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W.P. No.23173 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.23173 of 2013

1.P.Saravanan

2.A.Ramesh

3.V.Ramasamy

... Petitioners

Vs.

1.The State of Tamilnadu
represented by its Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai – 9.

2.The Director of Public Health
and preventive medicine,
Chennai – 6.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in RC No.9529/PaNO/Iru 3/2013 dated 19-2-2013 and quash the same and direct the respondents to consider the case of the petitioners for a promotion to any suitable post since there are no proper promotional avenue for them in accordance with law or in the alternative consider the request of the petitioners for appointment a health Inspector Grade – I by imparting training as was done in the case of

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Laboratory Assistants and Basic health workers in the light of
G.O.Ms.No.216, dated 12.06.2007 and G.O.Ms.No.39 dated 01.02.2008.

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For Petitioner : Mr.S.Selvathirumuragan

For Respondents : Mr.E.Sundaram
Government Advocate.

ORDER

The petitioners 1 & 2 herein were appointed as Refrigeration Mechanic in the department of Public Health and Preventive Medicine during the year 1988. Whereas, the 3rd petitioner was appointed as Audio Visual Operator in the year 1989. All the petitioners herein have been continuing in the very same post in which they were appointed during the years 1988 & 1989.

2. The post of Refrigeration Mechanic and Audio Visual Operator coming under the Tamil Nadu Public Health Subordinate Services are governed by the Adhoc Rules issued in G.O.No.917, Health Department, dated 27.03.1989 and G.O.No.1776, Health, dated 10.09.1986. The petitioners herein, having been continued in the said post for more than 30 years made a claim for creation of promotional avenue for consideration of their case for promotion on the ground of long stagnation and also approached this court, by filing the writ petition in W.P.No.33383 of 2012



and this Court, by an order dated 14.12.2012 directed the respondents to consider the claim of the petitioners. It is pursuant to the said order passed by this Court, the claim of the petitioners for creation of promotional avenue was considered by the 2nd respondent and impugned order, dated 19.02.2013 came to be issued rejecting the claim of the petitioners stating that the relaxation of Rules is not feasible of compliance. It is aggrieved by the said proceedings in RC.No.9529/PaNO/Iru3/2013 dated 19.02.2013, the petitioners approached this Court by filing the present writ petition.

3. The learned counsel for the petitioner contended that the respondents have considered the similar claims that are made by the Lab Assistants, Basic servants, Lab technicians etc., working in the department of Public Health and Preventive Medicine for promotion to the post of Health Inspector Grade-I and Grade-II and various Government orders were issued for promotion of the said categories to the post of Health Inspector Grade-I and Grade-II by providing special training etc., but the similar consideration is denied to the petitioners. According to the learned counsel for the petitioners providing an opportunity of one promotion atleast during the entire service of an employee is mandatory requirement and also placed reliance on



various decisions of the Hon'ble Apex Court reported in *2002 10 SCC 432*, *1990 1 Supp SCC 688 3J 2004 9 SCC 65 (2001) 10 SCC 401*, *2008 5 SCC 416* and *2008 5 SCC 100*.

4. In response to the notice issued by this Court, the 2nd respondent filed a counter affidavit contending that the Lab Assistants, Lab Technicians, Basic servants etc were included in the feeder categories to the post of Health Inspector Grade I and Grade II, as the case may be and accordingly, their cases were directed to be considered for promotion to the said post by issuing appropriate Government orders from time to time. It is also stated that the post of Refrigeration Mechanic and Audio Visual Operator are not in the feeder category to any of the above post and the nature of duties that are to be performed by the petitioners and the Health Inspector are totally different and therefore, the cases of the petitioners cannot be considered for promotion to the post of Health Inspector.

5. This Court carefully considered the submissions made on either



side and also perused the entire material on record.

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6. The learned counsel for the petitioner placed reliance on various decisions rendered by the Honb'le Apex Court as noted above holding that an employee is entitled to claim promotion as a matter of right. No doubt, in case if promotional avenue is available, the claim of employee for consideration of their case for promotion to the promotional post was held to be a fundamental right but not for the promotion as such.

7. It is not in dispute that admittedly, there is no particular Rule providing for promotional avenue to the post held by the petitioners herein. Because of the stagnation in the very same post for long time, the benefit of carrier advancement was provided and accordingly, the benefit of selection grade, Special grade etc., were also provided to such employee who stagnated in the very same post beyond 10 years. It is not the case of the petitioners that their cases were not considered and they were not extended the benefit of such Carrier Advancement and upgradation of their pay. When the posts that are held by the petitioners are not included in the feeder category to any of the post in the department of Public Health and the respondents are of the view



that the petitioners are not suitable for being promoted to any of the post on the ground that the nature of duties are totally different, in the considered view of this court, no mandamus can be issued directing the respondents to create promotional avenue to the petitioners.

8. No doubt, the Hon'ble Apex Court, in various decisions observed that the availability of promotional avenue will increase the efficiency of an employee and absence of the same would decrease the efficiency of an employee. But that itself cannot be made basis for issuing a mandamus to the respondents to create a promotional channel. The petitioners are aware of their service conditions as on the date of their initial appointment in the respective posts about the absence of promotional avenue and therefore, no legal or fundamental right of the petitioners can be said to have been infringed by passing the impugned order.

9. In the circumstances, this Court does not find any error or illegality in the impugned order passed by the respondents and accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petitions, if any shall stand closed. No costs.



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Index : Yes/No
Speaking Order : Yes/No
dpa

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