.2277,
Palarivattam P.O.,
Cochin- 682025.

4. Mr.Suresh Kumar,
Secretary,
Spices Board,
Sugandha Bhavan,
N.H.By-Pass, P.B.No.2277,
Palarivattam P.O.,
Cochin- 682025.

5. Mr.S.Siddaramappa,
Director, Spices Board
Sugandha Bhavan,
N.H.By-Pass, P.B.No.2277,
Palarivattam P.O.,
Cochin- 682025.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the office order of the 3rd respondent dated 24.10.2016 and quash the same and consequently direct the 2nd and 3rd respondent to appoint the petitioner as Director (Marketing) of the 2nd respondent.

For Petitioner : Mr.K.Sakthivel
For Respondents : No appearance for R1
Mr.V.S.Venkatesh for R2 to R5

O R D E R

The relief sought for in the present writ petition is to call for the records of the 3rd respondent in proceedings dated 24.10.2016 and quash the same and consequently direct the respondents 2 and 3, to appoint the petitioner as Director (Marketing) of the 2nd respondent.

2. The office order impugned dated 24.10.2016, is in relation to the appointment of respondents 4 and 5, to perform the duties of the Director (Marketing) in-charge and Secretary in-charge, in the place of Mr.S.Kannan. The respondents 4 and 5 were appointed as Secretary and Director of the second respondent / Institution as in-charge.

3. This Court is of an opinion that posting an officer as an in-charge will not confer any right on him to seek permanency and the same cannot be construed as a promotion or an appointment as per the rules in force. Appointing the person, as an in-charge officer is only a temporary arrangement and the incumbent will not get any right for permanent appointment/promotion. Thus, allowing an employee to hold the post as in-charge will not confer any right on him and regular promotions and appointments are to be made only in accordance with the Rules. Thus, the very challenge made in respect of the order appointing the respondents 4 and 5 as in-charge Secretary and Director, need not be considered in the present writ petition and the regular appointments/promotions are to be made only by considering all the eligible persons and by following the Rules in force.

4. The learned counsel appearing on behalf of the petitioner states that the writ petitioner is fully qualified and eligible for promotion to the post of Director. However, the respondents 2 and 3 has initiated steps to fill up the post of Director through direct recruitment. The respondents 2 and 3 are filling up the post of Director only by way of promotion and in order to deprive the writ petitioner to get promotion to the post of Director, they resorted to direct recruitment method. However, it is admitted that there is no Rules in force in respect of

promotions. In the absence of any such rule, it is an administrative decision to be taken by the competent authorities, either to fill up the post of Director by way of promotion or by way of direct recruitment. If the post is to be filled up only by way of promotion under the Rules, the case of the petitioner deserves to be considered. In the absence of any such specific Rules, the administrative decision taken by the authorities are binding on the writ petitioner and therefore, the petitioner has not established that the Rules provides, filling up of the post of Director must be done only through promotion.

5. This being the factum of the case, this Court is unable to interfere with the orders passed, appointing the respondents 4 and 5 as in-charge Secretary and Director. This apart, in-charge position is only a temporary arrangement, it will not confer any right on the employee to seek permanency in the said post. It is submitted that the service rules in this regard are already framed and sent it for approval of the Government of India. Thus, the first respondent has to consider the same and take a decision without causing any undue delay, both in the interest of the employees as well as in the interest of the Institution. Accordingly, the petitioner is at liberty to participate in the direct recruitment process, if he is otherwise qualified and eligible, in accordance with the terms and conditions stipulated.

6. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.
pns/sk

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Ministry of Commerce & Industry,
Government of India,
Udyog Bhavan, New Delhi - 110 001.

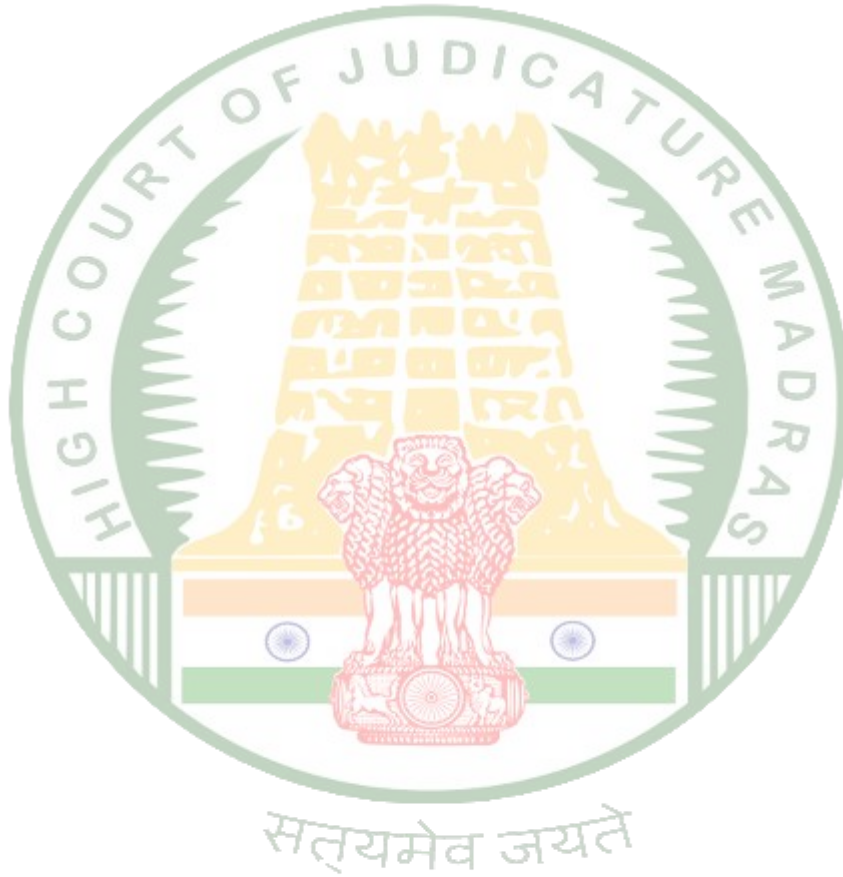
2. The Secretary,
Spices Board,
Sugandha Bhavan,
N.H.By-Pass, P.B.No.2277,
Palarivattam P.O.,
Cochin- 682025.

3. The Chairman,
Spices Board,
Sugandha Bhavan,
N.H.By-Pass, P.B.No.2277,
Palarivattam P.O.,
Cochin- 682025.

+1cc to Mr.K.Sakthivel, Advocate S.R.No.70109

KR/13/11/18

W.P.No.38351 of 2016



WEB COPY