

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2019
Delivered on: 08.04.2019

C O R A M

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.29221 of 2006

G.Velayudhan Pillai

... Petitioner

Vs

1. The Export Inspection Council,
Represented by its
Chairman (Ex-Officio), Ministry
of Commerce Department,
Building, New Delhi-1.
2. The Director, Export
Inspection Council of India, III Floor,
NDYMCA, Cultural Central Building,
First Jai Singh Road,
New Delhi-110 001.
3. The Deputy Director,
Export Inspection Agency,
6th Floor, CMDA Tower-II,
1, Gandhi Irwin Road, Egmore,
Chennai-8.
4. Shri V.D.Tiwari
Junior Scientific Assistant,
Export Inspection Agency,
6th Floor, CMDA Tower-II,
1, Gandhi Irwin Road, Egmore,
Chennai-8.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd Respondent and quash the order in reference EIA:CH:ESTT:2:2005-2006 dated 16.11.2004 and insofar as it relates to the promotion of the 4th Respondent and consequently, direct the Respondent 1 to 3 to promote the Petitioner to the Post of Junior Scientific Assistant with effect from 03.04.2005 with all attendant benefits.

For Petitioner : Mr.K.Chandrasekaran

For Respondents : No appearance

O R D E R

This Writ Petition has been filed seeking for a Writ of Certiorari cum Mandamus to quash the order dated 16.11.2005 of the Third Respondent insofar as it relates to the promotion of the 4th Respondent and consequently direct the Respondents 1 to 3 to promote the Petitioner to the Post of Junior Scientific Assistant with effect from 03.04.2005 with all attendant benefits.

2.The petitioner was appointed as Lab Assistant Grade II in the Export Inspection Agency, which functions under the supervision of the Export Inspection Council, the first respondent herein. He was promoted to the post of Lab Assistant Grade I in the year 1977 and was thereafter promoted as Lab Assistant (Special Grade) in the year 1983. The next avenue of promotion for the petitioner is to the post of Junior Scientific Assistant. The educational qualification for the post of Junior Scientific Assistant is a Degree in Science/Diploma in Engineering/Technology or equivalent in the capacity of Lab Assistant Grade II, Lab Assistant Grade I and Lab Assistant Grade I. According to the Petitioner, the requirement of the Degree in Science/Diploma in Engineering/Technology was relaxed by the Export Inspection Council/the first Respondent herein, by order dated 21.06.1980, in respect of those who have total experience of 10 years in the laboratory (Special Grade). It is further stated that the post of Junior Scientific Assistant is required to be filled up in the ratio of 25% through promotion and 75% through direct recruitment. According to the Petitioner, he is fully qualified to be promoted to the post of Junior Scientific Assistant in the 25% quota by way of promotion. In this connection, it is stated that the Petitioner sent representations dated 12.07.2001 and 07.11.2002 and that by reply dated 03.02.2003 and 19.12.2003, the Petitioner was informed that the request for promotion would be considered as per the recruitment rules as and when vacancy for the post of Junior Scientific Assistant under promotion quota arises.

3.Thereafter, by order dated 16.11.2005, which is impugned herein, it was communicated that the 4 Respondent herein viz., Sri V.D.Tiwari, was appointed as Junior Scientific Assistant with effect from 05.11.2005. The Petitioner states that the 4th Respondent is junior to the Petitioner as evidenced by the fact that the basic pay of the 4th Respondent is lower than that of the Petitioner. The Petitioner further states that in response to his representation dated 29.06.2006, the 1st Respondent conveyed that, as per its records, two Lab Assistants

Grade I (Special) are senior to the Petitioner and that, therefore, his request for promotion to the post of Junior Scientific Assistant cannot be considered at this point of time. It appears that one more representation dated 12.07.2006 was sent by the Petitioner on receipt of reply dated 29.06.2006.

4. In response to the affidavit filed by the Petitioner, the Respondents 1 to 3 have filed a common counter affidavit wherein it is stated that there are only three sanctioned posts of Junior Scientific Assistant and, as per the recruitment rules, two posts are required to be filled up through direct recruitment and one post through promotion. It is further stated that the seniority list of Group-C and Group-D employees was circulated on 15.01.2002 and as per this list, the 4th Respondent is the senior most in the feeder category of Lab Assistant Grade I (Special) whereas the Petitioner herein is in the fourth position. According to the Respondents, this seniority list was circulated on 19.02.2002 and the Petitioner did not challenge or question the said seniority list. It is further stated in the counter affidavit that the basic pay of the 4th Respondent is less than that of the Petitioner because he was on leave without pay for a period of seven years but his position in the seniority list circulated on 19.02.2002 is two places above that of the Petitioner herein. It is further stated in the said counter affidavit that the advertisement dated 20.05.2006 is in respect of vacancy for the direct recruitment quota and that the Petitioner is not eligible to apply for direct recruitment. Therefore, the Respondents submitted that the writ petition is liable to be dismissed.

5. At the hearing on 14.03.2019, the Petitioner was represented through counsel but there was no appearance for any of the Respondents. The learned counsel for the Petitioner submitted that the Petitioner was admittedly eligible to be considered for promotion to the post of Junior Scientific Assistant based on his laboratory experience and the relaxation of educational qualifications for such persons. He further submitted that the region-wise seniority rule [Rule 5(1)] would not apply because the said rule only applies to posts carrying scale of pay not exceeding Rs.800/- whereas, the scale of pay of the Petitioner exceeded the said sum. He further submitted that the Petitioner is clearly senior to the 4th Respondent because his basic pay is higher and that it is admitted by Respondents 1 to 3 that he took a break from service for a period of seven years.

6. The affidavit, counter affidavit of the Respondents 1 to 3, documents filed by both the parties and the oral submissions of the Petitioner were considered.

7.It is clear from the recruitment rules of the First Respondent, viz., the Export Inspection Agency [Recruitment] Rules, 1980 that the post of Junior Scientific Assistant is required to be filled up by resorting to both direct recruitment and promotion in the ratio of 75% and 25% respectively. It is also clear that the relaxation with regard to educational qualification has been extended to persons with not less than 10 years experience in the capacity of Lab Assistant Grade II, Lab Assistant Grade I and Lab Assistant (Special Grade). Therefore, the petitioner was eligible to apply for the post of Junior Scientific Assistant in the promotion quota. However, it is clear from the seniority list of Group C and Group D employees of the first Respondent, which was circulated on 14.03.2002, that the 4th Respondent is ranked No.1 in the seniority list of the feeder category viz., Lab Assistant Grade I (Special) and the petitioner herein is ranked fourth. The petitioner did not assail this seniority list and the contention that the fourth respondent is junior to the petitioner because his basic pay is lower is untenable. In this regard, Respondents 1 to 3 have explained as to why the basic pay of the 4th Respondent is lower in paragraph - 12 of the counter. The contention with regard to the region-wise seniority rule being inapplicable is not material because the 4th Respondent is, in any case, in the first position in the seniority list. Accordingly, there is no infirmity in the order dated 16.11.2005 whereby it was communicated that the 4th Respondent was appointed as Junior Scientific Assistant by promotion. Further, it has been stated in the counter affidavit that there is only one post of Junior Scientific Assistant for the promotion quota and that there is no vacancy in the said quota after the promotion of the 4th Respondent. Therefore, there is no infirmity in the impugned order dated 16.11.2005. In this regard, it is relevant to state that there is no accrued or vested right to promotion and that promotion is to be decided entirely on the basis of relevant rules. Therefore, this writ petition is not sustainable.

8.Accordingly, this writ petition is dismissed; however, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kal

To

1. The Export Inspection Council,
Represented by its
Chairman (Ex-Officio), Ministry
of Commerce Department,
Building, New Delhi-1.
2. The Director, Export
Inspection Council of India, III Floor,
NDYMCA, Cultural Central Building,
First Jai Singh Road,
New Delhi-110 001.
3. The Deputy Director,
Export Inspection Agency,
6th Floor, CMDA Tower-II,
1, Gandhi Irwin Road, Egmore,
Chennai-8.
4. Shri V.D.Tiwari
Junior Scientific Assistant,
Export Inspection Agency,
6th Floor, CMDA Tower-II,
1, Gandhi Irwin Road, Egmore,
Chennai-8.

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.33892

Writ Petition No.29221 of 2006

NRL (CO)
CS (20/05/2019)

सत्यमेव जयते

WEB COPY