



W.P.No.25211 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 24.01.2025

ORDERS PRONOUNCED ON : 28.03.2025

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.25211 of 2015

and

W.M.P.No.24842 of 2016

N.Kannan

... Petitioner

Vs.

- 1.Chief General Manager,
State Bank of India,
Local Head Office,
10th Floor, 16, College Road,
Nungambakkam, Chennai-600 006.
- 2.The Deputy General Manager,
State Bank of India,
Zonal Office, Net Work I,
Zone II, Chennai-600 001.
- 3.The Deputy General Manager & CDO,
State Bank of India, HR Department,
Local Head Office, 16, College Road,
Nungambakkam, Chennai-600 006.



W.P.No.25211 of 2015

WEB COPY

4. The Regional Manager,
State Bank of India,
Region V, RBO, Puducherry.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the respondents to consider the representation dated 27.07.2015 of the petitioner for promotion to the next higher Grade of SMGS V and above with consequential benefits arising there from by implementing the 3% reservation for physically Handicapped cadres.

For Petitioner : Mr.V.Govardhanan
for M/s.Row & Reddy

For Respondents : Mr.S.Ravindran
Senior Counsel
assisted by Mr.K.Chandrasekaran

ORDER

This writ petition has been filed seeking a Writ of Mandamus directing the respondents to consider the representation dated 27.07.2015 of the petitioner for promotion to the next higher Grade of Senior Management Grade Scale V (SMGS V) and above with consequential benefits arising there from by implementing the 3% reservation for physically handicapped cadres.



W.P.No.25211 of 2015

WEB COPY

2. During the pendency of the present writ petition, the petitioner retired from service on attaining the age of superannuation during the year 2018. On perusal of the affidavit filed in support of the writ petition and the arguments advanced on behalf of the petitioner, it is clear that the claim of the petitioner in the present writ petition is for consideration of his case for promotion to the post of Higher Grade SMGS V and above by providing reservation to Persons with Disabilities (PwD) Category, in the light of the provision contained in Section 33 of Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995. According to the petitioner, by virtue of the law laid down by the Hon'ble Apex Court in the cases of *Union of India and Anr. vs. National Federation of the Blind and Ors.*, and *Union of India and Others vs. National Confederation for Development of Disabled and Another* reported in (2013) 10 SCC 772 and (2015) 13 SCC 643 respectively, the posts in each cadre in an organisation are required to be identified in terms of Section 32 of the Act, 1995 irrespective of the mode of filling up of the said post either by direct



W.P.No.25211 of 2015

WEB COPY

recruitment or promotion etc., and therefore, 3% reservation contemplated under Section 33 of the Act, 1995 is also applicable while filling up the post in the cadre of SMGS V in the respondent-Bank. Therefore, the respondent-Bank is under obligation to provide 3% reservation in terms of Section 33 of the Act, 1995 while filling up the post in the cadre of SMGS V and above by way of promotion.

3. According to the petitioner, he is fully eligible for consideration for promotion to the post of SMGS V and the respondents having also found the petitioner eligible for such promotion, called him for interview on more than one occasion, but he was not selected. Had there been a reservation provided in terms of Section 33 of the Act, 1995, the petitioner would have got promotion to the cadre of SMGS V and above while he was in service.

4. Heard Mr.V.Govardhanan, learned counsel for M/s.Row & Reddy, for the petitioner and Mr.S.Ravindran, learned Senior Counsel assisted by Mr.K.Chandrasekaran, learned counsel for the respondents.



W.P.No.25211 of 2015

WEB COPY

5. Though there is some confusion about the legal position as to whether Section 33 of the Act, 1995 would also mandate for providing reservation and promotion in favour of PwD candidates or not, the said issue has been decided by the Hon'ble Apex Court in the case of ***State of Kerala and others & Ors. vs. Leesamma Joseph*** reported in ***[2021] 3 S.C.R. 576*** and by virtue of the said decision, it is now clear that the reservation contemplated under Section 33 of the Act, 1995 in favour of PwD candidates is available not only at the time of entry level recruitment, but also in the case of recruitment by promotion also. The Hon'ble Apex Court in the said decision held as under:

“14. The legislative mandate has to be understood in the aforesaid context as it provides for equal opportunity for career progression, including promotion. Thus, it would be negation of the legislative mandate if promotion is denied to PwD and such reservation is confined to the initial stage of induction in service. This would in fact result in stagnation of the disabled in a consequential frustration.”



W.P.No.25211 of 2015

WEB COPY

In the light of the above, the claim of the petitioner is required to be examined.

6. The petitioner herein, who was initially appointed as Clerk-cum-Typist on 05.05.1980 in the General Quota has been promoted to higher scales in the General Category from time to time and finally, he was promoted to the post of Chief Manager in Scale IV on 01.11.2001 and he was working in the said post at the time of filing of the present writ petition. Admittedly, there are no rules providing for reservation in promotion in favour of PwD candidates in terms of Section 33 of the Act, 1995.

7. The relief sought in the present writ petition is for grant of mandamus to direct the respondents to consider the representation dated 27.07.2015 submitted by the petitioner. As already noted about, the petitioner retired from service on attaining the age of superannuation during the year 2018. Therefore, the question of consideration of the case of the petitioner for promotion to the higher post including SMGS V does not arise at this



W.P.No.25211 of 2015

WEB COPY stage.

8. The next question that falls for consideration is whether the petitioner is entitled for grant of notional promotion and other consequential benefits without actually working in the promotion post or not? This aspect of the matter is no more *res integra*, as the Hon'ble Apex Court in the recent decision in the case of ***Bihar State Electricity Board and Others vs. Dharamdeo Das*** reported in ***2024 SCC OnLine SC 1768*** has dealt with the similar issue and the said decision of the Hon'ble Apex Court was followed in another decision in ***Government of West Bengal and Others vs. Dr. Amal Satpathi and Others*** reported in ***2024 SCC OnLine SC 3512***, wherein, the Hon'ble Supreme Court held as under:

“21. While we recognize respondent No. 1's right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective



W.P.No.25211 of 2015

WEB COPY

upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.”

9. In the light of the above, it is evident that though the petitioner has fundamental right to be considered for promotion in accordance with law, but there is no such right to claim promotion as a matter of right and the petitioner is not entitled for notional promotion and other consequential benefits without actually working in the promotional post and that too after relieved from service on attaining the age of superannuation.

10. In the light of the above, though this Court agrees with the contention raised on behalf of the petitioner that Section 33 of the Act, 1995 provides for reservation in promotion in favour of PwD candidates, in similar line as that of reservation in the entry level, no relief can be granted in favour



W.P.No.25211 of 2015

WEB COPY of the petitioner for the reasons already assigned herein above.

11. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.03.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes

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W.P.No.25211 of 2015

MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
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