

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.1507 of 2013

N.Ravishankar

..Petitioner

Vs

1.The Member (HR)

Airport Authority of India
Rajiv Gandhi Bhavan
Safdarjung Airport
New Delhi-600 064

2.Executive Director

Airport Authority of India
Rajiv Gandhi Bhavan
Safdarjung Airport
New Delhi 110 003

3.Airport Director

Airports Authority of India
Chennai Airport
Chennai-600 027

..Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the respondents to promote the petitioner as Senior Superintendent retrospectively with effect from 01.01.2003 and to give him all consequential benefits.

For Petitioner : Mr.S.Ramaswamyrajarajan

For Respondents :

R1& R2

No appearance

R3

Mr.R.Parthiban

ORDER

The Petitioner has come forward with the present writ petition seeking a direction to the respondents to promote him as Senior Superintendent retrospectively with effect from 01.01.2003 and to give him all consequential benefits.

2. The case of the Petitioner is that the 3rd respondent has issued a circular dated 28/31.10.2002 and had invited applications to appear for competitive test for selection of Senior Superintendent under competitive test quota. It is to be noted that the Petitioner had joined the erstwhile IAAI as Assistant Grade III on 03.03.1986 and was promoted to the post of Senior Assistant on 22.05.1998. The Departmental Promotion is from Assistant Grade II to Assistant Grade I, which has now redesignated as Senior Superintendent. In terms of the Recruitment and Promotion Rules, the Promotion need to be effected in terms of the Rules as follows:-

" 2.4 Promotion from Assistant Grade II to Assistant Gr.I. "

50% of posts in Assistant Grade-I will be filled by promotion of the departmental candidates on the basis of seniority-cum-fitness and the remaining 50% on the basis of competitive test and interview. Stenographers however, will be considered for promotion as Personal Assistants only."

3. The Petitioner even though an in-service candidate has participated in the competitive test and having been successful in the competitive test, it was mentioned that further intimation will be given in connection with date and time of the interview. At that stage, several others have been promoted based on seniority, but there was no intimation to the petitioner. Aggrieved by the same, a representation was made by the Petitioner requesting to promote him as Senior Superintendent under competitive test quota. However, the 3rd respondent has stated that they have no data to be furnished to the petitioner and the same has been informed to the Petitioner. The Petitioner got reply dated 01.01.2010 from the first respondent's office stating that they called for interview, however, it was withheld and vacancy which was allotted for competitive test quota was allotted to seniority-cum-fitness quota in February 2003 and the petitioner's representation was disposed of. Aggrieved by the said action of the respondents in not considering the case of the Petitioner who was meritoriously qualified and not promoting him in the 50% competitive test quota which is meant for merit, the Petitioner had to approach this court.

4. The Petitioner further submitted that the promotional post is based on All India Seniority and as such relied on the similarly placed employee who approached the Kerala High Court, got relief and as such, he should also be given the benefit of promotion with retrospective effect.

5. The Petitioner further brought the attention of this court to the averments made in paragraph 13 of the counter

affidavit, wherein, it is stated by the 3rd respondent as follows:-

" 13. With reference to the averments in paragraph 11, it is submitted that on the advice of Head Quarters over phone, the then Airport Director gave verbal instructions to hold the interview in abeyance due to intervention of the recognized Union. After withholding the interview, Head Quarters was asked to clarify whether the vacancies should be filled on competitive test quota or purely on Seniority-cum-fitness quota. In turn Head Quarters clarified vide letters dated 20.12.2002 and 17.01.2003 intimated that all the vacancies shall be filled on the basis of seniority-cum-fitness quota. Accordingly, all posts including these vacancies were filled on seniority-cum fitness basis. The recognised Union legitimately takes up issues relating to larger interest of the employees with the management and the existing policies are fine tuned. "

From the aforesaid averments, it is clear that at the intervention of the Union, entire merit quota has been filled up based on seniority basis and as such, the Petitioner is entitled to the relief as prayed for in this Writ Petition.

6. In reply to the arguments raised by the learned counsel for the Petitioner, the learned counsel for the 3rd respondent would submit that it is no doubt true, Recruitment and Promotion rule existed and that at the intervention of the Union, the vacancy for the post of Senior Superintendent viz., the promotional post was given based on seniority and not based on 50% merit quota, as per the Rule extracted supra.

7. Be that as it may. The Petitioner had the benefit of promotion from the post of Senior Assistant to Senior Superintendent as early as on 22.05.2006 and after getting the promotion, he slept over the matter for nearly 7 years and approached this court only after coming to know about the orders of Kerala High Court thereafter on appeal before the Supreme Court, the Writ Petitioner therein getting the benefit of promotion with retrospective effect. The facts of the case therein shows that the Petitioner therein approached the Kerala High Court as early as on 2003 itself. However, the petitioner herein approached this court only in 2013 ie., after 10 years and more particularly after 7 years of getting promotion as Senior Superintendent. Hence the Writ Petition got to be dismissed on the ground of laches.

8. Heard both sides.

9. It is not in dispute that the petitioner is a successful candidate in the written examination in the 50% quota meant for

promotion to the post of Senior Assistant Grade-I which has been redesignated as Senior Superintendent. The Petitioner was also called for interview in the year 2003. At the intervention of the Union, the 3rd respondent has given a go by to the merit list and decided to fill up the vacancy on seniority. The act of the Management in promoting and filling up of vacancy based on seniority after conducting of examination for the earmarked extent of 50% quota to the meritorious candidate is bad as promotion cannot be made in contravention to the rules meant for promotion. The Apex Court in catena of cases has held that the seniority drawn, which stood in the length of time shall not be disturbed. In the present case, the petitioner's request for promotion on the basis of his merit in the promotion test, having not considered in 2003, however, thereafter having accepted the promotion in the year 2006, woke up from the slumber after 10 years from the date of call letter for interview and 7 years after acceptance of promotion to the post of Senior Superintendent, at the distance of time cannot set at naught the whole promotion based on seniority, which went on undisturbed for nearly for 15 years. Hence on the ground of laches and further on account of the Petitioner keeping quite for 10 years over the rejection of his request for promotion in the year 2003 but after the orders of Kerala High Court and same issue taken before the Apex Court, wherein, the Apex Court directed that Appointment order shall be issued to the Writ Petitioner, by Judgment dated 08.04.2005 in W.A.No.1752 of 2003, the Petitioner has come forward with this Writ Petition, as such, this court is not inclined to accept the case of the petitioner. It is no doubt true that the Apex Court granted the relief to the Writ Petitioner who approached for selection and appointment to the post of Senior Superintendent (office) before the Kerala High Court. However, in this case, the petitioner has knocked the doors of this court after his request was not considered and that too very belatedly. Hence on the ground of laches, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

10. Before parting with the matter, this court would like to make an observation that henceforth, promotion has to be given in terms of the Rules and the Management cannot dance to the tunes of Union, which is contrary to the Rules.
nvsri

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Member (HR)
Airport Authority of India
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Safdarjung Airport
New Delhi-600 064

2. The Executive Director
Airport Authority of India
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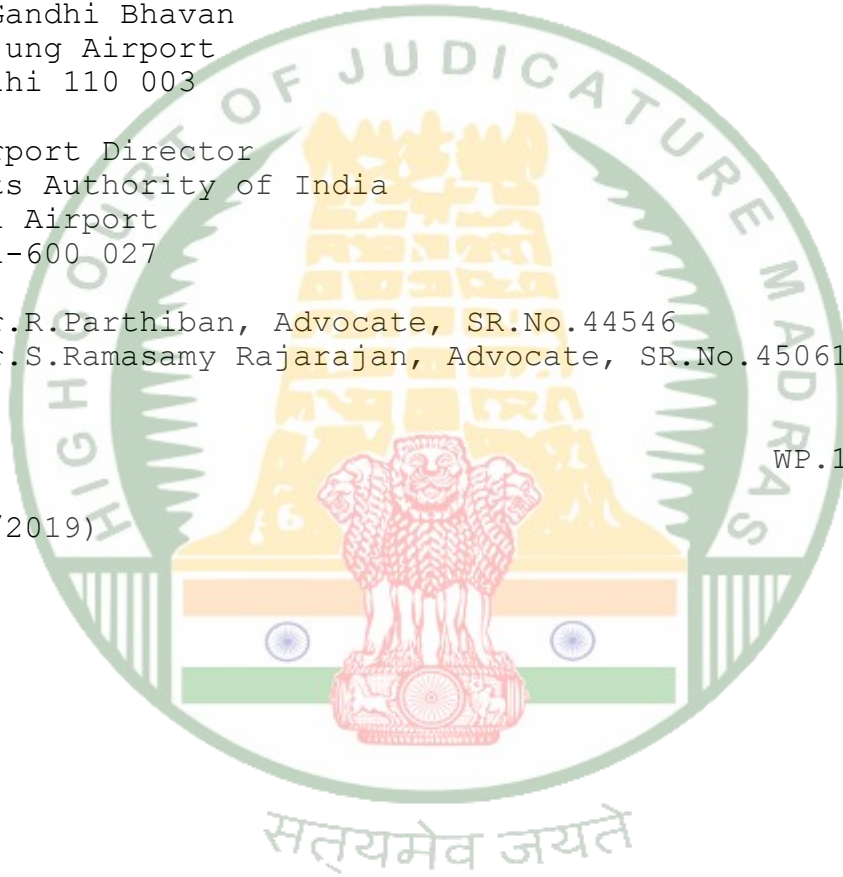
3. The Airport Director
Airports Authority of India
Chennai Airport
Chennai-600 027

+1cc to Mr.R.Parthiban, Advocate, SR.No.44546

+1cc to Mr.S.Ramasamy Rajarajan, Advocate, SR.No.45061

WP.1507 of 2013

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