

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.2829 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents herein in filling up the post of Section Officer as arbitrary and illegal, and consequently to direct the respondents to promote the petitioner as Section Officer as per seniority when the petitioner became eligible to be promoted to the post with retrospective effect and with all consequential benefits.

2. Heard Sri K.V. Subrahmanya Narsu, learned Counsel for the petitioner and Sri D. Ravi Shankar Rao, learned Counsel for the respondents.

3. The case of the petitioner is as follows:

He joined as clerk/Junior Assistant on 6.11.1975 in the respondent-organization, which is a Central Government of India undertaking. He was promoted as Assistant on 20.11.1978 and thereafter, he was promoted as Senior Assistant on 1.12.1988 and since then, he has been working as Senior Assistant. Next promotion post to the Senior Assistant is Section Head/Section Officer. As per the seniority list of Senior Assistants as on 1.6.1999 his seniority was at serial No.90. Whenever vacancies arose in the post of Section Officer, the Senior Assistants were being promoted on the basis of seniority/suitability. No other qualifications were

prescribed to the said post. However, in the year 1994 for the first time, method of selection of the candidates for filling up the post of Section Officer by interviews was taken up. Consequently, interviews are being conducted for promoting the Senior Assistants as Section Officers by a Departmental Promotion Committee (DPC). Right from the year 1994 i.e., for the last 12 years, the petitioner was being called for the interview and was not being selected and he was being ignored consistently. But his juniors are being promoted as Section Officers. Aggrieved by the same, the petitioner filed this writ petition.

4. The learned Counsel for the petitioner contends that in the absence of any rules for appointment to the post of Section Officer, the introduction of method of selection by interviews is nothing but arbitrary. He further contends that from the year 1994, the case of the petitioner is being ignored and his juniors are being promoted and the said exercise of the respondents is very illegal and arbitrary.

5. The learned Counsel for the respondents contends that the respondents are the officers of Hindustan Shipyard Limited and they never employed the petitioner in their individual capacity and it is the Hindustan Shipyard Limited, which employed the petitioner but the said company was not added as party in this petition and therefore, the writ petition is liable to be dismissed for non-joinder

and misjoinder of necessary parties. He further contends that in the year 1994, certain modifications were made in the promotion procedure in respect of non-technical staff, and that the method of conducting interviews for all eligible candidates by the Departmental Promotion Committee was introduced in consultation with the then staff association. He further contends that interviews to the post of Section Officers cadre from Senior Assistant and equivalent grades were conducted thrice i.e., in the year 1994, 2000 and 2006 after introducing the interviews by DPC and all the eligible candidates including the petitioner attended the interviews, and the DPC did not recommend the name of the petitioner in the interview conducted in the year 1994 and 2000, and even though his name was recommended by DPC in the interview held in the year 2006, as his order of seniority in the selection was 44 and as the vacancies in General category are 38, the petitioner was not selected. He further contends that all the averments made by the petitioner in this writ petition are false, and this writ petition is liable to be dismissed.

6. This Court considered the submissions made by the parties and perused the material available on record. It is not in dispute that when the exercise for promotion to the post of Section officers was taken up in the year 1994, 2000 and 2006 in terms of the promotional policy, the petitioner was called for interview. But he

could not be selected. From the counter-affidavit, it is obvious that the selection to the post of Section Officer is based on the marks obtained by the candidates for qualification/record of service and performance, and after evaluation made by the Committee. The evaluation of suitability/eligibility to the post of Section Officer and the selection process are within the domain of the Departmental Promotion Committee. This Court cannot judge the suitability of the petitioner and give a direction to promote the petitioner. In a case of this nature, if the petitioner's case was not considered by the Departmental Promotion Committee, at best the Court can give a direction to consider the case of the petitioner for such promotion in accordance with the rules, because right to be considered is the fundamental, but there is no fundamental right of promotion. But in the instant case, the case of the petitioner was considered by the Committee and he could not come up within the zone of consideration for such promotion twice due to lack of sufficient performance, and in the year 2006, though his name was recommended by the Committee, he was not selected for want of vacancies. In view of the same and in the absence of any malafides or irregularities on the part of the respondents, this Court cannot come to the rescue of the petitioner. There are no merits in this writ petition.

7. Accordingly, the Writ Petition is dismissed. However, it is needless to say that the case of the petitioner shall be considered for promotion to the post of Section Officer in accordance with the rules as and when vacancy arises and as and when the respondents take up such exercise. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd August, 2018.
Nn.



HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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23/08/2018

Nn.