



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2019
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P (MD) .No.10547 of 2014
and
M.P. (MD) Nos.1,3 and 4 of 2014

1. Minerals Workers Union,
Manavalakurichi,
Represented by its President,
P.Y.Selvaraj

2.L.Subash Bose

...Petitioners

Vs.

1. The Rare Earths Ltd,
Represented by its Head,
Indian Rare Earths Limited,
Manavalakurichi,
Kalkulam Taluk,
Kanyakumari District.

2. Mr.Murugiah,
Petrologist (A),
Rare Earths Ltd.,
Manavalakurichi,
Kalkulam Taluk,
Kanyakumari District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, to call for the records relating to the impugned letter of the 1st respondent in Ref.MK/HRM/3/2012/17 dated 06.06.2012 from the 1st respondent and the subsequent impugned order passed by him in reference No.MK/HRM.3/2013/6619, dated 04.11.2013 quash the same and direct the 1st respondent to given appointment to the 2nd petitioner as Petrologist (A) in the permanent vacancy now available on account of Dr.N.Babu's resignation by reconsidering the written representation of the 2nd petitioner dated Nil and received by the 1st respondent on 07.10.2013 and the subsequent impugned order made by the 1st respondent in reference No.MK/HRM.3/2013/6619, dated 04.11.2013.

For petitioners : Mr.P.Senthur Pandian

For Respondents : Mr.Sanjay Mohan

for Mr.C.Muthusaravanan (for R1)
Mr.G.Thalaimutharasu (for R2)

**ORDER**

The order of rejection, dated 04.11.2013, rejecting the claim of the writ petitioners to select and appoint the writ petitioners to the post of Petrologist, is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioners state that the second writ petitioner is fully qualified and eligible for appointment to the post of Petrologist in the first respondent Indian Rare Earths Limited. The second writ petitioner is possessing rich experience in the field of Petrology and therefore, he must be selected and appointed to the said post.

3.Appointments can never be claimed as a matter of right, so also the promotions. The promotions *per se* cannot be claimed as a matter of right. All appointments or promotions are to be made strictly in accordance with the recruitment rules as well as the promotion rules in force. Equal opportunity in appointments as well as in promotions are the constitutional mandate. Thus, the competent authority while undertaking the process of appointment or promotion has to consider the names of all the eligible candidates, who all are aspiring to secure public appointment or promotion with reference to the rules in force. It is needless to state that an administrative decision, in this regard, is required for filling up of a particular post, is the administrative prerogative of the employer and the employee, who is qualified cannot claim that a particular post will be filled up on account of the resignation, retirement death of an incumbent of that post. Thus, it is not within the purview of the employee concerned and the employer has to take a decision and thereafter to initiate action for the purpose of issuing a notification or otherwise and thereafter to conduct the process of selection for filling up of the particular post.

4.The learned counsel appearing on behalf of the respondents solicited the attention of this Court with reference to the contentions made in paragraph No.53 of the counter affidavit filed on behalf of the respondents which reads as under:-

"...53.With regard to the averments in Paragraph No.21, I submit that there is no vacancy as on date in the first respondent Company for the post of Petrologist (A) as there are already four Petrologists who have been engaged on permanent basis. I submit that the 1st petitioner has sought for a prayer for issuing a temporary mandatory injunction directing the first respondent Company to appoint the 2nd petitioner in the so called present vacancy arising out of the resignation of Mr.N.Babu. I submit that the prayer itself does not arise as there is no vacancy available



even after the resignation of Mr.N.Babu as already 4 Petrologists are working in the 1st respondent Company and also the validity of the selection panel had already expired. I therefore submit that the prayer of the petitioner to consider him for appointment as Petrologist in the so called vacancy does not arise and therefore, the prayer should be dismissed..."

5.It is stated that the vacancy for the post of Petrologist as of now is not available and if at all any vacancy arises, then an administrative decision is to be taken to fill up the post and thereafter, the respondents are bound to follow the rules in force. This being the the procedure is to be followed by the respondents, the present writ petition filed claiming promotion as a matter of right, cannot be considered by this Court under Article 226 of the Constitution of India.

6.Under these circumstances, this Court is of the view that the second writ petitioner also can participate in the process of selection, if any, notification is issued, in this regard by the respondents.

7.With these observations, the order impugned stands confirmed and the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

+1 CC to Mr.P.SENTHUR PANDIAN, Advocate (SR-75104[F] dated 12/07/2019)

+1 CC to Mr.G.THALAIMUTHARASU, Advocate (SR-75244[F] dated 15/07/2019)

+1 CC to M/s.S.RAMASUBRAMANIAN @ ASSOCIATES, Advocate (SR-75507 [F] dated 16/07/2019)

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