

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05-10-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1691 of 2017

And

W.M.P.No.1659 of 2017

S.Nallakannu

... Petitioner

..Vs..

1.The Secretary,
Ministry of Commerce and 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,
Palarivattom P.O.,
Cochin - 682 025.

.... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the second respondent's Notification No.12 dated 4.11.2016 and quash the same and consequently, direct the respondents to promote the petitioner to the post of Director (Marketing) of the second respondent.

For Petitioner

: Mr.K.Sakthivel

For Respondent-1

: Mrs.Sunitha Kumari,
Central Government Standing
Counsel.

For Respondent-2

: Mr.V.S.Venkatesh

O R D E R

The Recruitment Notification No.12 dated 4.11.2016 issued by the second respondent for appointment to the post of

Director (Marketing) in the second respondent-Spices Board, is under challenge in this writ petition.

2. The writ petitioner is holding the post of Deputy Director (Marketing) and he is fully qualified and eligible for promotion to the post of Director (Marketing).

3. The learned counsel, appearing on behalf of the writ petitioner, made a submission that there is no Recruitment Rules as of now in force in respect of the second respondent-Spices Board. However, they are taking decisions then and there on whims and fancies.

4. It is contended that all along the post of Director (Marketing) had been filled only by way of promotion from amongst the qualified Deputy Directors (Marketing) in the second respondent-Spices Board. Contrary to the practice, which was prevailing over for long years, the impugned Recruitment Notification has been issued by the second respondent-Spices Board for appointment to the post of Director (Marketing) only to deprive the writ petitioner from getting his opportunity of promotion to the post of Director (Marketing). Thus, the case of the writ petitioner is to be considered for promotion to the post of Director (Marketing).

5. The learned counsel for the respondents opposed the said contention of the learned counsel for the writ petitioner by stating that the Recruitment Notification for appointment to the post of Director (Marketing) had been issued based on the policy decision taken by the second respondent-Spices Board at the administrative level and the same cannot be questioned by the writ petitioner. If at all the writ petitioner is fully qualified, he is at liberty to participate in the process of selection pursuant to the Recruitment Notification issued by the second respondent-Spices Board.

6. Considering the arguments of the respective learned counsels appearing on behalf of the writ petitioner as well as the respondents, 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. A person, who is eligible, is entitled to be considered only in the event of preparation of Panel/Approved Panel by the employers. In other words, while preparing the Panel, all persons, who all are eligible and fit for promotion to the Higher Post and even the names of all the eligible persons are to be considered before granting promotion.

7. However, promotion, per se, can never be claimed as a matter of right in view of the fact that the person, who is in service, acquires right in respect of the post he is holding and not in respect of the Higher Post. In the absence of any service conditions in this regard, more specifically for grant of promotion, it is left open to the employer to take a policy decision. If the employer is of an opinion that there is no meritorious candidates available for the post of Higher Post of Director (Marketing), then they are at liberty to resort to the direct method of recruitment. In such an event also, the in-service candidates get the benefit of participating in the process. In the event of participation in the selection process, if they are selected, then they can be appointed.

8. Thus, there is no total prohibition in respect of aspiring for the post of Director (Marketing). In any angle, this Court is of an opinion that the writ petitioner is at liberty to participate in the process of Direct Recruitment for appointment to the post of Director (Marketing). Contrarily, the writ petitioner cannot file a writ petition by stating that the post of Director (Marketing) should be filled up only by way of promotion by considering his name. Such a claim is not supported with any legal precedents.

9. Under these circumstances, this Court is of an opinion that the writ petitioner has not established any acceptable legal grounds, so as to consider the relief, as such, sought for in this writ petition. The respondents are at liberty to proceed with the Recruitment Notification, if it is alive. If it is lapsed, then fresh Notification can be issued for appointment to the post of Director (Marketing).

10. The learned counsel for the second respondent-Spices Board brought to the notice of this Court that there is a ban for appointment by the Government of India. In the event of lifting the ban, the said exercise can be done by the respondents without any further delay.

11. It is brought to the notice of this Court that the Rules relating to the recruitment, promotion and other service conditions are yet to be framed by the second respondent-Spices Board. The learned counsel for the second respondent-Spices Board brought to the notice of this Court that the Draft Rule has already been framed and sent to the Government of India for approval.

12. This being the fact, the first respondent has to consider publication of Rules at the earliest possible and without causing any undue delay in the interest of employees at large and in the interest of the institution, more specifically, to regulate the service conditions and for grant of promotion, appointment etc.

13. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Secretary,
Ministry of Commerce and 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,
Palarivattom P.O.,
Cochin - 682 025.

+1cc to Mr.V.S.Venkatesh, Advocate sr.no.69057
+1cc to Mrs.Sunitha Kumari, Advocate sr.no.69015

nr 24/10/2018

WP No.1691 of 2017

WEB COPY