

P. Sadagopan and Others

Vs

Food Corporation of India, Zonal Officer (South Zone) Represented by its Zonal Manager and
Another

Civil Appeal No. 10651 of 1983

(K. Ramaswamy, S. Saghir Ahmed JJ)

20.03.1997

ORDER

1. This appeal by special leave arises from the judgment of the Division Bench of the Madras High Court made in Writ Appeal No. 32 of 1977 on 26-4-1982.

2. Respondent M. Sambandan and others had filed writ petition in the High Court seeking direction for consideration of 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 as under :

"All promotions shall be considered by a Promotion Board duly constituted for this 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."

3. 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 precondition 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 Division 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 the 1970 Panel. The 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 authorities concerned 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.

4. The appeal is, accordingly, allowed. The writ petition stands dismissed subject to the above

directions. No costs.