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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2022

Pronounced on : 06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.656 of 2021
and
C.M.P. No.3257 of 2021

Dr.G.Geetha

...Appellant

Vs.

1. Government of Tamil Nadu,
Rep. by its Principal Secretary,
Higher Education Department,
Fort St.George, Chennai-600 009.
2. Director of Collegiate Education,
DPI Campus, Nungambakkam,
Chennai-600 006.
3. Dr.C.Poornachandran,
Director of Collegiate Education,
DPI Campus, Nungambakkam,
Chennai-600 006.

... Respondents

Prayer:Writ appeal is filed under Clause 15 of the Letter Patents Act praying to set aside W.P.No.12495 of 2020 dated 29.10.2020.

Prayer in W.P.No.12495 of 2020:Writ of Certiorarified Mandamus, to call for the records relating/connected to G.O.Ms.No.98 read with G.O.(Ms).No.99 and G.O.Ms.No.100 Higher Education (F1) Department dated 14.08.2020 including the third respondent in panel for Director of Collegiate Education, simultaneously promoting him and in so far as giving posting to the Writ Petitioner only as Officer on special duty instead of Director of Collegiate Education as illegal, arbitrary, monetary, contrary to G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993 and to consequently direct the first respondent to give promotion to the petitioner as Director of Collegiate Education w.e.f. 17.08.2020, the date



on which the third respondent which the petitioner would have got had she has been promoted by order dated 14/08/2020 assumed charge, together with monetary and all other attendant benefits together with 15% interest.

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For Appellant : G.Sankaran
For Respondents: Mr.R.Shanmuga Sundaram
1 and 2 Advocate General
assisted by
Mythreya Chandru
Special Govt. Pleader

For Respondent 3: Mr.L.Chandrakumar

JUDGMENT

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

The following question may arise for consideration in this writ appeal viz.,

Whether drawing of panel in the interval/ period prescribed is mandatory and failure to comply with the said requirement, moreso, if it were to result in denying a candidate a valuable opportunity of being considered for promotion, would prove fatal and invalidate the promotion and entire process.

2. This intra-court appeal is filed against the order of the learned Single Judge only insofar as the learned Single Judge has not quashed G.O.Ms.No.98, Higher Education (F1) Department dated 14.08.2020 relating to the panel for the post of Director of Collegiate Education (hereinafter referred to as "D.C.E.").

3. Originally this writ petition was filed challenging G.O.Ms.No.98, 99 and 100. The learned Single Judge after quashing G.O.Ms.No.99 and G.O.Ms.No.100, however, found that G.O.Ms.No.98 need not be quashed as the learned Single Judge found no reason to do so. The present writ appeal is limited to the portion of the learned Single Judge whereby G.O.Ms.No.98, dated 14.08.2020 which provided for the panel for the post of D.C.E. for the year 2020-21 is left undisturbed.

4. Brief facts:

4.1. Before proceeding to examine the issue, it may be relevant to set out briefly the facts:

i) The appellant herein was originally appointed as Lecturer in Kunthavai Nachiar Government Arts College in the year 1989.



After a series of promotion, the appellant was promoted to the post of Grade-I Principal in the year 2019 and thus became eligible to be considered for appointment to the post of D.C.E. The appellant came within the zone of consideration for appointment to the post of D.C.E., on retirement of Dr.R.Sarumathi on 31.05.2019.

ii) As per G.O.Ms.No.368 dated 18.10.1993, the 1st respondent has got to prepare a list of 5 qualified candidates for promotion to the post of Head of the Department, of them two have got to be approved. As per G.O.Ms.No.3647 dated 31.10.1975, every year a panel has got to be prepared. The panel for D.C.E. consisting of 5 candidates has to be prepared 3 months before the vacancy were to arise.

iii) Initiation for preparation of panel ought to have been made on 28.02.2019 i.e., 3 months prior to the date of retirement of Dr.R.Sarumathi.

iv) Had the panel been prepared in terms of Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as "the Act") read with G.O.Ms.No.368, it would have contained the following five names and the 3rd respondent would not have been in the zone of consideration, which is tabulated hereunder:

S.No.	Name	Date of Retirement	Date of Retirement as per G.O.Ms.No.51 dated 07.05.2020
1	Freeda Gnanarani. D	30.06.2020	30.06.2021
2	Manimegalai. S	31.07.2020	31.07.2021
3	Geetha. G	30.06.2022	30.06.2023
4	Parameswari.K	31.07.2020	31.07.2021
5	Mythili.C.V	31.05.2022	31.05.2023

iv) Originally, G.O.Ms.No.95 dated 30.05.2019 was issued notifying vacancy to the post of D.C.E. This was followed by a "note for consideration" dated 07.08.2020 wherein the competent authority has recommended the appellant's name for consideration to the post of D.C.E. However, there was no further action.

v) Thereafter, G.O.Ms.No.88 was issued on 17.08.2019 notifying 'nil' vacancy for the year 2019-20. Hurriedly, G.O.Ms.No.98, 99 and 100 came to be issued whereby it provided for the following:

G.O.Ms.No.98 stated that the Government had approved a "nil" panel for the post of D.C.E. for the year 2019-20 vide G.O.Ms.No.88, Higher Education (F1) Department, dated 07.08.2020 and fixed the estimate of vacancy for the post of D.C.E. for the



year 2020-21 as one (1). It further stated that the Government have considered the names of the following Grade-I Principals for inclusion in the panel for promotion to the post of D.C.E. for the year 2020-21:-

S.No.	Name	Date of Retirement
1.	Dr.G.Geetha Principal, Thiru.Vi.Ka Government Arts College, Thiruvavarur	30.06.2023
2.	Dr.C.V.Mythili, Principal, Rani Anna Government Arts College for Women, Thirunelveli.	31.05.2023
3.	Dr.C.Poornachandran, Principal, Government Arts College, Paramakudi.	31.05.2025
4.	Dr.M.K.Rajkumar, Principal, Arignar Anna Government Arts College, Musiri.	28.02.2022
5.	Dr.M.Eswaramoorthy, Principal, Government Arts College, Udhagamandalam.	31.03.2022

a. By G.O.Ms.No.98, the name of the 3rd respondent was approved for inclusion in the panel for promotion to the post of D.C.E. for the year 2020-21.

The D.C.E was directed to display the orders in Notice Board and send a copy of the said order to the Regional Joint Directors of Collegiate Education and Grade-I Principals and that any appeal against his/her non-inclusion in the panel shall be made within a period of two months from the date of issue of the order.

b. G.O.Ms.No.99 provided that the Government directs the 3rd respondent to be promoted and posted as Director of Collegiate Education.

c. G.O.Ms.No.100 provided that the Government directs the following Grade-I Principals who are senior to Dr.C.Poornachandran, Principal Government Arts College, Paramakudi to be appointed as Officer's on Special Duty which included the appellant.



5. Finding of the learned Single Judge:

At this juncture, it may be relevant to refer to the findings of the learned Single Judge insofar as non-drawal of panel:

a. The learned Single Judge found that the Government, in fact, originally issued G.O.Ms.No.95, Higher Education (F1) Department, dated 30.05.2019, notifying vacancy to the post of DCE as "1" for the year 2019-20. The learned Single Judge further found that a "Note for circulation" (Higher Education (F1) Department), dated 07.08.2020 wherein, the competent authority has recommended the appellant's name for consideration for appointment in 2019 vacancy.

b. It was further found that such recommendation raised more question as no follow up papers were found to be available on the files. Ironically for the said year, the Government issued G.O.Ms.No.88, Higher Education (F1) Department bearing the signature of the appointing authority dated 17.08.2019 after a period of one year from the date of issue of G.O.Ms.No.95 dated 30.05.2019, notifying the panel for the year 2019-20 as "Nil".

c. Subsequent Government Order was issued only on 07.08.2020 and numbered as G.O.Ms.No.88 notifying as 'Nil' vacancy for the year 2019-20 on the eve of consideration of the present panel for the year 2020-21, which included the 3rd respondent. On perusal of file papers would disclose that NIL vacancy was notified due to administrative reasons.

d. Hurriedly on the same day, the respondent initiated the process of the impugned selection. On 14.08.2020 further Government Orders viz., G.O.Ms.98, 99 & 100 came to be issued.

The learned Single Judge after quashing G.O.Ms.No.99 and 100 has however stated that there was no reason to quash G.O.Ms.No.98.

i) By G.O.Ms.No.98, the name of the 3rd respondent was approved for inclusion in the panel for promotion to the post of D.C.E. for the year 2020-21.

The D.C.E was directed to display the orders in Notice Board and send a copy of the said order to the Regional Joint Directors of Collegiate Education and Grade-I Principals and that any appeal against his/her non-inclusion in the panel shall be made within a period of two months from the date of issue of the order.

ii) G.O.Ms.No.99 provided that the Government directs the 3rd respondent to be promoted and posted as Director of Collegiate Education.

iii) G.O.Ms.No.100 provided that the Government directs the following Grade-I Principals who are senior to Dr.C.Poornachandran, Principal Government Arts College, Paramakudi to be appointed as Officer's on Special Duty which included the appellant.



6. Submissions of the Appellant:

a. The panel which has been issued under G.O.Ms.No.98 dated 14.08.2020 is in violation of Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as "the Act") and the rules made thereunder which contemplates the procedure for preparation of panel in respect of vacancy to the post of Head of the Department (hereinafter referred to as "HOD"). The non-drawal of panel for the year 2019-2020 by citing administrative reasons cannot be justified inasmuch as it is mandatory to prepare a panel 3 months in advance of the prospective date of the retirement of the incumbent in terms of Section 7(1) of the Act read with G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993.

b. That had the panel been drawn in terms of Section 7(1) of the Act read with G.O.Ms.No.368 dated 18.10.1993, the 3rd respondent would not have even been included in the panel. The non-drawal of the panel has also resulted in two senior candidates namely Dr.D.Freeda Gnanarani, Dr.S.Manimegalai not being included in the panel, though entitled to in terms of the provisions, Rules and the Government Order.

c. That respondents while drawing a panel even for the year 2020-21 vide G.O.Ms.No.98 dated 14.08.2020 has proceeded on a gross misconception of the scope of G.O.Ms.No.440 dated 26.10.1990.

It was thus submitted by the appellant that but for G.O.Ms.No.98, the 3rd respondent may not have even been included in the panel which ought to have been prepared for the year 2019-20, since in terms of Section 7 of the Act read with G.O.Ms.No.368, a duty was cast to prepare the panel 3 months prior to the date of retirement of the incumbent i.e., 28.02.2019.

7. Submissions of the Respondents:

To the contrary, it was submitted by the learned counsel for the 3rd respondent and the learned Advocate General that the panel would have to be prepared every year and will remain effective only till the end of that session and on expiry of the duration of the panel, the candidates included may not have any legal right to be appointed. In other words, the life of a panel remains only for a year or until the next panel is prepared and once it lapses, no appointment can be made out of the earlier panel. In this regard, reliance was sought to be placed on the following judgments:

a. State of Bihar v. Amrendra Kumar Mishra reported in [(2006) 12 SCC 561:



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"9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel."

.....It was further held : (SCC p. 565, para 13)

"13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period."

b. K. Jayamohan v. State of Kerala reported in [(1997) 5 SCC 170 :

"5. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right to appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference."

c. All India SC & ST Employees' Assn. v. A. Arthur Jeen reported in (2001) 6 SCC 380:

"10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court.

d. Shankarsan Dash v. Union of India reported in (1991) 3 SCC 47 :

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire



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any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174] . "

(emphasis supplied)

e. Food Corpn. of India v. Bhanu Lodh reported in (2005) 3 SCC 618:

"14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review."

f. Pitta Naveen Kumar vs. Raja Narasaiah Zangiti reported in (2006) 10 SCC 261 :

"32. The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise."



8. Relevant provisions and Government Order:

"7. Approved Candidates:

(1) All first appointment to any class or any class or category or grade in any State Service or Subordinate Service, whether by direct recruitment or by recruitment by transfer or by promotion, shall be made by the appointing authority from a list of approved candidates. All appointments made by transfer, from one class to another class and from one category to another category in the same service carrying the identical [levels of pay in the pay matrix] shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the manner as specified in Schedule XI by the appointing authority or any other authority empowered in the special rules in that behalf and shall be displayed in the notice board in the office of the appointing authority. The list shall also be communicated to all persons concerned by registered post whose names are found in the list as well as to persons senior to the junior most person included in the list whose names have not been included in the list. Where the candidates in such list are arranged in their order of preference, appointments to the service shall be made in such order:

.....

Provided also that in respect of filling up vacancies in the post of Head of Department, the number of names of qualified candidates to be considered shall be fixed as twice the number of vacancies plus three in the seniority list in a class, category of service.

Explanation I: The period of one year validity for the list of approved candidates shall be reckoned from the date of approval of the panel by the competent authority.

Explanation II: In respect of appointment to the posts, which are under the purview of the Commission, temporary list may be drawn and published as aforesaid with reference to the qualification on the date fixed for the regular lists to meet out the exigencies of service and to avoid administrative delay. Once a qualified candidate is included in the temporary list with reference to the qualification on the crucial date fixed for regular list, his rights for temporary appointment should be protected and he should not be overlooked in preference to a person, who was not included in the temporary list as he was not qualified



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on the crucial date, but subsequently qualified. The temporary list shall be adopted for giving temporary appointments till the regular list is approved and regular appointments are made with reference to the regular list. "

(emphasis supplied)

G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department, dated 18.10.1993 :

"(vii) Filling up of posts of Heads of Department-

(1) To fill up a single vacancy in respect of Head of Department, the claims of the first 5 qualified candidates in the seniority list should be considered and a panel of at least two names should be got approved in order to, meet any contingency. According to the orders issued in the Government Order fifth read above, to be eligible for promotion as Head of Department, an officer should have not less than one year's service left before retirement. Those who do not have such a minimum period of left over service but are otherwise found to be fully qualified and are fit for promotion as Head of Department and deserve recognition on the crucial date of preparation of panel should be compensated by appointing them as officers on Special Duty with a specific assignment and with the same scale of pay as that of the Head of Department.

(2) Proposals to fill up the posts of Heads of Department (non-IAS) will have to be initiated by the Secretaries to Government themselves 3 months in advance of the prospective date of retirement of the existing incumbent as all the relevant particulars would be available in the Secretariat. If the initiative to send proposals is left with the Heads of Department themselves there are found to be delays caused by subjective considerations. Such promotion proposals will have to be suitably monitored by the Secretaries to Government themselves so that orders are issued before the retirement of the existing incumbent and the cases of those who have a minimum service of one year from the date of retirement of the previous incumbent are not omitted because of administrative delay."

(emphasis supplied)

There was delay in preparation of panel, in the instant case. The appellant submitted a representation requesting drawal of the panel, however, the same did not evoke any response. The appellant thus approached this Court vide W.P.No.34546 of 2019,



wherein this Court by order dated 13.12.2019 disposed of the writ petition directing the 1st respondent to consider and pass orders within a period of 6 weeks from the date of receipt of a copy of the order which expired on 26.01.2020. Thereafter, G.O.Ms.No.98, 99 and 100 came to be issued on the same day viz., dated 14.08.2020 which as stated supra provided for the following:

i) By G.O.Ms.No.98, the name of the 3rd respondent was approved for inclusion in the panel for promotion to the post of D.C.E. for the year 2020-21. The D.C.E was directed to display the orders in Notice Board and send a copy of the said order to the Regional Joint Directors of Collegiate Education and Grade-I Principals and that any appeal against his/her non-inclusion in the panel shall be made within a period of two months from the date of issue of the order.

ii) G.O.Ms.No.99 provided that the Government directs the 3rd respondent to be promoted and posted as Director of Collegiate Education.

iii) G.O.Ms.No.100 provided that the Government directs the following Grade-I Principals who are senior to Dr.C.Poornachandran, Principal Government Arts College, Paramakudi to be appointed as Officer's on Special Duty which included the appellant.

9. We find that the appellant must succeed in her challenge to G.O.Ms.No.98, in view of the following reasons:

a. Consequences of failure to draw the panel in disregard to the mandate contained in Section 7 of the Act and G.O.Ms.No.368:

There can be no doubt that once a life of the panel lapses no right accrues to the candidates who have found place in the panel. However, the question that arises here is slightly different. In the present case, admittedly, Section 7 of the Act read with G.O.Ms.No.368 provides and mandates initiation for preparation of panel 3 months prior to the date of retirement of the incumbent i.e., 3 months prior to 31.05.2019, which would be 28.02.2019. Importantly, as found by the learned Single Judge, G.O.Ms.No.95 dated 30.05.2019 was issued notifying vacancy to the post of D.C.E. as 'one' and a Note for circulation dated 07.08.2020 was also found in the file examined by the learned Single Judge wherein the Competent Authority has recommended the appellant's name for consideration for appointment in the 2019 vacancy. This would clearly show that even according to the Government there was a vacancy for the year 2019-20, however, the panel was not prepared for the relevant period citing administrative reasons. It appears that Section 7 of the Act not G.O.Ms.No.368 gives no room for postponement of preparation of panel citing administrative reasons. Importantly, In this regard, it may also be relevant to refer to the decision of the Hon'ble Supreme Court in the case of Y.V.Rangiah and others vs. J.Sreenivasa Rao reported in (1983) 3 SCC 284 wherein after



finding that in terms of the Rules, a panel ought to be prepared in the month of September, every year. However, there were considerable delay and the panel was drawn only in the year 1977. In the meanwhile, there were amendment to the rules which resulted in the appellant not being eligible to be considered for promotion to the post of Sub-Registrar Grade-II from Lower Division Clerk (LDC). It was the complaint of the appellant that, had the panel been prepared in compliance with the rules then she would have had an opportunity to be considered for promotion which she had lost for no fault of her only in view of the fact that the panels were drawn belatedly. The Hon'ble Supreme Court held that the post which fell vacant prior to the amended rules which would be covered by the old rules and non-drawal of panel cannot be a reason for denying/ depriving a candidate of her right to be considered for promotion. The relevant portion is extracted below:

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than Respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

10. For the reasons given above, we find no force in the contentions raised on behalf of the appellants. Both the sets of appeals, therefore, must fail. They are accordingly dismissed. There is, however, no order as to costs."

10. It appears that there is merit in the submission of the appellant that failure to comply with Section 7(1) of the Act and G.O.Ms.No.368 by non-drawal of panel had impacted the right of appointment of the appellant by exclusion and inclusion in



the panel of candidate in particular the 3rd respondent, who is otherwise not eligible to be included, thereby vitiating the entire process. The consequential G.O.Ms.No.99 and 100 has rightly been quashed by the learned Single Judge.

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We would think that impugned order G.O.Ms.No.98 which is issued by disclosing 'nil' vacancy for the year 2019-20 in disregard to Section 7 of the Act and G.O.Ms.No.368 is clearly unsustainable and thus liable to be set- aside.

b. Failure to draw panel- Impairs right to be considered for promotion:

It ought to be borne in mind that preparation of panel is the first step towards promotion of prospective candidates and right to promotion has been consistently held by the Apex Court and this Court as a valuable rather a fundamental right. By Non-drawal of the panel in disregard to the mandate contained in Section 7 and G.O.Ms.No.368, has resulted in the appellant's right to promotion being impaired, the same cannot be countenanced unless it is supported by cogent and valid reasons and under certain extraordinary circumstances. In this regard, it may be relevant to refer to the following judgments:

i) Union of India vs. Manpreet Singh Poonam reported in 2022 SCC Online SC 272:

"14. No officer has a vested right to a promotional post, which is restricted to that of consideration according to law. The law on this aspect is settled by this Court in the case of Ajay Kumar Shukla vs. Arvind Rai, 2021 SCC Online SC 1195:

37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K.Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd., vs. Pravat Kiran Mohanty, [(1991) 2 SCC 295] in paragraph 4 of the report which is reproduced below:

"4.... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules..."

.....

38. A Constitution Bench in case of Ajit Singh v. State of Punjab, [(1999) 7 SCC 209], laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the



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eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, CJI., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paragraphs 21 and 22 and 27:

22The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right...."

ii) Ajay Kumar Shukla and others vs. Arvind Rai and others reported in 2021 SCC Online SC 1195:

"36.....Right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right.

37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right...."

iii) Union of India v. Sangram Keshari Nayak, reported in (2007) 6 SCC 704 :

"11. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration."

11. In the circumstances, we are of the view that G.O.Ms.No.98 which has been prepared by showing "nil" vacancy for the year 2019-20 cannot be sustained. Thus, we are of the view that the panel ought to be drawn for the year 2019-2020 including candidates who have attained superannuation by including them notionally if they are otherwise entitled to be included in the panel, had it been drawn for the year 2019-20



and appointment to the post of D.C.E. must be carried out thereafter.

12. We are in complete agreement with the learned Single Judge that non-drawal of panel for the year 2019-20 is with ulterior motives which has resulted in distorting the entire scheme of appointment and suffers from malice, arbitrary and contrary to Section 7 of the Act read with G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993.

13. In view of the above observations, the Writ Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mka

To:

1. The Principal Secretary,
Higher Education Department,
Fort St.George, Chennai-600 009.
2. The Director of Collegiate Education,
DPI Campus, Nungambakkam,
Chennai-600 006.

+1cc to G.Sankaran, Advocate, S.R.No.32324

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.32357

W.A. No.656 of 2021
and
C.M.P. No.3257 of 2021

RSV[co]
NSK/28/06/2022