



W.P.(MD).No.17516 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.17516 of 2019

A.Senthil Velkumar

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to the Government/
Additional Chief Secretary,
Department of Milk Productions
and Diary Development
and Animal Husbandry Development
and Fisheries Department,
Secretariat,
Chennai – 9.

2.The Director,
Department of Milk Productions
and Diary Development,
Madavaram,
Chennai – 51.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to grant notional promotion to the petitioner in the post of Junior Assistant with effect from the year 2008 and with all consequential benefits within the time frame stipulated by this Court.



W.P.(MD).No.17516 of 2019

For Petitioner : Mr.G.Karthik,
For M/s.Lajapathi Roy and Associates.

For Respondents : Mr.P.Thambidurai,
Government Advocate.

ORDER

This Writ Petition is filed for Mandamus, directing the second respondent to grant notional promotion to the petitioner in the post of Junior Assistant with effect from the year 2008 and with all consequential benefits.

2. In the year 2008, there were 19 vacancies available in the respondent Department for the post of Junior Assistant. The respondents have taken steps to fill up the said post. The learned counsel appearing for the petitioner submitted that for the in-service candidates, 20% out of total vacancies were allotted to the post of Junior Assistant as per G.O.Ms.No.43 dated 15.12.1994. In the panel for promotion, the petitioner's name was in Serial No.4. The respondents have filled up 17 posts but denied promotion to the petitioner. It is not known why the respondents have filled 17 vacancies and not 19 vacancies. If the respondents have considered the entire 19 posts, the petitioner would



W.P.(MD).No.17516 of 2019

have been promoted to the post of Junior Assistant. Aggrieved over the same, the petitioner has come with this Writ Petition.

3. The respondents have filed a counter stating that as per G.O.Ms.No.43 dated 15.12.1994, the respondents submitted a proposal wherein in the said proposal, 4 posts were allotted to the recruitment by transfer/promotion. If the said proposal is considered, the petitioner would be promoted. However, the said proposal was modified by the Government in Letter No.23778/MP.II/2007-I, dated 22.11.2007 & No.56097/P/2007-1, Personnel & Administrative Reforms Department, dated 17.10.2007. The Government after considering the said proposal has issued G.O.Ms.No.124 Animal Husbandry, Dairying and Fisheries (MP.II) Department dated 11.04.2008, wherein the Government has directed to fill up the said post by granting only 2 posts to the category of recruitment by transfer/promotion.

4. In order to understand the case, the proposal and the approval tabulation is given under:



W.P.(MD).No.17516 of 2019

WEB COPY

Sl.No.	Category	No.of post	Mode of Recruitment
1.	Junior Assistant (Security)	1	Direct recruitment through Tamil Nadu Public Service Commission.
2.	Junior Assistant (non-Security)	12	Direct recruitment through Tamil Nadu Public Service Commission.
		02	Appointment on compassionate ground
		04	Recruitment by transfer/promotion.
	Total	19	

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W.P.(MD).No.17516 of 2019

5. Therefore, the respondents submitted that since the Government has approved only 2 posts for the category of in-service candidates, the petitioner is standing in the 4th place, hence, the petitioner was not granted promotion. Even though it is a policy decision and within the domain of the Government, this Court is of the considered opinion that logically reducing the number of posts to the recruitment by transfer / promotion cannot be accepted. The respondents have granted the entire posts of direct recruitment that is 12 past and has reduced the promotional opportunity by cutting down 20% into 10%. Moreover, the said allotment is totally against the earlier Government Order issued by the Government in G.O.Ms.No.43. If the respondents have reduced the number of seats allotted to direct recruitment from 12 to 10, then the respondents would have accommodated the entire seats to the recruitment by transfer / promotion. Even though promotion is not a fundamental right, it is a constitutional right. Moreover, if granted to the in-service candidate then the government would not be affected financially.

6. When it comes to the providing employment to the unemployed youth and providing promotion to in-service candidate, the Government has duty to grant promotion than providing employment. Therefore, the change in the



W.P.(MD).No.17516 of 2019

policy decision is not in accordance to the constitutional duty of granting promotion.

7. Hence, this Court is of the considered opinion that the approval by the Government in G.O.Ms.No.124 cannot be sustained which is totally against G.O.Ms.No.43 and also against the constitutional duty granting promotion. Therefore, the petitioner is entitled to the relief. The petitioner shall be granted notional promotion by fixing him in the year 2008 and all service and monetary benefits shall be granted to the petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. In view of the above, this Writ Petition is allowed. There shall be no order as to costs.

16.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



W.P.(MD).No.17516 of 2019

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- 2.The Director,
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W.P.(MD).No.17516 of 2019

S.SRIMATHY, J.

Nsr

W.P.(MD).No.17516 of 2019

16.06.2023