



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.11534 of 2021

B.Muthuramalingam

... Petitioner

vs.

The Secretary

The Government of India

Ministry of Personnel, Public Grievances and Pension

Department of Personnel and Training

New Delhi

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondent to consider and dispose of the petitioners representation dated 16.06.2021 sent in connection with the acceptance of reviewed cadre strength by relying upon the vacancy position available during 2019-2020 as expeditiously as possible so as to enable him to get his name included in the select list prepared in this regard.

For Petitioner : Mr.R.Anand

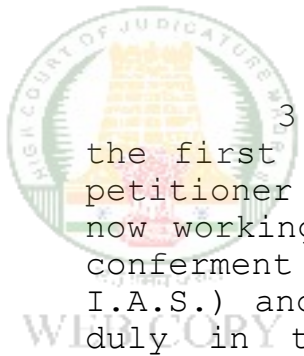
For Respondent : Ms.L.Victoria Gowri

Assistant Solicitor General of India

O R D E R

The relief sought for in this writ petition is to direct the respondent to consider and dispose of the petitioner's representation dated 16.06.2021 in connection with the acceptance of reviewed cadre strength by relying upon the vacancy position available during 2019-2020 as expeditiously as possible so as to enable him to get his name included in the select list prepared in this regard.

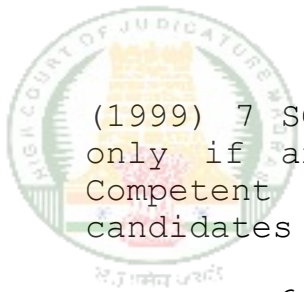
2. Promotion per se cannot be claimed as a matter of right by the employee. No doubt, consideration for promotion is a fundamental right of the employee. Question of considering the eligible candidates would arise only if an administrative decision is taken to prepare a panel of eligible persons, who all are fit for appointment / promotion. Administrative prerogative cannot be insisted upon by the employees though they are eligible for promotion / appointment, as the case may be.



3. Thus, the rights of the employees must be considered at the first instance before considering the relief sought for by the petitioner in this writ petition. The petitioner claims that he is now working as District Revenue Officer and he is eligible for the conferment of post in Indian Administrative Service (in short, I.A.S.) and if Cadre Strength Review Committee has been constituted duly in time, he will be getting an opportunity of securing appointment as I.A.S. Officer. However, such a claim is hypothetical in nature. In respect of future events, High Court cannot take a decision. The principles in this regard to be considered are that once a decision is taken by the Authority Competent to prepare a panel for promotion, then all eligible persons are to be included for grant of promotion to the post of I.A.S. However, the eligible employee cannot seek for a direction or submit a representation to convene a Cadre Strength Review Committee meeting, which is beyond the purview and scope of the service conditions of the employee, who is otherwise working in the State service under the Government of Tamil Nadu. As far as I.A.S. is concerned, the Central Government has to take a decision and therefore, the petitioner cannot have any right to claim that Cadre Strength Review Meeting is to be conducted for the purpose of granting promotion.

4. The learned counsel appearing for the petitioner made a submission that the petitioner filed W.P.(MD) No.19680 of 2020 and this Court, by order 23.12.2020, directed the respondent to publish the select list prepared on or before 31.12.2020 by considering the petitioner's representation dated 03.12.2020. According to the learned counsel for the petitioner, the said order has not been implemented so far. However, filing another writ petition cannot be a solution for the implementation of the order passed in the earlier writ petition. Thus, the service rights of the petitioner are to be ascertained before issuing a direction even to consider the representation. In the absence of establishing any such right, High Court cannot issue any direction even to consider the representation. Mere issuance of a direction to consider the representation would not do any service to the cause of justice, contrarily, it would lead to multiplicity of proceedings and ultimately, the litigant cannot get a proper remedy.

5. The rights in respect of promotion have been considered by the Honourable Supreme Court in the recent decision in Union of India (UOI) and others vs. Manpreet Singh Poonam and others, reported in MANU/SC/0280/2022, wherein the Apex Court in unequivocal terms held that as there is no vested or accrued right over a promotional post, in the absence of any vacancies actually in existence for the year 2009, the migration of the other officers of the Indian Administrative Service (IAS) cadre took place only in the year 2011. The Apex Court again reiterated that consideration for promotion is a fundamental right as per the decision of the Apex Court in the case of Ajit Singh vs. State of Punjab, reported in



(1999) 7 SCC 209. Thus, the rights of the employee are restricted only if an administrative decision is taken by the Authorities Competent to prepare a panel while considering the eligible candidates for promotion.

6. The learned counsel for the petitioner made a submission that the name of the petitioner has already been considered and included in the list by the State Government as an eligible person and if any decision is taken by the Government of India, then the State Government will be in a position to forward the names of eligible persons for consideration. Therefore, mere preparation of panel by the Authority Competent would not be a ground to confer any right on the petitioner to seek a direction against the Government of India to convene a Review Committee Meeting and to prepare a panel.

7. Filling up of posts is an administrative decision and the prerogative of the Government of India. Employee cannot seek for any direction to fill up the post or claim a promotional post. When such rights are not conferred on the employees, the relief as such sought for in this writ petition cannot be granted.

8. The learned counsel appearing for the petitioner, in support of his contentions, placed reliance on the unreported decision of the Honourable Supreme Court in the case of Union of India and another vs. Hemraj Singh Chauhan and others, dated 23.03.2010 in Civil Appeal No.2651-52 of 2010, wherein in Paragraph Nos.40 and 45, the Apex Court has held as follows:

"40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.

...
...

45. In the facts of this case neither the appellants nor the State of U.P. has justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of 'ordinarily' in



the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review."

9. In the above decision, the Honourable Supreme Court has considered the legitimate expectation of the employee for being considered for promotion. Therefore, these observations would not provide any absolute right for an employee to claim promotion as a matter of right. These are all the observations made regarding expectations of the employee and the procedures to be followed for the purpose of grant of promotion. However, in the present case, the Review Committee itself not convened during the relevant point of time and taken any decision for grant of promotion to the State Government employees to the post of I.A.S. Therefore, the petitioner has not established even a semblance of legal right to direct the respondent to consider his representation and mere direction to the Authority concerned to consider the representation would do no service to the cause of justice in the absence of establishing any legal right.

10. Thus, the writ petition is devoid of merits and it is dismissed. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To:

The Secretary to Government of India,
Ministry of Personnel, Public Grievances and Pension,
Department of Personnel and Training,
New Delhi.

+1 CC to M/s.R.ANAND, Advocate (SR-12818[F] dated 17/03/2022

W.P. (MD) No.11534 of 2021

15.03.2022

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MS/24.03.2022/4P.3C