

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 1207 OF 2011

C.Sakthivel

.. Petitioner

- Vs -

1. The Government of Puducherry
rep. By Chief Secretary
Puducherry.
2. Pondicherry Khadi & Village
Industries Board, rep. By its
Chairman & Secretary
Puducherry.
3. The Chief Executive Officer
Pondicherry Khadi & Village
Industries Board
Plot 1 & 2, Kamaraj Salai
New Saram, Puducherry.
4. Accounts Officer
Pondicherry Khadi & Village
Industries Board, Puducherry.
5. District Industries Centre
rep. By its General Manager
Puducherry 605 103.
6. G.Krishnaraj .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the the 3rd respondent to consider and promote the petitioner as Development Officer on adhoc basis w.e.f. 02.03.1999, the date on which the 6th respondent was posted as Development Officer, pay the consequential and other attendant benefits till the regular process of promotion based on the Recruitment Rules.

Prayer amended as per order dated 07/02/2011)

For Petitioner : Mr. K.M.Ramesh

For Respondents: Mr. A.V.Ramalingam, AGP (Pondy)
for RR-1 & 5
Mr. T.M.Naveen for RR-2 to 4
Mr. T.S.Baskaran for R-6

ORDER

The petitioner was appointed as a Loan Inspector (Grade II) on adhoc basis in the 2nd respondent/Board on 4.12.88. The services of the petitioner were regularised as Loan Inspector (Grade II) on 20.1.92. In the said grade, the petitioner was placed at No.1 in the seniority list. On 3.9.97, the petitioner was promoted to the post of Loan Inspector (Grade I). Though the petitioner was due even earlier for promotion, but the petitioner could not be promoted. The petitioner completed three years of service as Loan Inspector (Grade I) and became eligible to hold the post of Development Officer. On 2.3.99, the 6th respondent was promoted as Development Officer on adhoc basis superceding the petitioner, who was No.1 in the seniority list. Therefore, the petitioner had approached this Court by filing W.P. No.33723/07. A learned Judge of this Court dismissed the writ petition on 25.10.07 on the ground of laches.

2. As against the said order, the petitioner filed writ appeal in W.A. No.385/08 and the writ appeal was allowed by a Division Bench of this Court on 11.09.09 by directing the 2nd respondent/Board to promote the petitioner as Loan Inspector (Grade I) with effect from 1997 by creating a supernumerary post. However, while grant of further promotion to the post of Development Officer, the Division Bench of this Court held that the procedure for such promotion being different, the Bench was not giving any further direction in that regard. That is how the petitioner herein has been promoted as Loan Inspector (Grade I) with effect from 03.09.97 by order dated 20.04.2010.

3. Thereafter, the petitioner submitted a representation on 19.10.2010 and on subsequent dates as well for considering his case for promotion to the post of Development Officer, since the 6th respondent, who is admittedly junior to the petitioner, was promoted. However, the representation was not considered by the 2nd respondent and the same was rejected stating that he was not entitled to be promoted. Aggrieved by the said rejection, the petitioner is before this Court challenging the said rejection of his representation by the 2nd respondent.

4. Mr.K.M.Ramesh, learned counsel appearing for the petitioner submits that the petitioner, admittedly, being No.1 in the seniority list, his candidature ought to have been

considered for promotion to the post of Development Officer. The 6th respondent, who has since gone on voluntary retirement, was admittedly junior to the petitioner and he was granted promotion as Development Officer overlooking the original claim of the petitioner. In any event, since there is a vacancy in the post of Development Officer, in view of the voluntary retirement of the 6th respondent on 18.12.17, learned counsel for the petitioner submits that atleast in that vacancy, the petitioner could be considered for promoted. Learned counsel for the petitioner also submits that though the Division Bench of this Court, in W.A. No.385/08, has not passed specifically granting promotion to the petitioner to the post of Development Officer, yet, it left the issue open only on the ground that the rules governing promotion to the post of Development Officer was different. However, the Division Bench has not foreclosed the right of the petitioner to claim such promotion on the basis of his seniority.

5. to the above submission, Mr.Naveen, learned counsel appearing for the respondent/Board submitted that the petitioner is not entitled to be considered for promotion to the post of Development Officer for the simple reason that the post of Loan Inspector, though was included in the amended recruitment rules in the year 1999, but unfortunately, till date the said amended rules have not been notified. As regards the unamended recruitment rules, as it stood prior to the amendment in the year 1999, the post of Loan Inspector was not feeder category and the only post, which was shown as feeder category was the post of Assistant Development Officer. Therefore, the petitioner has no right to claim for promotion as the post which the petitioner is holding is not a feeder category to the post of Development Officer. As regards the appointment of the 6th respondent is concerned, learned counsel for the respondent/Board submitted that the 6th respondent was also similar to the petitioner and had worked as Loan Inspector and that the said 6th respondent was appointed only on adhoc basis. In any event, learned counsel for the respondent/Board submits that the appointment of the 6th respondent by promotion to the post of Development Officer cannot be cited as a precedent or basis for considering the case of the petitioner, since the petitioner cannot claim any right outside the scope of the recruitment rules, which govern appointment to the post of Development Officer.

6. This Court considered the rival submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

7. No doubt, the recruitment rules, which is in force as on date, does not prescribe the post of Loan Inspector as one of

the feeder category post to the post of Development Officer. Nevertheless, the Board itself has promoted the 6th respondent as Development Officer on the basis of the amended recruitment rules of the year 1999, though not notified yet. Once the Board has taken a decision to promote the 6th respondent, who was admittedly junior to the petitioner, and promoted him to the post of Development Officer, though on adhoc basis, this Court is unable to see how the Board could discriminate in denying such benefit to the petitioner, who is admittedly senior to the 6th respondent.

8. As on today, it appears that there is a vacancy in the post of Development Officer, as the 6th respondent has gone on voluntary retirement with effect from 18.12.17. In such a scenario, this Court is of the considered view that if the said vacancy is available, the Board may consider the appointment of the petitioner by promotion to the post of Development Officer, as was done in the case of the 6th respondent. Such consideration ought not to affect the right of third parties, who is in the regular line for promotion with reference to the recruitment rules in force.

9. Accordingly, this Court directs the petitioner to submit a representation to the respondent/Board and if the said vacancy is available, the Board may consider the appointment of the petitioner by promotion to the post of Development Officer, as was done in the case of the 6th respondent. However, this Court makes it clear that the petitioner may be considered for such promotion only if no other candidate is available in line of regular promotion in terms of the recruitment rules in force. The petitioner shall submit the representation within a period of one week from the date of receipt of a copy of this order and on receipt of the said representation, the 2nd respondent is directed to pass orders within a period of eight weeks from therefrom.

10. The writ petition is disposed of with the aforesaid observations and directions. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Chief Secretary
The Government of Puducherry
Puducherry.
2. Pondicherry Khadi & Village
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rep. By its General Manager
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+1cc to Mr.K.M.Ramesh, Advocate SR.No.19220

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PA(CO)
GMY(03/04/2019)



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