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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.14856 of 2017

S.Sumathy

... Petitioner

Vs.

1. The Registrar General,
High Court,
Madras - 600 104.

2. The State of Tamilnadu,
rep. by the Principal Secretary to Government,
Home (Courts VI) Department,
Secretariat, Chennai.

3. The Director of Prosecution,
Office of the Directorate of Prosecution,
Tamil Nadu lum Clearance Board,
Secton Floor, No.5, Kamarajar Salai,
Chennai - 600 005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to forthwith grant notional promotion to the petitioner as Joint Director of Prosecution as per the seniority list in G.O.Ms.No.36 Home (Courts VI) Department dated 20.01.2016 with all attendant benefits.

For Petitioner :Mrs.AL.Ganthimathi

For Respondents :Mr.C.T.Mohan - R1

Mr.J.Ramesh
Additional Government Pleader - R2 & R3

O R D E R

This Writ Petition has been filed to direct the respondents to grant notional promotion to the petitioner as Joint Director of Prosecution as per the seniority list in G.O.Ms.No.36 Home (Courts VI) Department dated 20.01.2016 with all attendant benefits.



2. The writ petitioner worked as a Deputy Director of Prosecution Sivagangai region. The third respondent on 11.05.2015 has sent a panel of officers fit for appointment of Director and Joint Director of Prosecution (Administration) for the year 2014-15 and recommended the name of Mr.S.Shanmugam and the writ petitioner for promotion to the said posts. The aforesaid Shanmugam was the senior most officer and his name was then recommended for Director of Prosecution. The seniority list of Deputy Director of Prosecution for the year 2014-2015 was published on 20.01.2016 in which the name of the petitioner was found in Serial No.9 and all the persons above the name of the writ petitioner had retired in the year 2014-2015 itself except the said Shanmugam, who was then holding the post of Deputy Director of Prosecution, Chennai with the full additional charge of the post of Director of Prosecution. According to the writ petitioner, the third respondent by letter dated 01.02.2016 had recommended the senior most officer Mr.Shanmugam as Director of Prosecution. The writ petitioner is the next senior most who was eligible for appointment to the post of Deputy Director of Prosecution. The writ petitioner was eligible for appointment to the post of Joint Director of Prosecution (Administration). The aforesaid list was sent to High Court for concurrence. The second respondent had received concurrence from the High Court on 18.07.2016. According to the writ petitioner, the post of Joint Director of Prosecution was re-designated as Joint Director of Administration for which no concurrence is necessary since the post is not covered under the purview of Section 25A of the Criminal Procedure Code Amendment Act of 2005. Therefore, the said file has been unnecessarily sent for concurrence to the High Court by the respondents thereby causing delay in promotion to the petitioner for the post of Joint Director of Prosecution. Therefore, there is a delay on the part of the respondents for finalising the list and pass promotion Order to the writ petitioner. Hence, the petitioner is entitled for notional promotion for the post of Joint Director of Administration.

3. The learned counsel appearing for the respondents submitted that the writ petitioner's name was recommended by the second respondent and the Government in letter No.31296/Cts-VI/2015-7 Home Department dated 29.02.2016 to the Registrar General, High Court, Madras. Based on the aforesaid recommendation submitted by the Government, the High Court has sent the file to the respondent by accepting the recommendation and concurrence has been given by the High Court as requested by the Government. Thereafter, the writ petitioner has retired from service on 31.07.2016. According to the learned counsel for the first respondent, the respondent has not passed the Order of promotion to the petitioner during her service tenure.



Once, the writ petitioner had retired from service, she could not claim any right for notionally being promoted to the post of Joint Director of Prosecution. He also relied upon by the judgment of the Delhi High Court in W.P.No.(C) 2969 of 2012 dated 24.05.2013 in Ranvir Singh Vs. Government of NCT, Delhi and others and submitted that the Government had recommended not only the name of the writ petitioner but also the names of other officers for the post of Joint Director of Prosecution and seven posts of Deputy Director of Prosecution. But in the meanwhile, the writ petitioner was allowed to retire on 31.07.2016. In the light of the above decision, the writ petitioner cannot claim for notional promotion to the post of Joint Director of prosecution based on the recommendation of the respondents. Therefore, the writ petition is devoid of merits and is liable to be dismissed.

4. Heard the learned counsel for the writ petitioner and the learned Additional Government Pleader for the respondents and perused the materials available on record.

5. The undisputed fact is that the name of the writ petitioner was recommended for the post of Joint Director of Prosecution and the writ petitioner has served as Deputy Director of Prosecution from the year 2012. The joint Director of Prosecution (Administration) is a promotional post among the senior most prosecuting officers holding the post of Deputy Director of Prosecution and hence, a panel in the ratio of 1 : 2 was forwarded to the second respondent by the third respondent for the post of Director and Joint Director of Prosecution for the year 2014-2015 on 11.05.2015 in which the name of one S.Shanmugam and the name of the petitioner was included in the said panel. In the recommendation made by the third respondent, Shanmugam was the senior most Deputy Director of Prosecution and the writ petitioner is also recommended for Joint Director of Prosecution. Both their names were recommended by the third respondent to the second respondent. Both of them were found eligible and found fit for Director of Prosecution and Joint Director of Prosecution. The second respondent has forwarded the same to the Government and based on the aforesaid recommendation the second respondent has sent it to the High Court by a letter No.31296/Cts-VI/2015-7 Home Department dated 29.02.2016 addressed to the Registrar General for obtaining concurrence from the High Court. The said concurrence was sent to the second respondent on 18.07.2016 and subsequently, the writ petitioner was allowed to retire on 31.07.2016. Therefore, during that period of service of the writ petitioner in the Department, no final decision was taken by the Government by passing promotion Order to the writ petitioner for post of Joint Director of Prosecution.



6. The issue involved in the present writ petition is whether the writ petitioner is entitled for the notional promotion to the post of Joint Director of Prosecution as contended by the petitioner. The second respondent has strongly relied upon the judgment of the Division Bench of Delhi High Court in W.P.No.2969 of 2012, dated 24.05.2015 in which the Delhi High Court following various decisions of the Apex Court and held as follows :

5. The Bench had held that the cornucopia of case law above noted brings out the position:-

"(i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.

(ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made."

6. The reasoning of the Bench in the decision dated April 12, 2013 be read as a part of the present decision.

7. The learned counsel for the petitioner would rely upon a judgment of this Court in WP(C) 5549/2007, Dr. Sahadeva Singh v. Union of India & Ors. The said case can be differentiated on facts inasmuch as in that case the petitioner's service was extended, after he attained superannuation. Further, in the case in hand the promotion order was issued after the petitioner had retired. Further, the Tribunal in the impugned order relied upon a judgment of this Court in the case in WP(C) 20812/2005 Union of India v. Rajender Roy wherein



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this Court rejected a similar plea on the ground that none of the juniors to the respondent was promoted before his retirement. In this case also the Tribunal, in the impugned order, rejected the claim of the petitioner on this very ground. In other words, since no junior to the petitioner was promoted before his retirement, he could not have claimed any right for being promoted to the post of Principal. Further, if the claim of the petitioner is allowed then the promotion order with respect to around 128 Vice Principals promoted to the post of Principals vide order dated June 29, 2010, need to be revised which is impermissible.

7. From the facts of the case on hand, the contention of the petitioner is that her name was recommended on 11.05.2015 for promotion to the post of Joint Director of Prosecution in the year 2014 and 2015. During the promotion process pending before the respondents, the writ petitioner had retired from the service. Therefore, according to the writ petitioner, she is entitled for notional promotion for the post of Joint Director of Prosecution. The aforesaid contention of the writ petitioner cannot be accepted. It is not the case of the petitioner that the junior to the petitioner was promoted to the aforesaid post during the service of the petitioner. Both the writ petitioner as well as the senior most person Shanmugam's names were recommended for promotion. In such circumstances, the writ petitioner cannot seek notional promotion for granting monetary relief. In view of the facts and circumstances of this case and in the light of aforesaid judgment of the Division Bench of Delhi High Court, the petitioner is not entitled to the aforesaid relief and this writ petition is liable to be dismissed.

8. Accordingly, this writ petition is dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar



To

1. The Registrar General,
High Court,
Madras - 600 104.

2. The Principal Secretary to Government,
State of Tamilnadu,
Home (Courts VI) Department,
Secretariat, Chennai.

3. The Director of Prosecution,
Office of the Directorate of Prosecution,
Tamil Nadu lum Clearance Board,
Secton Floor, No.5, Kamarajar Salai,
Chennai - 600 005.

+1cc to Mr.C.T.Mohan, Advocate Sr.16302
+3cc to M/s.A.L.Ganthimathi, Advocate Sr.16485
+1cc to the Government Pleader Sr.17203

W.P. No.14856 of 2017

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