



WP No.17555 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-11-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.17555 of 2017

S.Muthukumar

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Petitioner

VS.

1.The Secretary to Government,
Animal Husbandry, Dairying and Fisheries
(FS-II) Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Fisheries,
Chennai-600 006.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent herein to consider the petitioner for promotion as Assistant Executive Engineer for the panel year 1994-1995 with retrospective effect from 01.08.1994 and as Executive Engineer for the panel year 1999-2000 with retrospective effect from 01.08.1999 on notional basis.



WP No.17555 of 2017

For Petitioner

: Mr.R.Ravishanmugam

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For Respondents

: Ms.V.Yamuna Devi,
Special Government Pleader.

ORDER

The Writ of Mandamus has been instituted to direct the the first respondent to consider the petitioner for promotion to the post of Assistant Executive Engineer for the panel of the year 1994-1995 with retrospective effect from 01.08.1994 and as Executive Engineer for the panel of the year 1999-2000 with retrospective effect from 01.08.1999 on notional basis.

2. The petitioner joined as Junior Engineer in the Fisheries Department on 10.10.1983. The petitioner had passed Diploma in Civil Engineering and passed Account Tests for Public Works Department Officers and Subordinates Part I and Part II and therefore, he is fully qualified for consideration promotion to the post of Assistant Executive Engineer in the Fisheries Department.

3. The learned counsel appearing on behalf of the petitioner mainly contended that the Special Rules to the Tamil Nadu Fisheries



WP No.17555 of 2017

Engineering Services of the Engineering Wing of the Fisheries Department was published by the Government of Tamil Nadu first time in G.O.Ms.No.169, Animal Husbandry, Dairying and Fisheries (FS-II) Department, dated 25.08.2014.

4. As per the Notification, the Rules published shall be deemed to have come into force on and from 12th January, 1983. Thus the Special Rule was implemented with retrospective effect from the year 1983. Since the Rules were given retrospective effect and the petitioner was eligible for promotion to the post of Assistant Executive Engineer during the relevant point of time. The petitioner must be granted the promotion to the post of Assistant Executive Engineer and Executive Engineer with retrospective effect.

5. Promotion per se cannot be claimed as an absolute right. However consideration for promotion is a Fundamental Right of an employee. The question of consideration is aroused if the panel was prepared after taking administrative decision to fill up the promotional post.



WP No.17555 of 2017

Thus the mere availability of vacancy itself would not confer any right on the employee to claim for promotion as a matter of right. Thus Administrative Authorities have to take a decision to fill up the Higher Post and in the event of preparation of panel, then all eligible employees, who all are eligible for promotion must be considered for inclusion of their names in accordance with seniority and by following the procedures as contemplated under the Rules. Therefore, the retrospective effect granted to the Rules would not confer any right to claim retrospective promotion by the employee concerned.

6. It is not in dispute that anyone of the junior to the petitioner was promoted to the higher post overlooking the seniority of the writ petitioner. Only in such circumstances, the senior employee, who was wrongfully denied promotion can claim retrospective promotion.

7. In the present case, the respondents have stated that vacancies were not available during the relevant point of time and no panel was prepared or promotion was granted to any of the junior to the writ



WP No.17555 of 2017

petitioner and thus considering the case of the writ petitioner for retrospective promotion would not arise at all.

8. When none of the junior has been promoted overlooking the seniority or depriving the petitioner from getting promotion, the relief as such sought for by the petitioner cannot be granted and mere retrospective implementation of the Rules by the Government would not confer any right to claim promotion based on the eligibility of the petitioner.

9. Thus, the present writ petition deserves no merit consideration and accordingly, it stands dismissed. However, there shall be no order as to costs.

01-11-2022

Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
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WP No.17555 of 2017

S.M.SUBRAMANIAM, J.

Svn

To

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WP 17555 of 2017

01-11-2022