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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.05.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.13225 OF 2022

AND

W.M.P.NO.12560 OF 2022

S.Jayashankar

... Petitioner

.Vs.

1. The Additional Chief Secretary/
Commissioner of Sugar,
"Aavinlllam" 2nd floor,
3-A, Pasumpon Muthuramalinganar Salai,
Nandanam, Chennai - 35.

2. The Managing Director,
Subramaniya Siva Co-Op Sugar Mills Ltd.,
Gopalapuram, Alapuram Post,
Pappireddiapatty Taluk,
Dharmapuri District.

... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents to include the petitioner name before confirming the Provisional Seniority list for the post of office manager published by 1st respondent in by R.C.No.4101/SL2/2021, dated 01.03.2022, considering the petitioner Proforma and representation/objections dated 16.03.2022.

For Petitioner : Mr.Mr.S.Sivakumar

For Respondents : Mr.P.Bala Thandayutham
Special Government Pleader
For R1 and R2



ORDER

The relief sought for in the writ petition is to direct the respondents to include the name of the petitioner before confirming the Provisional Seniority list for the post of Office Manager published by 1st respondent in by R.C.No.4101/SL2/2021, dated 01.03.2022, by considering the petitioner representation dated 16.03.2022.

2. The petitioner states that he was appointed as Clerical IV on 16.11.1992. His services were regularized by the 2nd respondent in proceedings dated 28.02.1994. There was an error crept in with reference to the designation of the writ petitioner and thereafter, the petitioner was placed in Clerical III Grade with effect from 3.10.1994. The petitioner was promoted in proceedings dated 07.10.2021. However, it is not in dispute that the writ petitioner was retrospectively promoted to the post of Superintendent and on par with his junior with effect from 25.5.2017. Therefore, for all purposes, the petitioner is serving as Superintendent with effect from 25.05.2017 and such a retrospective benefit confirmed on the petitioner by the respondent cannot be denied for the purpose of granting further promotion to the post of Office Manager.

3. The learned Special Government Pleader for the respondents made a submission that as per the Common Service Rules, the petitioner ought to have been served as Superintendent for a period of three years as the petitioner was promoted as Superintendent only in the year 2021 and he has not completed three years of service in the post of Superintendent.

4. This Court is of the considered opinion that the petitioner, no doubt, actually serving as Superintendent for the past about 7 months. However, he was retrospectively granted promotion in the post of Superintendent from 25.05.2017 onwards. The error crept in respect of the service of the petitioner was rectified and consequently, the petitioner was retrospectively promoted with effect from the year 2017. Therefore, the benefit of further promotion, taking into consideration the retrospective promotion granted, cannot be denied to the writ petitioner.

5. Once an employee has been retrospectively promoted in a particular cadre/post, then the benefit of the retrospective promotion to be extended for grant of further promotion also. As



per the Rules, three years of service in the post of Superintendent is contemplated. In the present case, the petitioner was retrospectively promoted as Superintendent from 25.05.2017. Thus, on completion of three years from the said date, the petitioner became eligible for inclusion of his name in the panel.

6. Promotion per se cannot be claimed as a matter of an absolute right. All promotions are to be made strictly in accordance with the rules in force. However, consideration for promotion is a fundamental right of an employee. Thus, the authorities, at the time of filling up of the post and while preparing the panel, must consider the names of all the eligible persons, who all are aspiring to secure promotion in accordance with the rules and in the order of seniority. This being the principles to be followed for grant of promotion, High Court cannot issue a direction to promote an employee based on his service or based on his representation. Only if the promotions are granted in violation of the rules in force, then alone the High Court can interfere with the order, but not otherwise.

7. The Hon'ble Supreme Court even recently ruled that promotion can never be claimed as a matter of right and the consideration for promotion alone is the right in the case of Union of India and another vs. Manpreet Singh Poonam reported in CDJ 2022 SC 291. In the event of taking a decision to fill up the promotional post, at the time of preparation of panel, if the petitioner is otherwise eligible in accordance with the rules, then his name is also to be considered along with all other eligible persons.

8. In the present case, the provisional seniority list of Superintendent for promotion to the post of Office Manager on 01.04.2021 was published on 1.03.2022. The officials, who were promoted as Superintendent during the years 2018, 2019 and 2020 are included in the provisional list for promotion. When the petitioner was promoted as Superintendent retrospectively with effect from 25.05.2017, the said date is to be reckoned for the purpose of seniority and accordingly, the petitioner would be eligible for inclusion of his name in the panel. However, promotion is to be granted subject to the compliance of other rules in force. Thus, the name of the petitioner is to be considered for inclusion of his name in the provisional seniority list of Superintendent for promotion to the post of Office Manager as on 01.04.2021 and promotions are to be considered, if the petitioner is otherwise eligible for promotion in accordance with the rules in force. The said



exercise is directed to be done by the respondents within a period of four weeks from the date of receipt of a copy of this order.

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9. With this direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

kak/nti

To

1. The Additional Chief Secretary/
Commissioner of Sugar,
"Aavinlllam" 2nd floor,
3-A, Pasumpon Muthuramalinganar Salai,
Nandanam, Chennai -35.
2. The Managing Director,
Subramaniya Siva Co-Op Sugar Mills Ltd.,
Gopalapuram, Alapuram Post,
Pappireddiapatty Taluk,
Dharmapuri District.

+1cc to Mr.Mr.S.Sivakumar, Advocate, S.R.No.31716
+1cc to the Government Pleader, S.R.No.31791

W.P.NO.13225 OF 2022

JPL(CO)
PBS/30/05/2022