

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2010

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

W.P.No.24701 of 2001

P.Kalavathi

... Petitioner

Vs.

1. Food Corporation of India
rep. by its Zonal Manager (South),
3, Haddows Road,
Chennai-600 006.

2. Senior Regional Manager,
Food Corporation of India,
Tamil Nadu Region,
Chennai-6.

3. Deputy Zonal Manager &
Disciplinary Authority,
Zonal Office : Food Corporation
of India, 3 Haddows Road,
Chennai-6.

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarifie Mandamus, calling for the records relating to the order dated 26.9.2001 vide No.E1.30 (20)/2000 issued by the 1st respondent, quash the same and consequently, direct the respondents to consider the petitioner's date of promotion to the post of Assistant Manager (General) as 21.12.1989.

For Petitioner : Mr.N.G.R.Prasad for M/s.Row & Reddy

For Respondents : Mr.A.S.Thambusamy

ORDER

The petitioner was appointed as Assistant Grade III in the respondent Food Corporation of India in the year 1964. She was promoted as Assistant Grade II in the year 1967. Again, she was promoted as Assistant Grade I from the post of Assistant Grade II with effect from 10.1.1973 and posted to Kerala. The petitioner did not accept the promotion, because she was not willing to go to Kerala to work. In view of the same, the promotion order dated 10.1.1973 was cancelled by order dated 1.12.1973 and she was retained as Assistant Grade-II. On 20.2.1976, she was again promoted as Assistant Grade I.

2. On such promotion, with effect from 20.2.1976, her seniority was fixed at Sl.No.62 in the seniority list of Assistant Grade-I. But she made a representation stating that her seniority in the post of Assistant Grade I should have been fixed on the basis of the original order of seniority dated 10.1.1973. Considering the said representation, her seniority to the post of Assistant Grade I was altered and she was kept at Sl.No.12-A. Based on the said seniority, namely Sl.No.12-A, she was promoted as Assistant Manager (General) on 21.12.1989. On such promotion, she was posted at Coimbatore where she worked till 1991. In the year 1991, she was transferred to Chennai.

3. While so, in the year 1990, the persons who were promoted to the post of Assistant Grade I prior to 20.2.1976 made representation expressing grievance regarding the fixation of seniority for the petitioner at Sl.No.12-A overlooking their seniority. The same was accepted by the Corporation and admittedly, her seniority was again brought back to Sl.No.62 in the Seniority List of Assistant Grade I. Based on the said re-fixation of seniority, an attempt was made to revert her to the post of Assistant Grade I, since on the basis of the seniority at Sl.No.62, she would not have been in the zone of consideration during the year 1989 for promotion to the post of Assistant Manager (General). The petitioner immediately filed W.P.No.19666/96 challenging the re-fixation as well as the reversion. In the said Writ Petition, interim order of stay was granted and on account of the same, she continued as Assistant Manager (General). The said Writ Petition in W.P.No.19666/1996 was partly allowed by this Court by order dated 13.12.1996 wherein this Court held that the re-fixation of her seniority at Sl.No.62 was correct. However, in respect of the question of reversion, this Court passed the following Order :

" ... Anyway, these are all matters, which the respondent Corporation has got to examine and as it is, I do not find that the respondent Corporation has addressed itself to these issues before passing the impugned order, reverting the petitioner Smt.P.Kalavathy. Having regard to the fact that the petitioner Smt.P.Kalavathy has been working as Assistant Manager (General) from 21.12.1999 till today, it is hoped that the respondent Corporation will examine her case, keeping this particular aspect of the matter also in mind."

4. Based on the said order, the whole issue was reconsidered by the Corporation and by order dated 31.3.1999, the Corporation re-fixed her seniority in the post of Assistant Manager (General) with effect from 24.7.1993 instead of 21.12.1989. The petitioner is aggrieved by the said fixation of seniority in the post of Assistant Manager (General).

5. In pursuance of the said re-fixation of her date of promotion with effect from 24.7.1993 instead of 21.12.1989, the petitioner was also transferred to Vellore from Chennai. Aggrieved over the same, the petitioner filed a Contempt Petition in Contempt Petition No.583/2000 before this Court on 15.9.2000. While the said Contempt Petition was pending, the petitioner was placed under

suspension. The Contempt Petition was disposed of on 2.7.2001 with an observation that the Corporation should reconsider the whole issue relating to the seniority of the petitioner within three months. The said order was passed by this Court on 19.7.2001. Thereafter, the 1st respondent passed an order on 26.9.2001 again refixing the seniority of the petitioner in the post of Assistant Manager (General) only with effect from 24.7.1993 instead of 21.12.1999. Aggrieved over the said order, the petitioner is now before this Court with the present Writ Petition.

6. For the completion of the narration, I have to state that the order of suspension came to be challenged by a different Writ Petition and the said Writ Petition has already been disposed of. The petitioner continued to act as Assistant Manager (General) and retired from service on 30.5.2004. According to the petitioner, if the seniority of the petitioner in the post of Assistant Manager (General) is fixed only from 24.7.1993 instead of 21.12.1989, she would be put to monetary loss as she would not be eligible for the pay scale for the post of Assistant Manager (General) for the period between 21.12.1989 and 24.7.1993. It is in these circumstances, this Writ Petition is before me for disposal.

7. In the counter filed by the respondents, it is stated that the fixation of the seniority of the petitioner in the post of Assistant Grade I at Sl.No.62 has become final in view of the order passed by this Court in W.P.No.19666/1996. If that is so, according to the counter, in the year 1989, when the process of selection for promotion was undertaken by the Corporation, the petitioner would not have been within the zone of consideration for promotion. Therefore, according to the counter, the petitioner would not have been promoted in the year 1989 and so her claim of seniority in the post of Assistant Manager (General) is not sustainable. It is further stated in the counter that during the year 1991, the next process of selection was undertaken during which Serial Numbers 9 to 21 in the seniority list were promoted. In the yet another selection process which was undertaken in the year 1993 Serial Numbers 22 to 66 in the seniority list were promoted. Since the petitioner happened to be in Sl.No.62, she was promoted in the year 1993 and accordingly her seniority was fixed from 24.7.1993. Therefore, according to the counter, there is nothing illegal in fixing the seniority of the petitioner in the post of Assistant Manager (General) from 24.7.1993.

8. Reiterating the above contentions, the learned Counsel for the respondents would take me through the proceedings of the Selection Committee which selected the candidates for promotion during the years 1991 and 1993. According to the learned Counsel for the respondents, as per the Regulations of the Corporation, while considering the promotion to be given, for each post, there shall be three candidates who would be considered i.e. the zone of consideration shall be in the ratio 1:3. The learned Counsel would further point out that in the year 1991, the petitioner came within the zone of consideration i.e. in the ratio 1:3. But she was not selected by the Selection Committee as the Serial Numbers 9 to 21 were seniors to her. Therefore, according to the learned Counsel, the Serial Numbers 9 to 21 were promoted and the petitioner was not promoted in the year 1991. But in the year 1993, she was considered

again and accordingly promoted. That is why according to the learned Counsel, her promotion in the post of Assistant Manager (General) was given effect from 24.7.1993. Accordingly, her seniority was fixed.

9. I have considered the rival submissions made on either side and also perused the records.

10. Indisputably in the post of Assistant Grade-I, the seniority of the petitioner was fixed at Sl.No.62 and the same had become final in view of the order passed by this Court in W.P.No.19666/1996. As per the regulations of the Corporation, the zone of consideration shall be based on seniority in the ratio 1:3 i.e. for each post, there shall be three candidates under consideration. There is no dispute as of now that in the year 1989, the petitioner did not come within the zone of consideration at all for being considered for promotion. Therefore, her promotion was not given effect from 21.12.1989. The learned Counsel for the petitioner is not in a position to point out any infirmity in the said stand taken by the respondents. Therefore, I find every justification on the part of the respondents in holding that the petitioner was not entitled for promotion from 21.12.1989 to the post of Assistant Manager (General).

11. Now coming to the selection process undertaken in the year 1991, admittedly the petitioner had come within the zone of consideration. As per the regulations of the Corporation, the post of Assistant Manager (General) is not a post to be filled up by promotion based only on seniority. Such promotion is based on merit-cum-seniority. It is a selection post. It is needless to point out that if only, among the candidates, the merit is approximately equal, then based on the seniority, selection shall be made. But in this case, in the counter, it is not stated that all the candidates who were considered during the selection held in the year 1991 were all meritorious equally and therefore, the seniors of the petitioners were selected. The counter simply states that Sl.Nos.9 to 21 were selected and promoted because they were seniors to the petitioner. This would only indicate that merit was never considered and instead only seniority was considered for promotion.

12. Quite contrary to the stand taken in paragraph No.11 of the counter, the learned Counsel for the respondents would contend that the selection through the said process in the year 1991 was made on merit-cum-seniority basis. For this purpose, the learned Counsel would take me through the proceedings of the Selection Committee vide page Nos.28 to 34 of the typed set of papers. I am able to see from the said typed set of papers that the Selection Committee held its meeting on 28.11.1991. In respect of Assistant Manager (General), the proceedings of the Committee state as follows:

"ASSISTANT MANAGER (GENERAL)

Total Post 25

Reserved for Direct Recruitment 6

<https://hcservices.ecourts.gov.in/hcservices/>

Out of this, 2 posts reserved one each for SC&ST and the total post to be filled is 25-2=23. For 23 posts,

reservation according to roster is 3 for SC and ST. Since no SC/ST candidates are available within the normal/extended zone of consideration, the five posts (3 for SC and ST) have not been filled. For the remaining posts, the following names have been empanelled."

13. Accordingly, as per the proceedings of the Committee, Serial Numbers 3 to 18 starting from one P.M.Sivaraman to M.Ananda Kurup were all promoted. Even these proceedings do not reflect that there was consideration of merit. Had it been the case of the committee that the petitioner was equally meritorious like Sl.Nos.3 to 18 and therefore, based on the seniority Sl.Nos.3 to 18 were promoted, this Court would not have had any difficulty in approving the action of the Selection Committee. But the records clearly reveal that the merit of the candidates were never considered and instead, the Selection Committee went only by the seniority and selected Sl.Nos.3 to 18. Since the petitioner was in Sl.No.62, she was not selected. It is not the case of the respondents even now before this Court that the petitioner was not having the merit for promotion in the year 1991. Based on her irregularly fixed seniority at Sl.No.12-A when she was considered for promotion in the year 1989, she was so promoted because she was found to be meritorious. When that be so, it cannot be said that she was not meritorious in the year 1991. But it is comparative merit of the candidates which weighs. In this case such comparison was not done in the year 1991 and therefore, though the petitioner was also meritorious, there was no occasion for the respondents to give any finding as to whether the merit of the petitioner was superior so as to promote her by overlooking the seniors or she was in any manner equal to others so as to give promotion to others based on their seniority. Since the said exercise was not done, I am of the view that the petitioner cannot be denied the deemed promotion in the year 1991 when Sl.Nos.3 to 18 were promoted.

14. According to the respondents, in the year 1993, when she was again considered, she was promoted not on the basis of her comparative merit, but only on the basis of seniority. Though it is contended by the respondents that even in the year 1993, the promotions were given based on the comparative merit and the seniority being taken when the merit was equal, I do not find any material to support the said contention. The Selection Committee Proceedings as well as the counter do not reflect that the selection was made strictly in accordance with the regulations going by the comparative merit and seniority. To put it otherwise, the entire promotion process was done based on seniority-cum-merit instead of merit-cum-seniority. Therefore, I have no option to hold that the promotion of the petitioner to the post of Assistant Manager (General) should be deemed to have been given from the date on which Sl.Nos.3 to 18 were promoted. To this extent, I am inclined to grant relief to the petitioner.

15. In the result, the Writ Petition is partly allowed, the proceedings of the 1st respondent impugned in this Writ Petition is set aside with a direction to the 1st respondent to fix the seniority of the petitioner in the post of Assistant Manager (General) with effect from the date on which Sl.Nos.3 to 18 were promoted and keep

her seniority just below Mr.M.Ananda Kurup and give her all the consequential benefits. A consequential order shall be passed by the 1st respondent within a period of three months from the date of receipt of a copy of this Order. No costs.

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

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To

- 1.The Zonal Manager (South),
Food Corporation of India,
3, Haddows Road,
Chennai-600 006.
2. Senior Regional Manager,
Food Corporation of India,
Tamil Nadu Region,
Chennai-6.
3. Deputy Zonal Manager &
Disciplinary Authority,
Zonal Office : Food Corporation
of India, 3 Haddows Road,
Chennai-6.

1 cc to Mr.A.S.Thambuswamy, Advocate, Sr.No.91894

1 cc to M/s.Row & Reddy, Advocate, Sr.No.92558

सत्यमेव जयते

W.P.No.24701 of 2001

TEJ {CO}
TP/24.1.2011.

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