



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P (MD) No.2784 of 2010

and

M.P (MD) Nos.1 and 2 of 2010

V.Saravanaraja

: Petitioner

Vs.

1.The Chief Executive Officer,
Khadi and Village Industries Board,
Kuralagam, Chennai.

2.The Regional Deputy Director,
Khadi and Village Industries,
Madurai.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, Writ of certiorarified mandamus, to call for the records and quash the impugned order passed by the first respondent in his proceedings Proc.R.C.No.23296/EICA/2005, dated 09.12.2009 and consequently, directing the first respondent to promote the petitioner as Assistant Director in Khadi Village and Industries Board.

For Petitioner : Mr.S.Sreenivasan

For Respondents : Mr.G.Karnan

ORDER

This writ petition has been filed by the petitioner for issuing a writ of certiorarified mandamus, to quash the proceedings of the first respondent dated 09.12.2009 and consequently to direct the first respondent to promote the petitioner as Assistant Director in Khadi Village and Industries Board.

2.The petitioner was originally appointed as a Supervisor of oil and hand pounding in the first respondent Board by proceeding dated 03.02.1993. The petitioner was posted in the office of Assistant Director in Khadi Village and Industries, Tuticorin in the existing vacancy. The petitioner himself admitted that the appointment was purely temporary. However, the first respondent

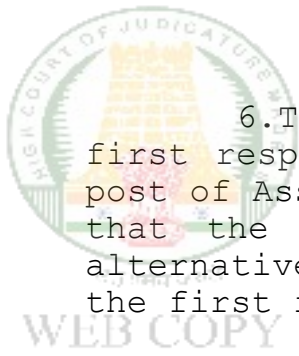


regularized the petitioner's service in the post of Supervisor of oil and hand pounding with effect from 08.02.1993. It is stated by the petitioner that as per the service rules applicable to Tamil Nadu Khadi and Village Industries Board, any person, who is appointed as a supervisor (oil and hand pounding) is eligible to be promoted as Assistant Development Officer after a period of not less than 3 years. Though it is admitted by the petitioner that his promotion would be subject to the availability of vacancy in the post of Assistant Development Officer (oil), the petitioner states that he is eligible to be promoted as Assistant Development Officer (oil) even in the year 1997.

3.Be that as it may. The petitioner admitted that the post of supervisor (oil and hand pounding) was abolished. It is further admitted that the post of Assistant Development Officer was abolished even earlier. It appears that the petitioner was transferred and posted as District Cottage Industries Inspector Grade-I. Thereafter, the petitioner was transferred and posted as Assistant Khadi Officer in the office of the Assistant Director, Pudukottai. Once again the first respondent transferred the petitioner and posted him as Oil Supervisor and to work in the post of Village Industrial Co-operative Officer in the office of Assistant Director.

4.The grievance of the petitioner is that though he was transferred in the alternative post available in other establishments of Khadi and Village Industries Board, he was only receiving the basic pay of supervisor (oil and hand pounding) for the past seventeen years, from 08.02.1993. The petitioner submitted a representation to the respondent in 2006 to promote him for the post of Assistant Director. However, the request was turned down by the first respondent. It is stated that the first respondent has promoted other persons, who are now in service in the post of Assistant Director. It is stated by the petitioner that the petitioner's junior by name, C.Arumugam, who was also appointed as a Supervisor on 13.03.1993, was promoted as Assistant Director even in the year 2005.

5.It is in the said circumstances, the petitioner filed a writ petition in W.P.(MD)No.7058 of 2007, for issuing a writ of mandamus directing the respondent to promote the petitioner as Assistant Director in Khadi and Village Industries. The writ petition filed by the petitioner was disposed of by directing the first respondent to consider the representation of the petitioner dated 27.07.2007. Thereafter, the petitioner made a further representation to the respondent on 31.07.2009, seeking promotion to the post of Assistant Director in Khadi and Village Industries Board. The said representation was rejected by the first respondent by proceedings dated 09.12.2009, which is impugned in the present writ petition.



6.The learned counsel for the petitioner stated that the first respondent failed to consider the issue that the promotional post of Assistant Development Officer was abolished by the board and that the petitioner ought to have been allotted in any other alternative posts, as the petitioner's service was regularized by the first respondent from 1993.

7.The learned counsel for the petitioner further submitted that as per the service regulation of Tamil Nadu Khadi Industries Board, every one, who has served for not less than 5 years has to be promoted as Assistant Director of Khadi and Village Industries. The learned counsel also urged that the first respondent passed an order without considering any of the issues and the order is non-speaking.

8.The respondent/Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board has filed a counter denying the allegations as well as the issues raised by the petitioner. In paragraph Nos.6 and 7 of the counter affidavit of respondent, it is stated as follows:

"6.The averment in para 7 of the said affidavit under reply is that one Thiru C.Arumugam was promoted as Assistant Director is junior to the petitioner and by quoting his promotion it is alleged that the petitioner preferred a representation to promote him as Assistant Director. Thiru.C.Arumugam was appointed as III Grade Assistant in Khadi Wing whereas the petitioner was appointed as Supervisor (Oil and Hand Pounding) in Village Industries Wing. The Khadi employee were getting promotion from feeder category. We have three different categories namely Khadi Wing, Village Industries Wing and Ministerial Wing. The method of promotion in respect of above three wings is entirely different one. Hence the petitioner cannot equate the promotion of the said Thiru.C.Arumugam as he was appointed in Khadi Wing and petitioner was appointed in V.I wing as Supervisor (Oil and Hand Pounding).

7.The averment mentioned in para 8 of the Affidavit under reply is absolutely false. He was not eligible to include in the panel for the post of Assistant Director during 2007 as he was not eligible to promote as Assistant Director as he appointed only Supervisor (Oil and Hand pounding). After the abolition of his original post he was asked to work against the post on humanitarian grounds. It does not mean that he was promoted to the feeder category such as District Inspector of Cottage Industries Gr.I., Assistant Khadi Officer, Village Industrial Co-operative Officer for his promotion as Assistant Director. The petitioner accepted to work against the post even though it is a higher scale than his original scale. He never preferred any representation that he is working in the higher post and he is entitled for the higher scale. It is

<https://hcservices.mca.gov.in/hcservices/> that, the petitioner is working against the post



and hence he is not claiming for higher scale for his working against the post. Hence the petitioner is precluded from claiming any promotion of Assistant Director."

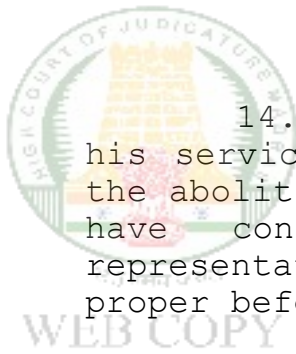
9.Hence, it is the specific contention of the respondent that the promotion policy of Khadi Board depends upon the feeder category in three wings. Since the post of supervisor (oil and hand pounding) was abolished and the promotional post was also abolished, the petitioner was absorbed in other wings of Khadi board, where the nature of duty and responsibilities are entirely different. Though the petitioner was appointed in the feeder category in other wing, the salary paid to him was to the post of supervisor which is the feeder category for Assistant Development Officer.

10.Having regard to the nature of work assigned to the petitioner at the time of recruitment and the abolition of post by closing the activity of village Industries, the respondent have shown some indulgence to absorb the petitioner in yet another wing, even though, it is not mandatory to absorb the petitioner.

11.In other words, the petitioner, who was facing retrenchment was absorbed by the respondent, despite the post of supervisor (oil) was abolished long back. It is also the case of the respondent that the petitioner was absorbed, but, it was without getting the approval from the Government and therefore, the petitioner cannot claim promotion as a matter of right. It was further stated that the petitioner, who was transferred to a different wing, has to be regularized and that he is not entitled to claim promotion, by assuming that he was appointed in the feeder category to the post, for which, the petitioner seeks promotion.

12.In the representation submitted by the petitioner, pursuant to the order passed in the writ petition in W.P.(MD)No.7058 of 2007, the petitioner claimed that he is entitled to be promoted as Assistant Director after regularising his service in any one of the feeder categories as per direction of this Court. By the impugned order, the representation of the petitioner was dealt with and it was held that the petitioner's representation to regularize his service in any of the categories of District Inspector of Cottage Industries Grade I or Assistant Khadi Officer or Village Industrial Co-operative officer and then to promote him as Assistant Director was rejected.

13.This Court, having regard to the facts and circumstances narrated above, is of the view that the petitioner is not entitled to get promotion as Assistant Director in view of the position that he was never appointed in any permanent post. Since the post, in which, the petitioner was originally appointed, was abolished, he was allowed to continue in other wings in different post to avoid oust the petitioner by retrenchment.



14.The petitioner has urged the respondent for regularizing his service in the post, to which, he was transferred pursuant to the abolition of the post of oil supervisor. The respondent ought to have considered such requests. However, the petitioner's representation to promote him to the promotional post may not be proper before regularisation of petitioner's service.

15.In such circumstances, this Court has no hesitation to hold that the writ petitioner is not entitled to the relief prayed for regarding his promotion. However, the petitioner can be considered in the feeder category, pursuant to the abolition of the post of supervisor (oil) in the year 1993. Hence the first respondent is directed to consider the petitioner's representation and to pass suitable orders regarding regularization of the petitioner in any suitable posts within a period of two months from the date of receipt of a copy of this order. If the regularisation proposal requires approval from Government, the Government may grant approval considering the petitioner's case with lenience without much delay. Depends upon the out come, the petitioner's request for promotion shall be considered.

16. Accordingly, this Writ Petition is disposed of . No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

das

To

- 1.The Chief Executive Officer,
Khadi and Village Industries Board,
Kuralagam, Chennai.
- 2.The Regional Deputy Director,
Khadi and Village Industries,
Madurai.

+1 CC to M/s.G.KARNAN, Advocate (SR-85979[F] dated 09/09/2019)

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