



WEB COPY

W.P.No.17210 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17210 of 2016

K.Elangovan

... Petitioner

Vs.

1.The District Collector,
Salem.

2.The Director of Town Panchayat,
Kuralagam Buildings,
Chennai.

3.The Executive Officer,
Idangalsalai Town Panchayat,
Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd respondent to grant promotion to the petitioner as overseer on par with his juniors.

For Petitioner : Mr.M.Hariharan

For R1 & R2 : Mrs.R.L.Karthika
Government Advocate

For R3 : Mr.S.Gunasekaran



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ORDER

The relief sought for in the present writ petition is to direct the 2nd respondent to grant promotion to the post of petitioner as Overseer on par with his juniors.

2. The petitioner is now working as Electrical Assistant / Helper in the 3rd respondent Panchayat from 10.09.2001 onwards.

3. The grievance of the writ petitioner is that he was not promoted to the post of Junior Assistant, Bill Collector or Typist, despite the fact that he possess all the requisite qualifications for promotion.

4. Promotion *per se* cannot be claimed as a matter of right. Consideration for promotion is a Fundamental Right of an employee. Thus, in the event of taking an administrative decision by the competent authority to fill up the promotional posts, the name of all the eligible persons, who all are aspiring to secure promotion are to be considered in accordance with the Rules in force and in order of seniority. Therefore, mere continuance in the same post for long years would not confer any right for promotion. In order



to encourage the employees, who all are stagnated, the benefit of Selection Grade and Special Grade granted and the promotional scale of pay awarded to the stagnated employees. Therefore, the long services in the same post is not a ground to issue direction to grant promotion to the petitioner.

5. In the event of granting promotion in violation of rules or in violation of seniority or if any right of the petitioner is infringed, then he has to challenge the proceedings in the manner known to law. Then alone the Court would be in a position to consider the claim of the writ petitioner for grant of promotion or retrospective promotion or otherwise. Mere representation would not provide a cause for seeking a direction to consider the representation in the matter of grant of promotion and even if such a direction is issued the same would do no service to the cause of justice and the petitioner will be back again to the Court by way of another litigation. Therefore, even for issuing a direction to consider a representation, the Court has to examine, whether the petitioner has established a legal right or otherwise. In the absence of establishing any legal right, no writ is entertainable.



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6. In the present case, the petitioner states that he was not given promotion, despite the fact that he is qualified. Mere acquiring qualification is not a ground to seek promotion.

7. The respondents have stated that the name of the petitioner was placed in the S.No.51 in the seniority list of the year 2014. His name will be considered in due course for promotion, whenever an action is taken to grant promotion to the employees in order of seniority and in accordance with law. This being the factum established, the petitioner is not entitled to seek a direction as such sought for in the present writ petition.

8. Accordingly, the Writ Petition stands dismissed. No costs.

09.11.2022

Jeni
Index : Yes
Speaking order



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To

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S.M.SUBRAMANIAM, J.

Jeni

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