



WEB COPY



W.P.No.27726 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.27726 of 2018
and
W.M.P.No.32244 of 2018

Employees State Insurance Corporation,
Represented by the Director General,
Headquarters Office (HO),
Panchdeep Bhawan, CIG Road,
New Delhi - 100 002.

... Petitioner

Vs.

1. M.Karunanidhi
2. Union of India,
Represented by its Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhavan, Rafi Marg,
New Delhi - 110 001.
3. The Secretary to Government,
Government of India,
Department of Personnel and Training,
North Block, New Delhi - 110 001.
4. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjehan Road,
New Delhi - 110 001.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of the Central Administrative Tribunal Madras Bench pertaining to the order passed in O.A.No.1403 of 2012 dated 12.01.2017 and quash the same.

For Petitioner : Mr.K.Prabhakar
For Respondents : Mr.K.Gunasekar
SPCCG [For R2 and R3]
: Mr.R.Malaichamy [For R1]
: R4 - No appearance

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The *lis* on hand has been instituted questioning the validity of the final order passed by the Central Administrative Tribunal dated 12.01.2017 in O.A.No.1403 of 2012.

2. The Employees State Insurance Corporation represented by the Director General is the writ petitioner before this Court.

3. The first respondent instituted Original Application before the Central Administrative Tribunal seeking a direction to the petitioner to grant notional promotion with all consequential service and monetary benefits.



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4. It is not in dispute that the first respondent was appointed as Assistant Director in the year 1987 and promoted to the post of Deputy Director in the year 1997. He was promoted to the post of Joint Director on 27.02.2009 and retired from service on attaining the age of superannuation on 30.11.2012.

5. The contention of the first respondent is that there was an enormous delay in convening DPC, which resulted in denial of promotion to the first respondent to the post of Regional Director. Though the first respondent's name was considered and included in the Panel of Officers fit for promotion to the post of Regional Director/Director, he was not considered, since DPC was not convened prior to his date of retirement on 30.11.2012. It is not in dispute that DPC was convened in the year 2014 and at the time of considering the names of eligible Officers for promotion to the post of Director, the first respondent was not in service. Thus, his name was not considered for promotion.

6. Mr.K.Prabhakar, the learned Counsel appearing on behalf of the writ petitioner would submit that the first respondent was fit for promotion during the relevant point of time. Though there was no impediment for grant of promotion, his case was not considered, since DPC was not convened. At the



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time of consideration, the first respondent was not in service and he was allowed to retire on attaining the age of superannuation on 30.11.2012.

Therefore, the Tribunal has committed an error in granting notional promotion without considering the fact that none of the Juniors to the first respondent was promoted to the post of Director in the Panel wherein, the name of the first respondent was included.

7. Mr.R.Malaichamy, the learned Counsel for the first respondent would strenuously oppose by stating that the first respondent was eligible for promotion to the post of Director. His name was included in the Panel of Officers fit for promotion to the post of Director. Since there was an administrative delay in convening DPC, the Tribunal considered and directed the petitioner to assess the vacancies pertaining to the year 2012, and further, directed to consider the case of the first respondent for grant of notional promotion to the post of Director and pay consequential monetary benefits. He would rely on two Office Memorandum's issued by the Government of India.

8. However, perusal of the said Office Memorandum's would reveal that they are unconnected with the issues relating to grant of notional promotion to the Officer.



9. Governing principles for grant of promotion are to be considered in the present case.

(a) Promotion *per se* cannot be claimed as an absolute right by an employee.

(b) However, consideration for promotion is a fundamental right of an employee.

(c) All promotions are to be granted strictly in accordance with the service Rules in force.

(d) Administrative delay in grant of promotion would not confer any right to an employee to claim on the basis that the vacancies were available at the time of his or her eligibility.

(e) Mere eligibility for promotion would not provide a cause for institution of a petition before the Tribunal seeking promotion either notionally or actually.

(f) Mere inclusion of the name of an employee in the Panel would not confer right to claim promotion.

(g) When the promotion *per se* is not a right, availability of vacancy in a department would not confer any right to seek promotion.

(h) It is the prerogative of the Administration to fill up the post.

(i) Right of an employee would accrue, only if actual promotion is



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granted to the Junior overlooking the name of the Senior. Even under those circumstances, the reason for overlooking of the name of Officer is to be taken into consideration.

10. In the present case, admittedly, the first respondent was found fit for promotion to the post of Director. He was not promoted, since DPC was not convened during the relevant point of time. When DPC was convened in the year 2014, the first respondent was not in service, since he was allowed to retire from service on 30.11.2012 on attaining the age of superannuation. When the first respondent was in service, prior to 30.11.2012, none of his Juniors were promoted to the post of Director. His Juniors were promoted after the first respondent reached the date of superannuation. Therefore, the said point is not in favour of the first respondent.

11. Notional promotion can be considered by the Courts, only if any of the Juniors to the Senior was promoted in violation of the Rules, but not otherwise. Mere availability of vacancy would not be a ground to grant notional promotion. Since filling up of the post is the prerogative of the administration, it cannot be claimed as a right by an employee.



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12. The Central Administrative Tribunal and its findings would reveal that the relief was granted based on the consideration that vacancies were available in the year 2012 prior to the retirement of the first respondent. Therefore, the first respondent ought to have considered for promotion during the relevant point of time, since he was found fit and his name was included in the Panel. Such a finding is running counter to the legal principles settled. Therefore, the present writ petition is to be considered.

13. Accordingly, the impugned order dated 12.01.2017 in O.A.No.1403 of 2012 is quashed and the Writ Petition stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[M.J.R., J.]

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Index: Yes/No

Speaking/Non-speaking order

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To

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