



W.P.No.21852 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 23.04.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.21852 of 2017

and

W.M.P.No.2692 of 2018

V.Vasudevan

...Petitioner

vs.

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Handloom Handi Crafts Textiles and Khadi (F1)
Department,
St.George Fort, Chennai – 108.

2.The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam Buildings,
Chennai – 108.

3.The General Manager,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam Buildings,
Chennai – 108.

... Respondents

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Letter Na.Ka.No.19583/E2(2)/13 dated 03.02.2016 issued



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by the second respondent and to quash the same and for direction to the respondents to regularise the service of the petitioner as Assistant Development Officer (Soap) from the date of his eligibility and to pay the arrears of pay, pensionary benefits with revised pension accordingly and grant such other further relief.

For Petitioner : Ms.S.Meenakshi

For Respondents : Mr.M.Murali
Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent in Letter Na.Ka.No.19583/E2(2)/13 dated 03.02.2016 and sought for a consequential direction to the respondents to regularise the service of the petitioner as Assistant Development Officer (Soap) from the date of his eligibility and to pay the arrears of pay, pensionary benefits with revised pension.

2. The petitioner herein was initially appointed as a Soap Chemist on 09.07.1987 and was temporarily promoted to the post of Technician Grade II (Soap) on 13.01.1993. While he was continuing in the post of Technician



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Grade II (Soap) on temporary basis, the petitioner was posted for performing the duty of Assistant Development Officer (Soap) w.e.f 02.07.2004 and the petitioner continued to work in the said post till the petitioner retired from service on 30.04.2014, on attaining the age of superannuation. Thereafter, the petitioner made a claim by submitting a representation dated 20.07.2014 seeking regularisation of his services in the post of Assistant Development Officer (Soap) with effect from 02.07.2004. Thereafter, the petitioner submitted another representation on 26.03.2015. The respondents having considered the representation submitted by the petitioner issued the impugned proceedings rejecting the claim of the petitioner on the ground that he was permitted to retire from service in the post of Technician Grade II (Soap) and hence, he is entitled for payment of pension and other benefits in the said post only. Aggrieved by the said proceedings dated 03.02.2016, the petitioner approached this Court by filing the present Writ Petition.

3. The learned counsel for the petitioner contended that the petitioner while working as Technician Grade II (Soap), was required to discharge the functions of the post of Assistant Development Officer (Soap) with effect



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from 02.07.2004 and accordingly, the petitioner had discharged all the functions attached to the said post and retired from service on 30.04.2014.

The respondents are under obligation to prepare the panel for filling up the vacant post of Assistant Development Officer (Soap), but right from the year 2004, they failed to fill up the said post, thereby, the petitioner was constrained to discharge the functions of the post of Assistant Development Officer (Soap) till the year 2014, that is almost for a period of 10 years. Therefore, he is entitled for regularisation of service from the date on which he was posted to work as Assistant Development Officer (Soap) and also for payment of terminal benefits and pension in the said post. The learned counsel for the petitioner also placed reliance on the decision of the Division Bench of this Court in W.A.No.443 of 2018, dated 18.04.2018.

4. On the other hand, the second respondent had filed a counter affidavit on behalf of the respondents by contending that the post of Assistant Development Officer (Soap) that fell vacant in the year 2004 consequent of retirement of a person holding the post and hence, the said post could not be filled up because of the financial crunch that was faced at



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that relevant point of time and the petitioner who was working as Technician Grade-II (Soap) was posted against the said post. The petitioner voluntarily continued in the said post till on attaining the age of superannuation and made a claim for regularisation of his service in the said post after his retirement from service. It is also further contended that on the date of posting the petitioner in the post of Assistant Development Officer (Soap), the petitioner was holding a substantial post of Soap Chemist only and working on temporary basis in the post of Technician Grade-II and his service was also not regularised in the post of Technician Grade-II as on 02.04.2004. Thus, it is contended that the petitioner was neither promoted nor kept incharge of the post of Assistant Development Officer (Soap) at any point of time. But, it is only on temporary basis, the petitioner was asked to work in the said post. It is also further contended that the service of the petitioner in the cadre of Technician Grade-II was not regularised till the year 2013. The petitioner was treated as a person continuing in the post of Soap Chemist and accordingly, he was awarded the selection grade and special grade with effect from 19.07.1997 and 20.07.2007 respectively. Thus, it is contended that the claim of the petitioner for regularisation of his



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service in the post of Assistant Development Officer (Soap) cannot be granted.

5. This Court had carefully considered the submissions made by the learned counsels appearing on either side and perused the entire material available on record.

6. It is not in dispute that the promotion of the petitioner to the post of Technician Grade-II (Soap) on temporary basis with effect from 13.01.1993 came to be regularised only through proceedings in M.S.No.15, dated 28.06.2013 with effect from 13.01.1993. Thereafter, though the petitioner continued to perform duty as Assistant Development Officer (Soap), after confirmation of his promotion to the post of Technician Grade-II (Soap), the post of Assistant Development Officer (Soap) was not filled up by the respondents on regular basis and the petitioner was allowed to discharge the functions of the post of Assistant Development Officer (Soap) till 30.04.2014 on which date the petitioner was allowed to retire from service on attaining the age of superannuation. It is also not in dispute that the petitioner was allowed to retire in the post of Technician Grade-II (Soap),



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but, not in the post of Assistant Development Officer (Soap). Mere continuance in the higher post on temporary basis, as such will not confer any right upon the petitioner. Admittedly, the service of the petitioner in the post of Technician Grade-II (Soap) was not regularised till 28.06.2013. The petitioner has kept quite for almost two decades without raising his little finger against the respondents for not confirming his promotion to the post of Technician Grade-II (Soap). Immediately after regularising the promotion of the petitioner to the post of Technician Grade-II (Soap) through proceedings dated 28.06.2013, within a short span of less than a year, the petitioner retired from service. Though the petitioner claim to have submitted representations while he was in service claiming regular promotion/regularisation in the post of Assistant Development Officer (Soap), the same was not considered by the respondents, it is only after the petitioner retired from service, the respondents appears to called for preparation of panel for filling up the post of Assistant Development Officer (Soap). It is only thereafter, the petitioner made a claim for regularisation/ promotion to the post of Assistant Development Officer (Soap) and on having failed to get positive reply from the respondents, the petitioner had approached this Court



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by filing the present Writ Petition.

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7. No employee as a matter of right can claim promotion, but, however, the employee is entitled to be considered for promotion, when promotional post is sought to be filled up by the employer. In the instant case, the respondents have given an explanation for not filling up the post of Assistant Development Officer (Soap) between the years 2004 and 2014. For better appreciation, paragraph no.8 of the counter affidavit reads as follows:-

8.I deny the averment under para 10 to 16 of the affidavit. Though the panel particulars were called by the board to draw the panel for the post of assistant development officer (Soap) during the year 2014, no panel was drawn by the board for the said post. Apart from the petitioner, many employees of the board were ordered to work in higher post as incharge arrangements due to the non-drawal of the panel for the many posts. The board was continuously running on loss due which the government took certain steps which include retrenchment of board's employees, re- deployment of board staff to various government departments / boards / corporations



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etc .The board was facing a time in which even the dearness allowance and salary due to its employees could not be paid by the board. Direct recruitment was entirely banned by the Government. Since the board could not be able to meet out its establishment cost, panel was not drawn and promotion was not considered to its employees. Further only based on the request of the petitioner vide his letter dated.23.07.13 Selection grade and special in the cadre of technician (Soap) was awarded to the petitioner with effect from 15.01.03 and 15.01.2013 respectively vide this respondent's proceedings dated 06.03.2014. Though the petitioner served as in charge of the post of Assistant Development Officer (Soap) in the Toilet Soap Unit, Thirukalikundram, he was not promoted to the said post and hence he cannot claim any rights on the above post. Since, the holder of the above post got retired and not suitable hands were available in the board to fillup the vacant post of Assistant Development Officer (Soap) and the petitioner was serving in the Unit for many years, he was posted as in charge of the post. The statement of petitioner that his juniors were promoted to higher posts is false. In fact many Soap Chemists who were senior to the petitioner were not considered for promotion



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to the post Technician (Soap), where as the petitioner was promoted retrospectively to the said post since he possessed the qualification of graduation in science. His seniors were considered later for promotion to the said post . Since, the petitioner's request could not be considered by the Board for promotion to the post of Assistant Development Officer (Soap), his request was rejected by this respondent. Further the petitioner was allowed to retire from Board's service on 30.04.2014 only in the category of the Technician (Soap) and not from the post of Assistant Development Officer (Soap) as stated by the petitioner. Since he retired in the post of Technician (Soap) he is eligible to get pensionary benefits only in the said post.

8. As already observed above, an employer cannot be compelled to fill up the promotional post, if it is not viable or not possible for the employer to bear the financial expenses involved in filling up such promotional post. The stand of the respondents as taken in paragraph No.8 of the counter affidavit is not in dispute nor contradicted by the petitioner. In such circumstances, the claim of the petitioner for regularisation of his service in the post of Assistant Development Officer (Soap) on the ground that the petitioner



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discharged the functions of the said post till the date of his retirement cannot be accepted especially in context of the fact that there is no regular or temporary promotion of the petitioner to the post and admittedly, the petitioner was allowed to retire in the post of Technician grade-II (Soap) and not in the post of Assistant Development Officer (Soap).

9. The reliance placed by the learned counsel for the petitioner on a decision of the Division Bench of this court in W.A.No.443 of 2018 dated 18.04.2018 is concerned, the same is not applicable to the facts on hand. In the said case, the panel was drawn and the petitioner therein was at Serial No.1 of the panel and during the process of finalising the said panel for promotion, the petitioner therein retired from service and therefore, the Division Bench directed notional promotion to the petitioner only for the limited purpose of calculating pension. The present case on hand is not the one of such nature and the petitioner has already retired from service before the panel is drawn by the respondents. Therefore, in the considered view of this Court, mere continuance of the petitioner in the promotional post do not confer any right to claim for regularisation or promotion to the said post.



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10. In light of the above, this Court does not find any merits in the Writ Petition and the same is liable to be dismissed. However, from the materials on record, it is noticed that no regularisation or promotion of the petitioner to the post of Technician Grade-II (Soap) till the year 2013, that is almost for a period of 20 years, the petitioner was forced to hold the substantial post of Soap chemist, the petitioner was granted selection grade and special grade only in the post of Soap Chemist and subsequently, the services of the petitioner were regularised with effect from 13.01.1993 through proceedings dated 28.06.2013 and thus, the petitioner completed more than 20 years of service in the post of Technician Grade-II. Hence, the petitioner may be entitled for award of selection grade and special grade in the cadre of Technician Grade-II instead of Soap chemist as was granted in favour of the petitioner. In case, if the petitioner is found to be entitled for award of selection and special grade in the post of Technician Grade-II (Soap), the pay of the petitioner and the consequential pensionary benefits also may have to be revised.



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11. Accordingly, this Writ Petition is dismissed with the following directions:-

(i) The petitioner is granted liberty to make appropriate representation if he so intend to claim the benefit of selection and special grades in the cadre of Technician Grade-II, within a period of four weeks from the date of receipt of a copy of this order.

(ii) On receipt of such a representation, the second respondent shall consider the same and pass appropriate order as expeditiously as possible at any rate within a period of three (3) months from the date of submission of the said representation and communicate the same to the petitioner.

12. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.04.2024

gba
Index : Yes/No
Speaking order : Yes/No



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Represented by its Secretary to Government,
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MUMMINENI SUDHEER KUMAR, J.

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