



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.13663 of 2014

P.Moorthy

... Petitioner

Vs.

1.State Bank of India

represented by its Chief General Manager,
State Bank of India, Circle Top House,
Local Head Office, Nungambakkam,
Chennai - 600 006.

2.The Deputy General Manager,

State Bank of India,
Administrative Office Net Work I Zone I,
No.86, Rajaji Salai,
Chennai - 600 001.

3.The Assistant General Manager,

State Bank of India,
Regional Business Office,
22, 6th Cross Street,
Gandhi Nagar, Vellore - 632 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring the action of the respondent Bank in giving promotion to the petitioner by an order dated 19.06.2010 and the further order of the second respondent dated 31.07.2013 bearing DGM/(B&O)-CHE:ZI:HR:SS as if the petitioner has completed his Rural posting only on 18.08.2008 without considering the Circular dated 25.06.1999 bearing No.Cir.DO:Per:20 and not giving effect to the promotion with effect from 01.11.2000 as illegal, arbitrary, contrary to law and in violation of the principles of natural justice and consequently, direct the first respondent to consider the representation of the petitioner dated 12.04.2014 and grant further promotion upto the level of Scale V with effect from 01.04.2012.

For Petitioner : Mr.Balan Haridas

For Respondents: Mr.K.Sankaran



O R D E R

The writ on hand has been filed to declare the action of the respondent bank giving promotion to the petitioner by order dated 19.06.2010 and the further order of the second respondent dated 31.07.2013 bearing DGM/(B&O)-CHE:ZI:HR:SS as if the petitioner has completed his Rural posting only on 18.08.2008 without considering the Circular dated 25.06.1999 bearing No.Cir.DO:Per:20 and not giving effect to the promotion with effect from 01.11.2000 as illegal, arbitrary, contrary to law and in violation of the principles of natural justice and consequently, direct the first respondent to consider the representation of the petitioner dated 12.04.2014 and grant further promotion upto the level of Scale V with effect from 01.04.2012.

2. The petitioner joined as Clerk-cum-Typist in the State Bank of India on 16.11.1978. He was promoted to the post of Trainee Officer after undergoing selection and interview and accordingly, joined as Trainee Officer on 01.08.1990. The petitioner had undergone two years of job training and thereafter, he was posted as Assistant Manager at Krishnagiri Branch. The post of Assistant Manager is equivalent to JMG Grade-I. The petitioner states that it is semi-urban posting and he served in Krishnagiri till 30.04.1995. The petitioner served at various places and the grievance of the petitioner is that as per the circular issued by the respondent State Bank of India in circular dated 25.06.1999, an employee has to possess the requisite qualification of two years of rural service for promotion to MMG Grade II.

3. Learned counsel appearing for the petitioner mainly contended that the petitioner served in semi-urban area till 2002 and thereafter, he was not issued with any posting to serve in rural areas. However, such an opportunity was provided to him only during the year 2006 and he completed two years of rural service in the year 2008. After completion of two years of rural services as per the circular, the petitioner was granted promotion as Middle Management Grade-II vide proceedings dated 19.06.2010 and the promotion was granted with effect from 02.08.2008. Learned counsel is of the opinion that once promotion was granted to the petitioner with retrospective effect from the date of completion of rural services, such promotion further can be granted retrospectively as the petitioner has not committed any fault while serving in rural areas. The petitioner served in semi-urban areas, but, he had no opportunity to serve in rural area and for that, the petitioner cannot be penalized.



4. In support of the said contention, learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Supreme Court in P.T.Ravindranath v. The State of Tamil Nadu and others [2013 SCC Online Mad 622], wherein the following observations are made:

"The issue as to whether the person can be denied promotion for not possessing the service qualification, without his default, if he is otherwise qualified, was considered by the Supreme Court in the decision reported in (1996) 8 SCC 671 [Vijaywada Guntur Tenali Urban Development Authority v. Movva Ranga Rao] and a Division Bench of this Court in W.A.No.509 to 511 of 2008. In the above said judgments, it is held that the Government servant cannot be denied promotion for want of service qualification, if he was not given a chance to acquire the service qualification by the department head. As the department is bound to place the Government servant in a particular post, to acquire the service qualification, the officer/employee cannot be blamed for not possessing such service qualification. The Department head failed to adhere to the direction issued in the above Government Letter dated 11.01.2000. Similar issue was considered by one of us (NPVJ) in the decision reported in 2012 (4) MLJ 535 [A.Badhrachalam v. Principal Secretary/Commissioner of Revenue Administration, Chepauk, Chennai - 600 005]. In the said judgment, several judgments on this line rendered earlier were followed and held that service qualification can be acquired only if a posting is given in the particular post by the head of the department and the Government servant cannot be blamed. The denial of promotion on that ground alone, if he is otherwise qualified, is unreasonable and arbitrary."

5. Learned counsel appearing on behalf of the respondent/State Bank of India objected the contentions raised by the petitioner stating that the petitioner was not entitled to retrospective promotion from the year 2002 onwards. Admittedly, he acquired the eligibility of two years of rural services only in the year 2008 and thereafter, he was granted promotion from the date of completion of two years of rural services. Thus, there is no infirmity.



6. Learned counsel for the respondent/State Bank of India reiterated that the circular is unambiguous. The circular contemplates two years of rural services, which is mandatory. It is the pre-requisite qualification for promotion to MMG Grade-II. During the relevant point of time, the petitioner shall not possess the requisite qualification as per circular policy and on conclusion, the promotion was granted to the petitioner and therefore, the claim of the petitioner for retrospective promotion is untenable.

7. Learned counsel for the respondent relied on the judgment of the Supreme Court in State Bank of India and others v. Kashinath Kher and others [1996 (8) SCC 762] and reiterated that only if the administration has considered for not posting an employee in a particular post then alone the retrospective promotion can be considered and not otherwise. However, in the present case, the petitioner has given representation to accommodate him in a place of his choice and on more than one occasion, the representation of the petitioner was considered and he was accommodated in a nearby place based on certain family circumstances. More specifically, the petitioner submitted a representation to post him in a nearby village on the ground that his wife was suffering from ill-health. When the respondent Bank accommodated the petitioner based on his request to serve in semi-urban or urban area, then the petitioner is not entitled to claim that he was not given posting to serve in rural areas. At the request of the petitioner, he was posted in the place of his choice and hence, now he cannot turn around and claim by putting blame on the respondent Bank that he was not given an opportunity to serve in rural areas.

8. It is not in dispute that, as per the circular policy, two years of service in rural areas is mandatory for promotion as MMG Grade II. Thus, an employer is eligible for promotion in MMG Grade II only upon completion of two years of rural service. If at all, there is an administration reason for not posting in rural areas for two years, such employee is eligible for retrospective promotion on account of the fraud or mistake committed by the administration. However, if any employee submitted request application for transfer to a particular place or post or to accommodate in a nearby area and his request was considered by the authorities and he was posted in such places, such employees are not entitled to claim that they were not given rural posting by the respondent management. Once an employee has opted to submit a request application and his request was considered by the management on personal grounds, thereafter, they cannot turn around and say that he was not posted in rural areas for two years, which is a pre-requisite for promotion as MMG Grade II.



9. The judgment of the Division Bench relied on by the petitioner also clarifies that "A Government servant cannot be denied promotion for want of service qualification, if he was not given a chance to acquire the service qualification by the department head." Therefore, the Hon'ble Division Bench, in unambiguous terms, held that if the employee was not given any chance to acquire the service qualification then alone the employee is entitled to claim retrospective promotion and not otherwise. Per contra, if an employee's request application to transfer him in a nearby area or otherwise based on certain personal grievance was considered by the management, thereafter, he cannot say that an opportunity to serve in rural area was not granted to him by the management.

10. In the present case, admittedly, the petitioner submitted an application for request transfer to accommodate him in a nearby area due to the ill-health of his wife and such a request was entertained by the respondent Bank and he was given posting as per his request. This being the factum established, the petitioner is not entitled for retrospective promotion. Further, the petitioner admittedly served two years in rural areas from 2006 to 2008 and on completion of rural services, as per the circular, he was granted promotion from the date of completion of two years service in rural areas and thus, there is no infirmity in respect of the action taken by the respondent Bank. Thus, the petitioner has not established any acceptable ground for granting the relief as sought for in the present writ petition.

Accordingly, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gm

+lcc to Mr.Balanharidas, Advocate, S.R.No.35271

Writ Petition No.13663 of 2014

PM(CO)
SB(28/06/2022)