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W.P.No.6833 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.6833 of 2012

R.V.Suresh

...Petitioner

-Vs-

1. Life Insurance Corporation of India,
Rep. by its Chairman,
Central Office, “Yogakshema”
Jeevan Bima Marg, PB No.19953
Mumbai – 400 021.

2. Life Insurance Corporation of India,
Rep. by its Zonal Manager,
Zonal Office, Anna Salai,
Chennai – 600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus calling for the records from the file of the 2nd respondent dated 05.12.2007 and quash the same and further direct the respondents to give the benefit of promotion as AAO (Admn) or AAO (Programmer) with effect from the promotion round of 2004-05 with all other attendant benefits to the petitioner.



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For Petitioner : Mr.SU.Srinivasan

For Respondents : Mr.D.Muthukumar

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ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order dated 05.12.2007 passed by the 2nd respondent and further direct the respondents' Corporation to give the benefit of promotion as Assistant Administrative Officer (Admn) or Assistant Administrative Officer (Programmer) with effect from the promotion round of 2004-2005 with all other attendant benefits to the petitioner.

2. The case of the petitioner is that the petitioner joined the 1st respondent's Corporation on 28.06.1989 as an Assistant. Later on, he was promoted as a Programmer-HGA and was posted at Kallakurichi. Thereafter, he was transferred to the Divisional Office at Vellore as a Programmer (IT) in the year 2003. The petitioner was promoted as Assistant Administrative Officer (Programmer) in the Anna Nagar Branch of the respondents' Corporation vide order dated 31.08.2009.

3. Learned counsel for the petitioner would submit that the



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petitioner was promoted in the year 2004-2005, as he was eligible and qualified to be considered for the promotional post since he was not considered for promotion w.e.f. 2004-2005. It is further submitted that the petitioner was promoted only on 24.09.2009.

4. Learned counsel would further submit that the respondents' Corporation invited applications from the eligible candidates for the promotional posts of AAO (Administration) and AAO (Programmer) in the year 2004-2005. The petitioner applied for the said promotional cadre post under items 1 (a) and 4 of the LIC of India Class III and Class IV Employees (Promotional) Rules 1987, respectively, for the promotion round from 2004 onwards. The petitioner has also completed the M.A., L.L.B., and A.I.A. exams and also completed M.B.A. The petitioner was fully qualified for the promotional posts of AAO (Administration) and AAO (Programmer). The petitioner was also advised to appear before the selection committee whenever selection is taking place for the aforesaid promotional posts. Accordingly, the petitioner initially appeared for the interview on 19.08.2004, for the aforesaid promotional posts, and since then he has been appearing. It is pointed out that interviews were conducted on 22.08.2005, 14.08.2006, 27.08.2007 and 04.08.2008. According to his information, more than 400



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promotions were effected in the last five years. However, the petitioner was not given promotion. The petitioner made a representation to the respondents on 08.09.2007, highlighting the defects in not considering the petitioner for promotion, and he has approached this Court in W.P.No.32027 of 2007. This Court passed the order dated 05.10.2007, directing the respondents to consider the petitioner's representation. Thereafter, the petitioner's representation was rejected by the respondents' Corporation vide communication dated 05.12.2007. It was stated in the said communication that the LIC of India Clause III and Clause IV Employees (Promotion) Rules, 1987, is a gazette document, and final selection is based on total marks gained by an employee on all the three criteria. The selection process is a comparative assessment involving the element of selection – selection for promotion based on different criteria depending upon the nature of the post. In the ranking list of candidates recommended for promotion by the selection committee, it had been found that the petitioner had secured total marks less than the last candidate in the General Contingency list and therefore, he was found not suitable for promotion to both posts. The aforesaid order was passed by the 2nd respondent.

5. Learned counsel further submitted that the petitioner is a



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physically handicapped employee able to perform the officers' post and he

has also specifically pointed out in the representation dated 08.09.2007.

Unfortunately, the Corporation, which is a State within the meaning of Article 12, did not look into the petitioner's statement that he is a physically disabled person with a disability of 60%. Also, the petitioner had furnished relevant medical certificates in respect of the petitioner's physical disability dated 27.06.1984 and another certificate dated 11.03.2002. Since then, the petitioner had made several representations, even orally, to consider the petitioner's case for promotion on the basis of his physical disability.

6. It is also further submitted by the learned counsel for the petitioner that the Corporation, instead of simply following the general rules of LIC of India Clause III and Clause IV Employees (Promotion) Rules, 1987, ought to have made suitable amendments to accommodate physically disabled persons in the promotional quota for earmarking 3% as prescribed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The learned counsel further submitted that before the enactment of the Disability Act, 1997, the Government of India, vide its Administrative instructions, provided absorption for the physically disabled persons in Group C and D posts. Thereafter, the Department of



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Personnel and Training (DoPT), Government of India, vide OM dated 18.12.1997, issued notification wherein the promotion is available even for Group A and B posts. Aggrieved by the same, the petitioner has come forward with the present writ petition.

7. Learned counsel for the petitioner relied on the reported ruling of the Hon'ble Supreme Court in the case of *State of Kerala and Others Vs. Leesamma Joseph* reported in (2021) 9 SCC 208.

8. A counter affidavit was filed on behalf of the respondents on 20.12.2012.

9. Learned counsel for the respondents submitted that the petitioner has come forward with belated claim now for not being promoted way back in 2004-2005. Therefore, the writ petition is liable to be rejected for laches. Moreover, the petitioner has not impleaded officials as party respondents who had been promoted in the earlier selections from round 2004-2005 onwards. Hence, the writ petition suffers from the non-joinder of necessary and proper parties and is therefore liable to be rejected on this ground as well. The petitioner was promoted to the cadre of Assistant Administrative Officer



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(Programmer) during the promotion round 2009-2010. The petitioner was promoted in 2009-2010, when he was successful in the selection process, proceeding with the promotion to the cadre of Assistant Administrative Officer (AAO). However, in the earlier selections, the petitioner was not successful, and therefore he could not be promoted. It is an admitted fact that the petitioner is a physically disabled person.

10. Learned counsel for the respondents further submitted that the petitioner satisfied all the conditions of eligibility but could not be selected for promotion in view of his securing total marks less than the total marks secured by the last candidate in the general contingency list of relevant promotion years. Promotion to the cadre of various posts in AAO cadre envisages a detailed selection process based on marks secured by the employee who satisfies conditions of eligibility as per promotion rules and various other criteria like seniority, qualification, work record and interview etc. The candidates who are subjected to selection are placed based on the marks obtained by them on the four counts mentioned above. Thereafter, candidates will be placed within the number of vacancies earmarked in the category to which he/she belong and they will eventually be offered promotion in the respective category. As far as the petitioner is concerned, in



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all the earlier selections from 2004-2005 to 2008-2009, the marks secured by him in the selection process were comparatively less than that of the last candidate selected from the general category to which the petitioner belongs. Therefore, the question of promoting the petitioner in the earlier selections did not arise at all. He further submitted that the petitioner, having participated in the duly conducted selection process in terms of the promotion rules, cannot be heard to complain about his non-selection because his performance fell short of the required marks for promotion in his category.

11. It is the submission of the learned counsel for the respondents that the rules/instructions which were in force during the period from 2004-2005 to 2008-2009 promotion rounds governing promotion for Class III and Class IV employees in the corporation did not provide for any separate reservation in posts for persons with disabilities. Therefore, consideration of the petitioner in the disability category did not arise at all in the absence of rules providing for such reservation.

12. Heard both sides and perused the materials placed on record.

13. In this case, the petitioner was initially appointed as an



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Assistant in the respondents' Corporation on 28.06.1989, and was promoted as a HGA (Programmer) on 01.03.1999, and posted at Kallakurichi Branch under Vellore Division. On 20.03.2003, the petitioner joined as a HGA (Programmer) in the I.T. Department, Divisional Office, Vellore, on transfer from Kallakurichin Branch. Thereafter, the petitioner was promoted to the cadre of Assistant Administrative Officer (Programmer) during the promotion round of 2009-2010.

14. The grievance of the petitioner is that he is a physically disabled person and ought to have been promoted as Assistant Administrative Officer (AAO) w.e.f. 2004-2005 since he has attended five interviews. It is pertinent to note that the petitioner had other qualifications when he secured less marks. Hence, he was not selected as Assistant Administrative Officer (AAO) in the year 2004-2005. According to the respondents' Corporation, the promotion to the post of Assistant AAO is based on satisfying the conditions of eligibility like seniority, qualification and work record etc., apart from the marks secured by the petitioner.

15. It is evident in para 4 of the affidavit filed in support of the writ petition, which is extracted hereunder for better understanding and



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appreciation.

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Promotion round	Promotion to the cadre of AAO (Admn.)		Promotion to the cadre of AAO (Prog.)	
	Marks secured by R.V.Suresh	Cut-off marks for General Contingency list	Marks secured by R.V.Suresh	Cut-off marks for General Contingency list
2004-05	58	62	57	60
2005-06	58	62	57	60
2006-07	59	63	59	61
2007-08	63	64	61	63
2008-09	62	62	61	62

The petitioner was promoted as AAO w.e.f. 2009 (31.03.2009) and subsequently promoted on 29.05.2017 as Administrative Officer (AO) and superannuated on 31.03.2019. It is also pertinent to note that in this case, the impugned order was passed on 05.12.2007, whereas the petitioner approached this Court belatedly after lapse of 5 years. According to the petitioner, he is eligible to be promoted to the post of Administrative Officer (AO) in the year 2004-2005. That is so, the petitioner should have approached this Court much earlier and having failed to do so, and even after the impugned order was passed in the year 2007, he belatedly approached this Court only in the year 2012.

16. This apart, there is no rule in the Life Insurance Corporation



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providing reservation in the promotion for the physically disabled person with a claim by the petitioner. However, the Hon'ble Supreme Court of India, by judgment in the year 2022, provided reservation in the promotion and thereafter, an Official Memorandum dated 17.05.2022, was issued by the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) pursuant to the order providing for reservation in the promotion to the post on the above Official Memorandum. The respondents herein had also issued a circular dated 28.09.2022, which provided for reservations for various cadres in the promotion, including physically disabled persons.

17. It is also pertinent to note that in the year 2004 – 2005, which the petitioner claimed promotion as AAO, there is no reservation regarding in the promotion in the respondents' Corporation.

18. In view of the above facts and circumstances of this case, this Court is of the considered view that the impugned order dated 05.12.2007, passed by the 2nd respondent does no warrant any interference by this Court and the same is hereby confirmed.



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19. In the result, the writ petition stands **dismissed**. No costs.

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cda

Index : Yes/No

Speaking/Non Speaking order

To

1. The Chairman,
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Mumbai – 400 021.
2. The Zonal Manager,
Life Insurance Corporation of India,
Zonal Office, Anna Salai,
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