

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30437 of 2017
and W.M.P.No.33205 of 2017

S.Latha

... Petitioner

Vs.

The Managing Director,
Puducherry Adi Dravidar Development
Corporation Limited, Reddiarpalayam,
Puducherry.

... Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the respondent to give promotion to the petitioner to the post of Stenographer Grade II with effect from 31.12.2014, the date on which the Board of Directors have passed the resolution with all other consequential benefits including arrears of wages, seniority etc.

For Petitioner : M/s.V.Ajayakumar

For Respondent : Mr.R.Syed Mustafa
Special Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the respondents to give promotion to the petitioner to the post of Stenographer Grade II with effect from 31.12.2014, the date on which the Board of Directors have passed the resolution with all other consequential benefits including seniority etc.

2.The petitioner states that she joined as Junior Assistant on 22.12.2010 in Puducherry Adi Dravidar Development Corporation Limited. The petitioner is fully qualified for promotion to the post of Stenographer in the Corporation.

3.The grievances of the writ petitioner is that the Board passed a resolution on 31.12.2014 that the petitioner to be promoted to the post of Stenographer Grade II in the scale of pay of PB-I Rs.5200-20200 + Grade Pay of Rs.2400/- after following usual procedure for grant of promotion. Despite the fact that the Board passed a resolution, the Managing Director/Respondent herein has not issued any order of promotion and therefore, the petitioner is constrained to move the present writ petition.

4.The learned counsel for the petitioner drew the attention of this Court with reference to the recruitment rules for the post of Stenographer Grade II and accordingly, the post is to be filled up by way of promotion, failing which, by deputation, failing both, by direct recruitment. When the petitioner is fully qualified and senior working in the respondent organization, she must be granted promotion based on the resolution passed by the Board.

5.The learned counsel for the petitioner further relied on the Office note issued by the Chairman. The Office note issued by the Chairman also reveals that the case of the writ petitioner was forwarded for grant of promotion. In spite of the Note put up by the Chairman and the resolution passed by the Board, the Managing Director has not issued order of promotion.

6.The inter-departmental communications, the Office note or the resolution passed by the Board would not confer any right on the employee to claim promotion by way of filing a writ petition. Unless, an order of promotion has been issued in favour of an employee, promoting such an employee, the

right would not accrue. In the present case, admittedly, no order of promotion was issued to the writ petitioner. The petitioner relies on the office note and the resolution which cannot be the basis to grant the relief in a writ proceedings by the High Court under Article 226 of the Constitution of India.

7.Promotion *per se* cannot be claimed as an absolute right. Consideration for promotion is a fundamental right of an employee. Thus, the authorities competent, while undertaking the process of preparation of panel for promotion has to consider the names of all the eligible persons who all are eligible for promotion to the higher post in accordance with the rules in force. Thus, the consideration at the time of preparation of panel alone is a right and even in case an employee is included in the panel, the said preparation of panel would not confer any right to seek promotion. In other words, even after preparation of panel, an employer is within his powers to cancel it or to take a decision in the interest of administration. Once an order of promotion is issued then alone the right would accrue on the employee.

8.In other circumstances, if at all any junior was promoted or

promotions are granted in an illegal manner in violation of Rules, then also the employee aggrieved may approach the Court of law for appropriate remedy. In the absence of any such illegality or irregularity overlooking the name of the senior, the Court cannot interfere in the matter of promotions.

9. In the present case, the name of the petitioner was not overlooked. No panel was prepared. The office note was issued by the Chairman and the Board passed a resolution to grant promotion to the petitioner directly. It is not made available whether any other employees are eligible for such promotions are not. All these factors are to be ascertained and accordingly, the panel of eligible persons for promotions are to be prepared and appropriate orders to be passed. Even if no other eligible candidates are available, then, the name of the petitioner may be considered. However, the petitioner cannot claim promotion as a matter of right. It is the administrative prerogative of the authorities competent to grant promotion. Mere availability of vacancy is not a ground to claim promotion.

10.The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the process through which a decision is taken by the competent authority in consonance with the statutes and rules in force, but not the decision itself. That being the scope of judicial review under Article 226, the petitioner is not issued with any other order of promotion and mere inter-departmental communications including the office note or resolution would not confer any right for issuing a direction to promote the petitioner to the higher post. Thus, the petitioner is at liberty to approach the competent authorities, if at all any grievances exists.

11.With these observations, this writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

23.09.2022

Index : Yes
Internet : Yes
Speaking order
ssr

To

The Managing Director,
Puducherry Adi Dravidar Development
Corporation Limited, Reddiarpalayam,
Puducherry.

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S.M.SUBRAMANIAM, J.

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