



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No. 8420 of 2011

WEB COPY

J. Dhayala Rajagopalan

...

Petitioner

Vs.

The Director of Town Panchayat,
Kuralagam, Chennai - 600 108.

...

Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to consider the request of the petitioner, dated 16.03.2011 in the light of the order passed by this Court in W.P. Nos.14093 of 2007 and W.P. No.27449 of 2005, dated 11.06.2008 and 23.02.2006 respectively, within the stipulated time.

For Petitioner

: Mr.C.Jegannathan

For Respondent

: Mr.D. Muruganantham,

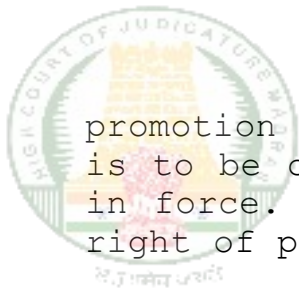
Additional Government Pleader

O R D E R

The grievance of the writ petitioner is that the non-implementation of the Government order issued in G.O. Ms.No.150, Municipal and Water Supply Department, dated 19.08.1998, resulted denial of promotion in the year 2004.

2.The learned counsel for the writ petitioner states that the vacancies were available during the year 2004 and the writ petitioner was also eligible for promotion. In spite of the fact that the Government issued orders in G.O.Ms. No.150, the authorities competent had not implemented the order and therefore, the writ petitioner was denied promotion. However, the writ petitioner was subsequently promoted during the year 2010 to the post of Junior Assistant.

3.Mere availability of the vacancy is not a ground to seek promotion. An administrative decision is to be taken for promoting an employees in accordance with the rules in force. Undoubtedly, the Government issued an order for grant of promotions to the post of Junior Assistant in respect of the employees who are working in Grade-IV services. However, a decision to fill up the post is also to be taken by the competent authority in a particular panchayat. The right of an employee for



promotion is that in the event of preparation of panel, the name is to be considered in accordance with the seniority as per rules in force. Mere implementation of a policy would not provide the right of promotion.

4. Promotion can never be claimed as a right. *Per se* all promotions are to be made strictly in accordance with the rules. Consideration for promotion is a fundamental right of an employee. However, the eligibility of an employee as well as the administrative decision to fill the post of Junior Assistant during the relevant point of time are to be verified with reference to the files available and accordingly, the case of the writ petitioner shall be considered, if the decision was taken and some of the employees or colleagues of the writ petitioner were promoted to the post of Junior Assistant. Therefore, mere issuance of a policy would not confer any right on the petitioner to seek retrospective promotion. However, in the event of any violation of seniority list or rules, the case of such employees can be considered by the authorities with reference to the rules.

5. The learned counsel for the writ petitioner states that during the year 2006 and 2008 itself, this Court passed an order granting the relief of retrospective promotion.

6. This Court is of the considered view that the said order passed long back cannot be now valid on account of the changing circumstances and in view of the legal principles now settled by the Apex Court in matters of granting promotion.

7. With the above observation, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Director of Town Panchayat,
Kuralagam, Chennai - 600 108.

+1 CC to SPL GP SR-67383.

+1 CC to M/s.VEERA ASSOCIATES, Advocate SR-67653.

W.P[MD)]No. 8420 of 2011