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W.P.No. 877 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 877 of 2019

K.Jayabalan

... Petitioner

Vs.

The Director of Stationery and Printing,
110, Anna Salai, Chennai – 600002.

...Respondent

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to prepare the panel for the post of Junior Foreman (Machine) for the years 2015-16 and 2016 and 2017 and consider the petitioner for inclusion in the said panel with reference to his seniority and grant him all consequential benefits including promotion and other service benefits.

For Petitioner

: Mr.P. Rajendran

For Respondent

: Mr. R. P. Murugan Raja
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the respondent to prepare the panel for the post of Junior Foreman (Machine) for the years 2015-16 and 2016 -17 and consider the petitioner for inclusion



of his name in the said panel.

2. Promotion per se cannot be claimed as an absolute right.

Consideration for promotion is a fundamental right of an employee.

However, filling up of a promotional post is an administrative prerogative of the competent authority. An employee has no right to seek a direction to fill up a particular post, which is lying vacant or otherwise. In other words, availability of vacancy would not be a ground to seek a direction to prepare a panel. Once an administrative decision is taken to prepare the panel, then the authorities competent are bound to consider the names of all the eligible employees who are all aspiring to secure promotion in accordance with the rules and in the order of seniority.

3. Even non-preparation of a panel would not confer a right. The right of an employee would commence only if the competent authority takes steps to prepare a panel by inviting the names of eligible employees, for inclusion in the panel. Therefore, filling up of the post or preparation of panel is an administrative decision to be taken, wherein the employees have no right. However, the right will commence from the stage when the panel is prepared and published without considering the names of the eligible persons. Even publication of panel would not confer any right for



promotion. Mere publication of panel can be subsequently cancelled, if a policy decision is taken by the competent authorities not to fill up the post or abolish the post or otherwise. Thus, the courts have to find the rights of an employee with reference to the service conditions applicable to the employee concerned. Only if the right of an employee is infringed, then alone the writ would be entertainable but not otherwise.

4. The learned counsel for the petitioner made a submission that preparation of panel in every year is to be made by the competent authorities for grant of promotion and he relied on G.O.Ms. No. 368, Personnel and Administrative Reforms (Personnel-S) Department, dated 18.10.1993 as amended from time to time. The Government Order reads as under:

*'Preparation of Estimate of vacancies:
Provision in General Rules: According to Rule 4 (Approved candidates) in Part II of the General Rules for the Tamil Nadu State and Subordinate Services, the list of approved candidate for appointment by promotion and by recruitment by transfer to all categories of posts in the Tamil Nadu State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year.'*

5. When promotion is not an absolute right of an employee, seeking a relief of direction to prepare the panel equally cannot be considered as a



right. The right will accrue only if a panel is prepared by the authorities and not otherwise and in respect of the guidelines issued by the Government in this regard, for preparation of panel every year, such guidelines remain as directory and cannot be construed as mandatory for the purpose of issuing a direction to the authorities to prepare the panel, which is otherwise an administrative decision to be taken by the competent authorities considering various factors. Therefore, rules in this regard in force is to be construed as a directory and cannot be considered as mandatory.

6. In view of the fact that the preparation of panel involves administrative decision to be taken, the rules in this regard is only directory.

7. In the present case, the relief sought for to direct the respondent to prepare the panel cannot be granted. If any employee seek such a direction to prepare the panel, then it would cause an anomalous situation in the department, every eligible employee, who are all qualified for promotion would file a writ petition, and asking for a direction for preparation of panel, which is impermissible. Thus, the right of an employee would accrue only in the event of preparation of a panel and his right would be considered if the name of an employee was not included despite the fact that he is



qualified and eligible for promotion to the higher posts.

8. In the context of the above principles, in the matter of promotion, the relief as such sought for to direct the respondent to prepare the panel cannot be considered. However, the petitioner has not made out any case that his juniors were promoted, depriving his opportunity of promotion.

9. That apart, the counter filed by the respondent reveals that during the particular point of time, there was no vacancy available for grant of promotion. Even in case, the vacancies are available, only if an administrative decision is taken to fill up the post, then alone the panel is to be prepared and this being the factum, the relief as such sought for cannot be granted. However, the petitioner has attained the age of superannuation, at this length of time, the relief lost its relevance. The writ petition stand dismissed.

31.10.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order



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S.M.SUBRAMANIAM, J.

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