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P. SADAGOPAN AND ORS.

v.

FOOD CORPORATION OF INDIA, ZONAL OFFICER (SOUTH ZONE) REPRESENTED BY ITS ZONAL MANAGER AND ANR.

B

MARCH 20, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Service Law :*

C

*Food Corporation of India Staff Regulations 1971 :*

D

*Regulation 10—Promotion of Assistants Category I to the post of Assistant Manager Category II—Regulations providing three years experience as Assistant Category I as pre-requisite for consideration for promotion—Promotion Board issuing executive instructions relaxing the norms laid down under the Regulation—Held, executive instructions cannot be issued in derogation of statutory Regulations—Authorities concerned would determine promotions of all eligible candidates in accordance with the statutory regulations.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10651 of

1983.

From the Judgment and Order dated 26.4.82 of the Madras High Court in W.A. No. 32 of 1977.

Amrish Kumar for the Appellants.

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S.G. Sambandan and Y.P. Rao (NP) for the Respondents.

The following Order of the Court was delivered :

G

This appeal by special leave arises from the judgment of the Division Bench of the Madras High Court made in Writ Appeal No. 32/77 on April 26, 1982.

H

Respondent M. Sambandan and others had filed writ petition in the High Court seeking direction for consideration their cases for promotion in terms of the executive instructions issued by the Board. The learned single Judge dismissed the petition. On appeal, the Division Bench relied

upon instructions issued by the Board and held that the promotion should be in terms of the instructions issued by the Board which bind the zonal promotions. Those instructions came to be issued in exercise of Regulation 91 of the Staff Regulations. The question, therefore, is whether the view taken by the Division Bench is correct in law? Regulation 10 of the Staff Regulations, 1971 reads under :

"All promotions shall be considered by a Promotion Board duly constituted for purpose and shall be regulated by the general instructions to be issued by the Corporation from time to time in regard to the field of choice of candidates, the size of the panel and validity of the panel."

The Regulation provides that such of the candidates who have put in three years experience as Assistant Category I are eligible to be considered for promotion as Assistant Managers in Category II post. It is now settled legal position that executive instructions cannot be issued in derogation of the statutory Regulations. In view of the fact that the statutory Regulations require that experience of three years is a pre-condition to consideration for promotion to Category II post from Category I post, it would be obvious that any relaxation was in defeasance of the above Regulations. The Divisions Bench, therefore, was not right in upholding the power of the Board in directing relaxation of the statutory Regulations and consideration of the cases without considering the claims of all the eligible persons. Moreover, later the Board itself cancelled 1970 panel. Regulation issued for promotion of the Scheduled Castes and Scheduled Tribes should also be considered. Admittedly, they were not considered. Since the claims of all the persons are not before us, we do not propose to close the matter at this end. Accordingly, we set aside the order of the Division Bench and direct the concerned authorities to determine the promotions of all the eligible persons in accordance with the statutory Regulations and pass appropriate orders within a period of six months from the date of the receipt of the order:

The appeal is, accordingly, allowed. The writ petition stands dismissed subject to the above directions. No costs.

R.P.

Appeal allowed.