



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)No.14245 of 2021

V.Ganesan

... Petitioner

Vs.

The Chief Executive officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam,
Chennai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to grant monetary benefits to the petitioner by giving notional promotion to the petitioner as Khadi Assistant Grade - 2 from the year 1997 in the light of the judgment of the Hon'ble Apex Court in W.P. (Civil) No.1018 of 1989 Dr.MS.O.Z.Hussain vs. Union of India, (reported in 1990 (Supp) Supreme Court Cases 688) and by considering the petitioner's representation dated 06.02.2021.

For Petitioner : M/S.Ganapathi Subramanian.P
For Respondents : Mr.S.Shanmugavel
Counsel for State.

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondent to grant monetary benefits to the petitioner by giving notional promotion to the petitioner as Khadi Assistant Grade - 2 from the year 1997 in the light of the judgment of the Hon'ble Apex Court in W.P. (Civil) No.1018 of 1989 Dr.MS.O.Z.Hussain vs. Union of India, (reported in 1990 (Supp) Supreme Court Cases 688) and by considering the petitioner's representation dated 06.02.2021.

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. According to the petitioner, he was appointed as Khadi Assistant Grade-3 on 01.09.1993 at Tamil Nadu Khadi and Village Industries Board, Dindigul and he was served in the Board for a period of 22 years without any promotion till his retirement on 31.05.2015 on attaining the age of superannuation. After his retirement, the petitioner made a representation on 06.02.2021 to the respondent to grant monetary benefits by considering the fact that notional promotion ought to have been given when he worked as



Khadi Assistant Grade-2 in the year 1997. But the said representation was still pending with the respondent till date. Therefore, the present writ petition has been filed by the petitioner before this Court.

5. Admittedly, the petitioner was retired from service on 31.05.2015 on attaining the age of superannuation. During the course of service, his name was not proposed for any further promotion. Therefore, in the light of the decision of this Court rendered in ***WP.No.14092 of 2015*** dated 01.07.2020 (***V.Vijayakumarasy Vs.The Government of Tamilnadu, rep. by the Principal Secretary to Government, Home (Transport II) Department and others***), this Court has elaborately discussed on the similar issues raised by the petitioner in the aforesaid writ petition and concluded that there is no scope for considering the said representation for grant of notional promotion to the writ petitioner. The relevant paragraph of the aforesaid judgment is extracted hereunder:

"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."



6. The aforesaid decision of this Court is squarely applied to the facts of the present case and hold good to the present case on hand also and therefore, the Writ Petition stands dismissed. No costs.

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Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Chief Executive officer,
Tamil Nadu Khadi and Village Industried Board,
Kuralagam,
Chennai.

+1 CC to M/s.GP (SR-27881[F] dated 02/09/2021)

W.P(MD)No.14245 of 2021
01.09.2021

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GC(27.10.2021) 3P 3C