

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.7464 of 2007
(O.A.No.6385 of 2002)

S.Chandramouli

.. Petitioner

-vs-

1. Government of Tamil Nadu
rep. by its Secretary to the Government
Highways Department
Secretariat
Chennai-9

2. The Chief Engineer (General)
Highways & Rural Works Department
Chepauk
Chennai-5

3. The Superintending Engineer
Highways and Rural Works Department
Chennai-25

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order passed by first respondent in respect of the petitioner in G.O.Ms.No.6, Highways (HM1) Department dated 11.1.99 and quash the same and consequently direct the second respondent to regularize the services of the petitioner from his date of appointment.

For Petitioner :: Mr.R.Rengaramanujam

For Respondents :: Mr.R.Govindasamy
Additional Government Pleader

ORDER

Mr.S.Chandramouli filed O.A.No.6385 of 2002 on the file of the Tamil Nadu Administrative Tribunal, Chennai seeking an order for regularisation of his services from the date of his appointment by quashing the impugned order issued in G.O.Ms.No.6, Highways (HM1) Department dated 11.1.99 in respect of the petitioner alone.

Subsequently, the matter came on transfer and renumbered as the present writ petition.

2. Learned counsel for the petitioner submitted that the petitioner was recruited through the employment exchange and appointed as Assistant Draughtsman by the Superintending Engineer, Highways and Rural Works Department, Chennai, the third respondent herein by proceedings in Rc.No.65/81/89 dated 27.11.81 in the said department. Accordingly, he joined duty on 7.12.81 in the office of Divisional Engineer, Kallakurichi. After serving for about three years, he was promoted as Junior Draughting Officer in the year 1984 and as such joined in the said post on 27.9.84. While he was continuously serving in the highways department as Junior Draughting Officer without any break, in terms of G.O.(3D) No.104, Highways (HM1) Department dated 13.8.97, he was reverted as Assistant Draughtsman by order dated 13.3.97 issued by the Chief Engineer (General), Highways and Rural Works Department, the second respondent herein, on the premise that he was not qualified to hold the post of Draughtsman. Arguing against the said approach, the learned counsel submitted that when the petitioner had passed S.S.L.C., and also completed three years of apprenticeship in the office of the Executive Engineer, Public Works Department, River Conservancy Division, Trichy from 20.8.75 to 19.8.78 under the National Apprenticeship Scheme and had also passed the examination for National Apprenticeship Certificate in the trade of Draughtsman (Civil) conducted by the National Council for Training in vocational trade held in the month of November, 1978, on the basis of G.O.Ms.No.1151, Labour and Employment Department dated 18.7.79 issued by the Government giving instructions to give preference in the matter of appointment to the apprentices who had completed the apprenticeship under the National Apprenticeship Scheme, the petitioner ought not to have been reverted. Moreover, the Government by issuing G.O.Ms.No.1177, Personnel and Administrative Reforms Department dated 28.11.80 had also recognised the National Trade Certificate / National Apprenticeship Certificate in respect of 29 trades for the purpose of appointment to suitable posts under the Government departments and instructions were also issued in this connection to all the heads of departments to make suitable amendments to the concerned special rules for this purpose. A perusal of the annexure to the G.O.Ms.No.1177, Personnel and Administrative Reforms Department dated 28.11.80 also shows that the trade of Draughtsman (Civil) has been included in Serial No.12 of the annexure. Therefore, by virtue of G.O.Ms.No.1177 dated 28.11.80, the petitioner should have been given preferential treatment over others in the matter of appointment. Considering the case of the petitioner through sponsorship from employment exchange, when the third respondent had appointed him as Assistant Draughtsman on 7.12.81 and subsequently promoted as Junior Draughting Officer on 27.9.84, however, on a wrong premise, the petitioner was ousted from service on 26.10.86. Thereafter, again he was promoted as Junior Draughting

Officer on 5.1.87. Once again he was reverted as Assistant Draughtsman on 2.4.97 and his services in the said post were sought to be regularised on 11.1.99. After considering his performance for about six long years, he was given promotion to the post of Junior Draughting Officer on 4.1.2005 and again given further promotion to the post of Draughting Officer on 13.8.2013 and the petitioner is left with only two more years of service.

3. Under this backdrop, the only grievance of the petitioner is that when a similarly placed person Mr.V.Senthilnathan, who was also having the same qualification like that of the petitioner and was appointed in the year 1980, was given the benefit of regularisation from the date of his appointment and even in the case of his junior one Mrs.P.K.Sasikala, who was also appointed on 6.10.86 five years after the petitioner's appointment, the respondents had given the benefit of regularisation from the date of her original appointment, the petitioner alone has been wrongly penalised, therefore, the regularisation given to the petitioner from 11.1.99 being wrong, he should be given the benefit of regularisation from the date of his initial appointment as Assistant Draughtsman on 7.12.81.

4. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader appearing for the respondents submitted that the post of Assistant Draughtsman is classified under category-4 as Tracer in Madras Highways Engineering Subordinate Service Rules. The qualifications prescribed in the service rules, namely, under Rule 5, Schedule-II for the post of Tracer (redesignated as Assistant Draughtsman) are as follows:-

- (i) A pass by lower grade in the Government Technical Examinations in Geometrical Drawing, Building Drawing and Estimating and Freehand outline and Model Drawing; or
- (ii) A completed SSLC issued under the authority of Government of Tamilnadu with a pass in 'Engineering' included as a special subject in the bifurcated course in secondary schools;
- (iii) A pass in the Building and Structural Draughtsmanship certificate course of the Central Polytechnic, Madras.

However, when the petitioner was sponsored by the employment exchange and appointed as Tracer (subsequently re-designated as Assistant Draughtsman) by the Superintending Engineer, Highways and Rural Works Department, Chennai Circle by his proceedings No.65/81/B9 dated 27.11.81 and he joined duty on 7.12.81, after sometime, he was promoted as Junior Draughting Officer on 27.9.84. However, he was ousted from service for want of vacancy on 26.10.86, nonetheless, he was promoted as Junior Draughting Officer on 5.1.87. On verification of his qualification, it was found that he was not possessing the requisite qualification. Therefore, with reference to G.O.(3D) No.15, Highways Department dated 20.2.97, as he failed to possess the qualification required for Junior Draughting Officer, he was reverted

as Assistant Draughtsman from 2.4.97. Subsequently, due to dearth of qualified hands, as the petitioner was also coming under the purview of G.O.Ms.No.1177, Personnel and Administrative Reforms Department dated 28.11.80, which states that the National Trade Certificate is recognised for appointment as Draughtsman (Civil), the third respondent-Superintending Engineer, Highways and Rural Works Department has appointed him as Assistant Draughtsman. It is also stated that so far as this appointment is concerned, as the qualification possessed by the petitioner is not incorporated in the service rules, his appointment as Assistant Draughtsman on 7.12.81 has been termed as irregular appointment requiring relaxation of service rules by the Government to regularise his services in the post of Assistant Draughtsman. Later on, considering his case, based on the recommendation of the Chief Engineer (Highways), the Government have issued orders relaxing the service rules relating to the qualification in favour of the petitioner in G.O.Ms.No.6, Highways Department dated 11.1.99. Accordingly, his services were regularised in the post of Assistant Draughtsman from the date of the Government Order dated 11.1.99. Thereafter, the petitioner submitted a representation to the Chief Engineer (General), Highways on 8.2.99 seeking to regularise his services as Assistant Draughtsman from the date of his appointment. When the Government have clarified in their letter dated 23.6.99 that the services were regularised from the date of the Government Order, on this basis, his request was rejected. However, in a subsequent reference to the Government by the Chief Engineer (General), Highways, the Government in their letter dated 3.12.2001 has informed that the proposal for regularisation of the services of the petitioner from the date of his appointment can be considered only after the amendment to the service rules for the post of Assistant Draughtsman, on this basis, the Chief Engineer (General), Highways was requested to renew the proposal after the publication of the amendment to the service rules. Till date, no final order has been passed in the matter. Therefore, the petitioner cannot press his prayer, as he was already regularised from 11.1.99 and subsequently he was also given promotion to the post of Junior Draughting Officer on 4.1.2005 and further promotion to the post of Draughting Officer on 13.8.2013.

5. This Court finds that the petitioner has been singled out. As a matter of fact, the petitioner, being sponsored from the employment exchange, was appointed as Assistant Draughtsman on 7.12.81. On the date of appointment, he having passed S.S.L.C., had also completed three years of apprenticeship in the office of the Executive Engineer, Public Works Department, River Conservancy Division, Trichy from 20.8.75 to 19.8.78 under the National Apprenticeship Scheme. That apart, he had also passed the examination for National Apprenticeship Certificate in the trade of Draughtsman (Civil) conducted by the National Council for Training in vocational trade held in the month of November, 1978. The Government also in G.O.Ms.No.1151, Labour and Employment Department dated 18.7.79 had

issued instructions to give preference in the matter of appointment to the apprentices who had completed the apprenticeship under the National Apprenticeship Scheme. In addition thereto, the Government have also issued one another G.O.Ms.No.1177, Personnel and Administrative Reforms Department dated 28.11.80 recognising the National Trade Certificate / National Apprenticeship Certificate in respect of 29 trades for the purpose of appointment to suitable posts under the Government departments. A perusal of the annexure enclosed to G.O.Ms.No.1177, Personnel and Administrative Reforms Department dated 28.11.80 clearly shows that the trade of Draughtsman (Civil) has been included in Serial No.12 of the said annexure. When the Government in the said Government Order had directed that the National Trade Certificate / National Apprenticeship Certificate in respect of the trades mentioned in the annexure to the said Government Order be recognised as the qualification for the purpose of appointment to suitable posts under the Government departments, for the simple reason that the Madras Highways Engineering Subordinate Service Rules have not been amended suitably, after appointing the petitioner through employment exchange on 7.12.81, further taking a decision to regularise his services from 11.1.99, cannot attribute any more excuse to the petitioner. No doubt, after the services of the petitioner were regularised in the post of Assistant Draughtsman from 11.1.99, he was again promoted to the post of Junior Draughting Officer on 4.1.2005 and further promoted to the post of Draughting Officer on 13.8.2013. But the case of the petitioner appears to be treated differently by the respondents.

6. As mentioned above, when the petitioner's junior one Mrs.P.K.Sasikala was appointed on 6.10.86, she was given the benefit of regularisation from the date of her original appointment. Similarly, one another person Mr.V.Senthilnathan, who was also appointed as Assistant Draughtsman on 28.4.80 with the same qualification like that of the petitioner, was given the benefit of regularisation from the date of his original appointment by issuing G.O.(3D) No.104, Highways (HM1) Department dated 13.8.97, this Court hardly finds any justification for not extending the same benefit to the petitioner. A perusal of paragraph-6 of the counter affidavit filed by the respondents also shows that the Chief Engineer (General), Highways addressed a letter to the Government to give the benefit of regularisation from the date of his original appointment. When the proposal has already been sent by the Chief Engineer (General), Highways for regularisation of his service from the date of his appointment, the Government also took a stand that till the amendment to the service rules for the post of Assistant Draughtsman is carried out, no final order could be passed. No doubt, till date, it appears that the amendment has not taken place. When no amendment of the service rules has taken place as contended by the respondents in the counter affidavit, the G.O.(3D) No.104, Highways (HM1) Department dated 13.8.97 has already been issued in favour of Mr.V.Senthilnathan giving the benefit of regularisation from the date

of his appointment, while so, the case of the petitioner also should be considered.

7. For all the aforementioned reasons, the writ petition stands allowed and the impugned order is set aside. Needless to mention that the respondents, after giving the benefit of regularisation from the date of his initial appointment, as it was given to one Mr.V.Senthilnathan, shall disburse the service benefits accruing therefrom to the petitioner within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

ss
To

1. The Secretary to Government
Highways Department
Fort St.George
Chennai 600 009
2. The Chief Engineer (General)
Highways & Rural Works Department
Chepauk
Chennai 600 005
3. The Superintending Engineer
Highways and Rural Works Department
Chennai 600 025

+ 1 cc to Mr.R.Rengaramanujam, Advocate SR.14809

+ 1 cc Government Pleader Sr.15772

RSY(CO)
EU 15.04.2015

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