



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.10930 OF 2008

K.Venkatesan

... Petitioner

.Vs.

1. The Pondicherry Industrial Promotion
Development and Investment Corporation
Limited (PIPDIC Ltd.)
Pondicherry, Rep by its Managing Director,
No.60, Romain Rolland Street,
Pondicherry 605 001.
2. Senior Departmental Promotion Committee,
Rep by its Chairman,
PIPDIC Limited,
(Chief Secretary to Government of Puducherry)
Secretariat, Beach Road,
Puducherry 605 001.
3. Aroul Abraham
4. S.Natanarajan
5. M.J.S.Ashok

... Respondents

Prayer:

Writ petition filed under Section 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus, calling for the records of the respondent herein in respect of their communication No.PIPDIC/Estt/6/89/338/1801 dated 25.03.2008 directing the first and second respondent to promote the petitioner to the Post of Manager (Technical) in respect of any one of the vacancies of Managers that existed prior to amendment of the rules in the year 2001 in accordance with the pre-existing rules i.e., rules in force prior to 2001 and pass orders.

For petitioner	: Mrs.Radha Gopalan
For respondents	: Mr.D.Ravichander for RR1 & 2 Addl. Government Pleader No appearance for RR3 to 5



ORDER

This petition has been filed to quash the communication of the respondent dated 25.03.2008 and to direct the first and second respondent to promote the petitioner to the Post of Manager (Technical) in respect of any one of the vacancies of Managers that existed prior to amendment of the rules in the year 2001 in accordance with the pre-existing rules i.e., rules in force prior to 2001 and pass orders.

2. The case of the petitioner is that, the petitioner was appointed as Officer (Technical) in the respondent Corporation with effect from 31.10.1989. He acquired Post Graduate Degree in Chemical Engineering and also in Financial Management and he is also a Decree holder in Law. He completed the five years of qualifying service for promotion on 31.10.1994. According to the petitioner, there were vacancies in the post of Manager (Technical), when the petitioner was eligible for promotion to the above post. Though vacancies were arose from 1987 to 1999 to the post of Manager (Technical), the respondents have not chosen to take action for filling up the vacancies. Subsequently, in the year 2000, Recruitment Rules were framed for the post of Deputy Manager (Technical), thereby the Recruitment Rules for the post of Manager (Technical) were revised.

3. After amended Rules, the respondent has started to fill up all the vacancies for the post of Manager (Technical), existed for the past, more than ten years. In the year 2001, the above posts were filled up by promotion of Deputy Manager (Technical). Then only the petitioner came to know that the petitioner was schematically omitted for promotion to the post of Manager (Technical). Hence, narrating all the facts, the petitioner made a representation before the respondents to fill up the post of Manager (Technical) under the old Rules. But it was not considered. Since the right of the petitioner for promotion was deprived by the respondent, the petitioner approached this court by filing a writ petition in W.P.No.11042 of 2004 to consider his representation, as per the Recruitment Rules, prior to the amendment of the Rules in the year 2000 and promote him as Manager (Technical). This court by order dated 03.03.2008 had directed the respondent to consider the petitioner's representation dated 24.10.2002, and pass orders on merits in accordance with law. Pursuant to the above order, the respondent passed order on 25.03.2008 by rejecting the claim of the petitioner. Hence, the present writ petition has been filed.

4. This writ petition is of the year 2008. Though this court has granted sufficient opportunities to the first and second



respondents to file counter, they have not chosen to file counter all these years. However, considering the legal issues involved in the writ petition, this matter is taken up for final disposal, by hearing the learned Additional Government Pleader appearing for the first and second respondents .

5. The primordial contention of the learned Additional Government Pleader is that, the petitioner is not entitled for promotion to the post of Manager (Technical), as per the amended Rules framed in the year 2000. According to him, till the year 2000, the first and second respondents have not filled up the posts of Manager (Technical) by promotion, and only after the amended Rules, the respondents have filled up the above post. His contention is that till the year 2000, the petitioner has not raised any malafide grounds against the respondents and further, it is not the case of the petitioner that the juniors to the petitioner were promoted to the post of Manager (Technical) by overlooking him. Therefore, the petitioner is not entitled to get promotion, in accordance with the rules and hence, the writ petition is liable to be dismissed.

6. Heard the rival submissions made by the counsel for both sides and perused the materials on record.

7. According to the petitioner, he was appointed as Officer (Technical) on 31.10.1989 and had completed five years of qualifying service for promotion on 31.10.1994. The Recruitment Rules was amended in the year 2000. A perusal of the records shows that the petitioner has not approached the authorities concerned from the year 1994 to 2000, praying promotion to the post of Manager (Technical), as per the old Rules. Though the petitioner has stated in the affidavit that there were vacancies in the post of Manager (Technical) from the year 1987 to 1999, he has made representation to the respondents only on 24.10.2002 and filed writ petition in the year 2004 to consider his representation. Pursuant to the order passed by this court, the respondents have also passed orders on the petitioner's representation and rejected the claim of the petitioner. The petitioner has not also attributed malafide against the respondents. Further, there is no allegation against the respondents that the Juniors to the petitioner were promoted to the post of Manager (Technical).

8. At this juncture, it is relevant to rely upon the decision rendered by this court in W.P.No.14092 of 2015 between V.Vijayakumarasamy Vs. The Government of Tamil Nadu rep. by its Principal Secretary to Government, and another dated 01.07.2020. In the above said order, at paragraph No.28, it is held thus:



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" 28. Considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court and High Courts cited supra and also considering the fact that there are no materials to establish that the respondents have wantonly delayed the petitioner's promotion and there is no taint of malice for the delay, this Court is of the firm view that the petitioner has not satisfied the criteria for considering the notional promotion and therefore, the claim of the petitioner seeking notional promotion and other benefits cannot be considered on the ground of delay due to administrative reasons at the hands of the respondent Department, as contended by the learned counsel for the petitioner and the same is liable to be rejected on the following grounds;

(i). No juniors to the petitioner were given promotion during service period of the petitioner, therefore there would not be any monetary loss to the petitioner during his service period.

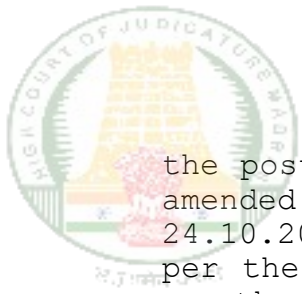
(ii). Promotion is not a fundamental right of a person and it is a condition of service, which has been very much observed by the Hon'ble Supreme Court in the case of S.B. Bhattacharjee Vs. S.D. Majumdar cited supra.

(iii). Even though, the promotions were made by the 1st respondent after the date of superannuation of the petitioner due to administrative reasons, no materials have been placed before this Court to prove the malafide or illegality on the part of the respondents for the delay in finalising the promotion panel.

29. In view of above, there is no merits in the contention of the learned counsel for the petitioner and consequently, the writ petition stands dismissed. No costs.

9. The learned counsel for the petitioner urged before this court that the respondents have not considered the promotion to the post of Manager (Technical) from the year 1994 to 2000 and hence, non considering for promotion during the above period itself is illegal on the part of the respondent.

10. But, on perusal of the records shows that the petitioner did not approach the authorities concerned praying promotion to



the post of Manager (Technical) from 1994 to 2000 and only after amended Rules in the year 2000, he made representation on 24.10.2002 before the respondent and sought for promotion, as per the Old Rules. Considering at any angle, the delay is only on the part of the petitioner in approaching the authority concerned as well as the relief sought before this court. Therefore, this court is of the view that there is no merits in the writ petition.

11. Accordingly, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

mst

To

1. The Pondicherry Industrial Promotion
Development and Investment Corporation
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2. Senior Departmental Promotion Committee,
Rep by its Chairman,
PIPDIC Limited,
(Chief Secretary to Government of Puducherry)
Secretariat, Beach Road,
Puducherry 605 001.

+1cc to Mrs.S.Radha Gopalan, Advocate, S.R.No.59913

W.P.No.10930 of 2008

KSM(CO)
PM/02/12/2021