



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.12754 of 2014

and

M.P. (MD) No.1 of 2014

Prabu Jayakumar Moses

... Petitioner

vs.

1.The Secretary to Government

Micro Small and Medium Enterprises Department

State of Tamil Nadu

Secretariat, St.Fort George

Chennai-9

2.The Industries Commissioner and

Director of Industries and Commerce

Chennai-28

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to include the petitioner's name in the panel for promotion of the year of 2013-2014 to the posts of Deputy Director (Engineering) before making any promotion by considering the petitioner's representation dated 09.07.2014 within a stipulated time fixed by this Court.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.D.Muruganandham

Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to the respondents to include the name of the writ petitioner in the panel for promotion of the year 2013-2014 to the post of Deputy Director (Engineering) before making any promotion, by considering the writ petitioner's representation, dated 09.07.2014, within a stipulated time.

2. The writ petitioner states that he was appointed as Assistant Engineer (Electrical) on 19.06.1995 and promoted to the post of Assistant Director in the Industries and Commerce Department as per the Government Order in G.O.(4D) No.28, Micro Small and Medium Enterprises Department, dated 07.10.2009. The writ petitioner states that the next avenue for promotion to him



is to the post of Deputy Director and thereafter, to the post of Joint Director. The writ petitioner claims that he is fully qualified for promotion to the post of Deputy Director.

3. Further, the writ petitioner states that in the Department of Industries and Commerce, there are separate wings i.e. Electrical Wing and General Wing. Each Wing maintains a separate seniority list and as per the seniority list, promotions are provided. As per the seniority list maintained in the Electrical Wing, the writ petitioner was promoted to the post of Assistant Director (Electrical). Accordingly, the writ petitioner has to be promoted to the post of Deputy Director (Electrical) as per the seniority list maintained in the feeder category of Assistant Director (Electrical).

4. The main ground raised by the writ petitioner is that the first respondent issued an amendment in service rules vide G.O.(Ms) No.10, Micro, Small and Medium Enterprises [E1(1)] Department, dated 20.02.2014, to the effect that all the posts of Joint Directors, such as, Joint Director (Electrical and Electronics), Joint Director (General) and Joint Director (Chemical) are merged and called as Joint Director (Engineering). Various Joint Director posts in various Wings are merged together and a common designation was provided as Joint Director (Engineering).

5. On account of the merger of the posts of Joint Director as per G.O.(Ms) No.10, Micro, Small and Medium Enterprises [E1(1)] Department, dated 20.02.2014, the writ petitioner states that the respondents ought to have merged the feeder category post also for the purpose of grant of promotion. It is stated by the writ petitioner that the respondents ought to have merged the post of Assistant Director (Electrical) in Electrical Wing with the post of Assistant Director (Industries) in General Wing, while preparing the panel for promotion to the post of Deputy Director (Engineering) in General Wing.

6. The writ petitioner is making an attempt to provide a suggestion to the Government that consequent to the merger of the post of Joint Director, the feeder categories of Deputy Director and Assistant Director are also to be merged and a common designation is to be provided as Deputy Director (Engineering) in General Wing. Such a suggestion cannot be accepted for the purpose of grant of promotion. Of course, the writ petitioner is mooted out an idea and the same would not be a ground for filing a writ petition.

7. Admittedly, the writ petitioner is working as Assistant Director (Electrical) and the merger of the Joint Director post may not have any implication in respect of the promotional opportunity of the writ petitioner to the post of Deputy Director. Even otherwise, it is a policy decision taken by the Government and the



writ petitioner being an employee of the Department, cannot have any legal right to question the policy decision, unless such a policy decision affects the service conditions of the writ petitioner. The writ petitioner is not even working in the feeder category for promotion to the post of Joint Director, in between, the post of Deputy Director is also there. The writ petitioner states that the post of Deputy Director also must be merged. Such a pleading is beyond the scope of the judicial review and in this regard, the Government alone is competent to take a policy decision.

8. Creation of posts, merger of posts, abolition of departments, framing of rules and prescribing criterias are the administrative prerogative of the employers. The power of judicial review cannot be extended for the purpose of interfering with such policy decisions of re-designation of posts and merging of certain posts. Only in the event of violations of any of the service conditions of the employee concerned, then alone, the High Court can exercise the power of judicial review under Article 226 of the Constitution of India and not otherwise.

9. The writ petitioner, who is working in the post of Assistant Director (Electrical), has to be considered in accordance with the promotion rules in force and whenever the competent authority undertakes the process of preparation of panel for promotion to the post of Deputy Director in accordance with the rules.

10. The learned Additional Government Pleader made a submission that the writ petitioner does not come under the General Engineering Wing and therefore, he was not considered for further promotion along with all other eligible candidates. The factual position, in this regard, is explained in paragraph Nos.4, 5, 6 and 10 of the counter affidavit filed by the first respondent, which are extracted hereunder:

"4. With reference to the averments made in paragraph 4 of the affidavit, it is submitted that in G.O.(Ms) No.40, Small Industries [EI (1)] Department, dated 31.08.2000 orders were issued merging the posts of Joint Director (Chemicals) and Joint Director (Electrical and Electronics) with that of Joint Director (Engineering) to minimize the administrative difficulties and improve the efficiency in the administrative set up of the department. The above orders were incorporated in the Special Rules by the way of amendment governing the post of Joint Director (Engineering) vide G.O. (Ms) No.10, Micro, Small and Medium Enterprises [EI(1)] Department, dated 20.02.2014 and the orders were given effect with effect from



*not come under the General Engineering Wing,
his name has not been considered."*

11. Promotions *per se* cannot be claimed as a matter of legal right. However, consideration for promotion is a fundamental right of an employee. Thus, at the time of undertaking the process of preparation of panel, the names of all the eligible persons are to be considered and accordingly, promotions are to be granted strictly in accordance with the promotion rules. Certain policy decisions taken regarding the merger of the posts cannot be a ground for filing a writ petition and seek promotion to the higher posts. This being the principles to be followed, the writ petitioner has not established any acceptable legal ground for the purpose of considering the relief as such sought for in the present writ petition.

12. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Secretary to Government,
Micro Small and Medium Enterprises Department,
State of Tamil Nadu, Secretariat,
St.Fort George, Chennai-9.
- 2.The Industries Commissioner and
Director of Industries and Commerce, Chennai-28.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-78731[F] dated 31/07/2019)
+1 CC to M/s.SPL GP (SR-78875[F] dated 31/07/2019)

W.P. (MD) No.12754 of 2014

and

M.P. (MD) No.1 of 2014

30.07.2019

AM/SAR/06.08.2019/5P-5C