

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.5762 of 2007
(O.A.No.5448 of 2002)

L.Chandrasekaran

...Petitioner

Vs.

1.The Commissioner
Department of Art and Culture
Thendral, Greenways Road,
Chennai 600 028.

2.The Secretary
Department of Art and Culture
Secretariat
Fort St.George,
Chennai 600 009.

3.The Principal
Govt. Kavin College of Art
Kumbakkonam,
Thanjavur District 612 002.

4.Anita Doss
5.A.Rajendran
6.P.B.Vijayakumar
7.A.P.S.Esuder Rasu
8.V.S.Arularasan
9.K.P.Vijayakumar
10.S.Devadoss

...Respondents

Prayer:

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Writ petition filed under Article 226 of the constitution of India for the issuance of writ of Mandamus, praying to direct the first respondent to promote the petitioner as Lecturer with effect from 12.12.88 and senior lecturer with effect from 8.6.2000 on par with his juniors the respondents 4 to 10.

For Petitioner : Mr.V.Manisekaran
For Respondents: Mr.K.V.Dhanapalan for R1 to R3
Additional Government Pleader
No Appearance for R4 to R10

ORDER

This writ petition came on transfer from the Tamil Nadu Administrative Tribunal. The petitioner has sought for a direction against the respondent to promote him as Lecturer with effect from 12.12.1988 and Senior Lecturer with effect from 08.06.2000 on par with his juniors, respondents 4 to 10.

2.The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Moulder in Sculpture Department in the Government College of Arts and Crafts, Chennai on 15.05.1979 as he was holder of second class Diploma in Fine Arts in Sculpture after completing E.S.S.L.C. (VIII Standard). It appears that he has also completed the Post diploma in Fine Arts in Sculpture in 1972-73.

3.The claim of the petitioner shows that the post of Instructor comes under the Category 5 of the Special Rules for the Tamil Nadu Educational Subordinate Service is to be filled up by promotion from among the holders of the post concerned or transfer from any other class or category or recruitment by transfer from any other service or direct recruitment. The said rule is to be observed for appointment for the category of Instructors in the Government College of Arts and Crafts at Egmore Chennai.

4.While so, in the exercise of power conferred by proviso under Section 309 of the Constitution of India, the Governor of Tamil Nadu made amendments to the Special Rules for the Tamil Nadu Educational Subordinate Service. As per Section 4 of the said amendments Instructors in Government Colleges of Arts and Crafts will be appointed by the Joint Director of Technical Education, Chennai. Section 5 of the amendment clearly says that the persons who are holders of the first class Diploma in Fine Arts in teaching or practical experience in design and execution in the appropriate field are to be appointed as Instructors.

5.The first respondent filled up nine vacancies of Instructors in the Government College of Arts and Crafts, Chennai in appointing the respondents 4 to 10 directly without calling for applications from eligible persons. As per the statutory rules, the first respondent should have filled up the vacancies by promoting and appointing eligible persons who has already been in service of the respondent college. However, if the first respondent desired to recruit persons from outside, he should have invited applications from eligible candidates and should have recruited candidates by way of selection by considering the merits of the applicants.

6. Aggrieved by the selection of the respondents 4 to 10, it was stated that the petitioner had challenged his non-promotion as Instructor by filing O.A.No.386 of 1989 before the learned Tamil Nadu Administrative Tribunal. The said Original Application was allowed giving direction to the respondent to consider his case for promotion to the post of Instructor in Government College of Arts and Crafts, Madras. Pursuant to the order passed by this Court, the petitioner was promoted as Instructor from 17.02.1997 i.e., from the date of the order in O.A.No.386 of 1989. However, since the petitioner ought to have been promoted prior to his juniors, he made a representation on 26.03.1997 to the first respondent to promote him retrospectively. But so far no order has been passed.

7. Therefore, he filed one another Original Application in O.A.No.8585 of 1997 seeking for a direction to dispose of his representation. Thereafter, the petitioner also filed contempt petition complaining that the direction given in O.A.No.8585 of 1997 was not complied with. The learned Tribunal while disposing of the Contempt Application No.474 of 1998 in its order dated 24.07.2001 has dismissed the same taking the stand shown by the respondent that reply was given to the petitioner. Aggrieved by the intimation shown by the respondent for not giving him promotion for the post of Lecturer, he has again come back to this Court.

8. Concluding his argument, the learned counsel for the petitioner would submit that the petitioner's juniors namely, respondents 4 to 10 having promoted as Lecturers and Senior Lecturers, the respondent cannot deny the same treatment and he further submitted that the stand taken by the respondent that the petitioner has not acquired teaching experience cannot be accepted since he was given promotion belatedly to the post of Instructor. Therefore, by relaxing the said qualification, he should be considered.

9. A detailed reply affidavit has been filed indicating the qualification requirement for the post of Lecturer.

10. The learned Additional Government Pleader pleaded that the request of the petitioner to promote him retrospectively as Lecturer with effect from 12.01.1988 and as Senior Lecturer with effect from 08.06.2000 cannot be considered since the qualification mentioned in G.O.Ms.No.1537, Education Department, dated 30.09.1986 that a first class Degree or Diploma in Fine Arts (Painting of Commercial Art or Sculpture obtained through the Government College of Arts and Crafts, Madras or Kumbakonam) is not possessed by the petitioner and he further stated that even the teaching experience for a period of not less than five years in a position not below the Rank of Lecturer in Painting, Commercial Art or Sculpture, Lecturer in History of Arts, Instructors and Designers in any of the Colleges of Arts and Crafts of the State of Tamil Nadu or equivalent post in other institutions has also not been possessed. I find full merits in these submissions.

11. Admittedly, the petitioner's claim for promotion to the post of Lecturer from 12.01.1988 and again as Senior Lecturer from 08.06.2000 cannot be given to him as he admittedly possess only a second class in Diploma in Fine Arts in Sculpture. That apart, he is also not having the requisite teaching experience of five years. Therefore, the claim of the petitioner being mis-conceived, this Court is not inclined to entertain the prayer sought for. Hence, this petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner

Department of Art and Culture
Thendral, Greenways Road,
Chennai 600 028.

2. The Secretary

Department of Art and Culture
Secretariat
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3. The Principal

Govt. Kavin College of Art
Kumbakkonam,
Thanjavur District 612 002.

+ 1 cc to Mr.V. Manisekaran, Advocate SR.11028

+ 1 cc to the Government Pleader Sr.10582

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BR(CO)

Eu 13.03.15