



WEB COPY



W.A.No.2204 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.2204 of 2021
and
C.M.P.No.14433 of 2021

1. Government Of Tamil Nadu,
Rep By Secretary To Government,
Labour And Employment Department,
Secretariat, Fort St.George,
Chennai 600 009.

2. The Commissioner Of Labour,
Chennai-600 006.

... Appellants

Vs.

P.Radhakrishnan

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 04-11-2020 made in WP.No.28318 of 2013 passed by this Court

For Appellants : Mr.P.Muthu Kumar,
Additional Advocate General

For Respondent : Mr.Adithya Reddy



W.A.No.2204 of 2021

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

State is the appellant before us. The respondent filed a writ petition seeking direction to include his name in the panel of the year 2012-13 for promotion to the post of Assistant Commissioner of Labour, by treating the services of the petitioner as Labour Officer (Social Security Scheme) from 1.11.2009 to 10.12.2020.

2. The Learned Additional Advocate General, appearing on behalf of the State would submit that the petitioner was not holding any one of the feeder category posts contemplated under the rules. He was holding the post of Labour Officer (Social Security Scheme) which was not included as a feeder category for promotion to the post of Assistant Commissioner of Labour. That apart, it was a new post created and the petitioner was appointed. Rules were not amended during the relevant point of time when the panel of the year 2012-2013 was published. Further, the respondent did not possess the requisite experience in the post of Labour Officer, Administrative Officer or Public Relation Officer. Therefore, his name was not considered. The learned Single Judge granted the relief without considering the rule position and thus, the appeal is to be allowed.



W.A.No.2204 of 2021

WEB COPY

3. The learned counsel for the respondent Mr. Adithya Reddy would oppose by stating that the delay in issuing an amendment cannot result in denial of promotion to the respondent. The respondent is fully qualified for promotion to the post of Assistant Commissioner. He had served more than one year in the post of Labour Officer (Social Security Scheme). Therefore, the appellants ought to have included the name of the respondent in the panel of the year 2012-13 for promotion to the post of Assistant Commissioner. The Writ Court considered the fact that even as per the rules, that was in existence in the year 2012-13, the petitioner was qualified and accordingly, granted the relief.

4. The undisputed fact between the parties are that the respondent was appointed as Labour Officer (Social Security Scheme) in the year 2008. It was a new post created. Thus, there was an administrative delay in issuing an amendment including the said post as a feeder category for promotion to the post of Assistant Commissioner of Labour. Any administrative delay in amending the rules would not affect the promotional prospects of the employees. Subsequently, the rule was amended and the Labour Officer (Social Security Scheme) was included as a feeder category, consequently,



W.A.No.2204 of 2021

the respondent was promoted to the post of Assistant Commissioner in the year 2015. Therefore, it is not the case of the appellant that the petitioner is not qualified for promotion to the post of Assistant Commissioner but during the relevant point of time, in the year 2012-13, the rule was not amended and in the absence of rule, the Department was not in a position to promote the respondent.

5. Promotion per se cannot be claimed as an absolute right. However, consideration for promotion is a fundamental right of an employee. When the respondent was working in the cadre of Labour Officer (Social Security Scheme), which carries an identical scale of the post of Labour Officer, and the respondent was fully qualified for promotion to the post of Assistant Commissioner, mere administrative delay in amending the rule would not deprive the opportunity of promotion to the respondent. There was no other impediment for the Department to consider the name of the respondent for promotion to the post of Assistant Commissioner in the panel of the year 2012-13. Thus, we concur with the findings of the Writ Court that the respondent was found eligible for promotion to the post of Assistant Commissioner of Labour and consequently, his name should be included in the panel for promotion to the post of Assistant Commissioner of Labour of



W.A.No.2204 of 2021

the year 2012-13, and accordingly, promotions are to be granted with retrospective effect on par with his immediate junior.

6. However, we made it clear that while granting notional promotion by including the name of the respondent in the panel of the year 2012-13, the respondent is not entitled to claim any back wages or monetary benefits since he had not served in the post of Assistant Commissioner of Labour till such time he was promoted in the year 2015. All other benefits including continuity of service and seniority ought to be extended to the respondent, which would be helpful to get further promotions and other superannuation benefits to him.

7. With these clarifications, the writ order stands confirmed and the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

26.06.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



W.A.No.2204 of 2021

To
WEB COPY

1. Government Of Tamil Nadu,
Rep By Secretary To Government,
Labour And Employment Department,
Secretariat, Fort St.George,
Chennai 600 009.

2. The Commissioner Of Labour,
Chennai-600 006.



WEB COPY



W.A.No.2204 of 2021

S.M.SUBRAMANIAM, J.

and

C.KUMARAPPAN, J.

(sha)

W.A.No.2204 of 2021

26.06.2024