



W.P.No.11909 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.11909 of 2016

A.Deivasigamani

...Petitioner

-Vs-

1.The Director of School Education,
Perunthalaivar Kamarajar Centenary
Education Complex,
100 Feet Road, Anna Nagar,
Puducherry.

2.Our lady of Lourdes,
Rep. by the Correspondence,
Govt. Aided Boys High School,
Villianur, Puducherry.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the second respondent to send the proposal for promotion to the post of Trained Graduate Teacher with effect from 01.08.2006 and consequently to direct the first respondent to give promotion to the petitioner to the post of Trained Graduate Teacher with effect from 01.08.2006 with all other consequential benefits including arrears of wages, seniority, etc.



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For Petitioner : Mr.V.Ajayakumar
For R1 : Mr.Syed Mustafa,
Government Pleader (Puducherry)
For R2 : Mr.P.Muthukumarasamy

ORDER

The prayer sought for in this writ petition is for a direction to the second respondent herein to send the proposal for promotion to the post of Trained Graduate Teacher with effect from 01.08.2005 and for consequential promotions to be granted. The petitioner herein had retired from service in the year 2015.

2. It is a settled proposition of law that a Government servant or Government Teacher, whose name has been included in the promotional panel or who is due for promotion, cannot seek promotion as a matter of right, merely because of their entitlement.

3. It is a settled proposition of law that mere inclusion of name in the promotional panel will not confer a right to claim promotion. The Hon'ble



Supreme Court, in the case of ***Union of India vs. S.S.Uppal and another*** reported in ***(1996) 2 SCC 168***, has upheld this proposition.

4. Likewise, in the case of ***Union of India and others vs. N.R.Banerjee and others*** reported in ***(1997) 9 SCC 287***, a similar view was taken by the Hon'ble Supreme Court in the following manner:-

"12.....It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary. In Shankarasan Dash v. Union of India [(1991) 2 SCR 567], the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even though the State acts in arbitrary manner. In Babita Prasad & Ors. v. State of Bihar & Ors. [(1993) Supp. 3 SCC 268] it was held that mere inclusion of one's name in the panel



does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In Union Territory of Chandigarh v. Dilbagh Singh & Ors. [(1993) 1 SCC 154] it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In State of Bihar & Ors. v. Secretariat Assistant Successful Examinees Union 1986 & Ors. [(1994) 1 SCC 126] it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary. However, in the light of the above principles and in the light of the clear rules extracted



hereinbefore, it is seen that the exercise of preparation of the panels is undertaken well in advance to fill up the clear vacancies of anticipated vacancies. The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable reason, yearwise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith."

5. The petitioner places reliance on an earlier proposal sent by the second respondent, whereby it is claimed that one V.Anthonysamy, who was placed at Seniority No.14 and who was junior to the petitioner, has been promoted. This claim seems to be a factual mistake, since the first respondent, in his counter affidavit, has stated that the proposal of V.Anthonysamy sent by the second respondent was rejected, since he was junior to many others whose names have not been in the promotional list.



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6. In view of the legal position that the petitioner cannot claim promotion as a matter of right and also that his juniors were not promoted by overlooking his candidature, the prayer seeking for a direction to the second respondent to send a proposal, after the petitioner's retirement, cannot be sustained.

7. Accordingly, the writ petition stands dismissed. No costs.

03.01.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
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To

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M.S.RAMESH,J.

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