

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No. 24070 of 2010

and M.P.Nos.1 and 2 of 2010

P.Azhagar Samy

...Petitioner

-Vs-

1.The State of Tamil Nadu
Rep. by its
the Secretary to Government,
Higher Education Department,
Chennai - 9.

2.The Principal Secretary/
Commissioner of Technical Education,
O/o. The Directorate of Technical Education,
Guindy,
Chennai 25.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records connected in Memo No.40909/B2/2009, dated 13.11.2009 passed by the second respondent and quash the same and direct the respondents to promote the petitioner as instructor on completion of Diploma qualification with effect from 1982, as per the G.O.Ms.No.1364, Education Department, dated 16.08.1988 and give consequential promotion as Associate Lecturer and Senior Lecturer, as given to other based on order passed by this Court in W.A.No.261 of 2008 dated 8.4.2008 and also G.O.Ms.No.89 Higher Education Department, dated 31.03.2009 and fix the petitioners pay on par with juniors and pay arrears.

For Petitioner : Mr.G.Elanhchezhiyan

For Respondent : Mr.V.Jaya Prakash Narayan
Spl.G.P.

O R D E R

The prayer in the writ petition is for a Certiorarified Mandamus calling for the records in Memo No.40909/B2/2009, dated 13.11.2009 passed by the second respondent and quash the same and direct the respondents to promote the petitioner as instructor on completion of Diploma qualification with effect from 1982, as per G.O.Ms.No.1364, Education Department, dated 16.08.1988 and give consequential promotion as Associate Lecturer and Senior Lecturer, as given to other similarly placed persons, based on the orders of this Court in W.A.No.261 of 2008 dated 8.4.2000 and also G.O.Ms.No.89 Higher Education Department, dated 31.03.2009 and to fix the petitioner's pay on par with juniors and pay arrears.

2.1. The short facts leading to filing of this case is as follows:

The petitioner passed Diploma in Mechanical Engineering in the year 1980. He was appointed as Draughtsman in Mechanical Engineering at Alagappa Polytechnic, Karaikudi by order dated 17.11.1980. The service of the petitioner was subsequently regularised from 27.03.1982 and his probation was also declared from 23.05.1983 and thereafter, the petitioner passed B.E. degree in November 1986. Consequently, he was promoted as Instructor on 16.12.1988. Subsequently, he was promoted as Lecturer on 19.08.1989 and Senior Lecturer on 19.08.1999 and he was upgraded as Head of Department on 19.09.2009 and as such, he is continuing his service without any remark.

2.2.The further case of the petitioner is that though initially, there was no rule for promotional aspects of the persons similarly like that of the petitioner, who are working in Technical Education Department of the respondent, subsequently, the Government issued G.O.Ms.No.1936, Education Department, dated 31.08.1981 and G.O.Ms.No.2100 Education Department dated 18.09.1981, whereby rules were framed. Even in such rules, no provision was given for recruitment to the post of Instructor by transfer.

2.3. Thereafter, the Government issued G.O.Ms.No.1363, Education department dated 16.08.1988 and thereafter issued another amended order in G.O.Ms.No.1364 Education Department dated 16.08.1988 for promotion from the categories of Foreman (Automobile), Boiler Foreman, Electrical Foreman, Workshop Instructor and Draughtsman. The said amendment was issued by the Government, in exercise of the power conferred by the proviso to Article 309 of the Constitution of India, as per which, the Governor of Tamil Nadu made the amendments to the Special Rules for the Tamil Nadu Technical Educational

Subordinate Service. Paragraph No.2 of the said amendment rules states that the amendment hereby made shall be deemed to have come into force on and from 23.12.1981. Thereby, the said amendment was issued by the Government in G.O.Ms.No.1364 dated 16.08.1988 amending rules and therefore, there is a retrospective effect from 23.12.1981.

2.4.In the amended rule in clause 1(1), there is about categories, which are covered under the said Rules for the purpose of promotion by transfer. The qualification as fixed in the said rule reads thus:

"promotion from the categories of Foreman (Automobile) or Boiler Foreman or Electrical Foreman or Workshop Instructor or Draughtsman possessing Diploma qualification in the respective branch of Engineering relating to the posts concerned with services for a period of not less than two years."

2.5.Though in the said original rules, which were amended under G.O.Ms.No.1364 retrospectively from 23.12.1981 whereby, qualification for promotion to the post of Instructor has been given clearly, the respondents had not considered the case of the petitioner for giving promotion from the date actually the petitioner completed two years of service with requisite Diploma qualification. Though so many juniors to the petitioners have been considered and given such promotion, the petitioner has not been given promotion and therefore, the petitioner had approached the respondents for promotion as Instructor as per the said amended rule with all subsequent service benefits including promotion and to pay benefits, which has been considered and rejected by the respondents by the impugned order dated 13.11.2009. The only reason cited in the impugned order is that the similarly placed persons had been considered and given retrospective promotion and service benefits pursuant to the order of this Court and therefore, the said gesture cannot be extended to the petitioner. Based on that reason only the request of the petitioner was rejected and the impugned order was passed. Challenging the said order, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that the issue raised in the writ petition is squarely covered by the order of this Court.

4.To substantiate his claim, the learned counsel for the petitioner relied upon the decision of this Court made in W.P.No.4660 of 2005 dated 30.10.2006 and the order of the Division Bench of this Court made in W.A.No.261 of 2008 dated

08.04.2008. He also produced a copy of the Government order made in G.O.Ms.No.89 Higher Education(I 2) Department, in and by which, the orders of this Court referred to above have been implemented.

5.The learned counsel for the petitioner further submitted that when the respondents accepted the verdicts of this Court and also implemented the same and the similarly placed persons like that of the juniors to the petitioner have been given benefit of promotion retrospectively from the date on which, actually the respective employees acquired necessary qualification as per the amended rule, the said benefits, should also have been extended to the petitioner. However, the same is denied to the petitioner by the impugned order which is palpably wrong and indeed a discriminatory one. Therefore, the writ petition has to be allowed.

6.Per contra, the learned Special Government Pleader would contend that the person who possess the requisite qualification for the post can only be considered for promotion and as per the seniority fixed in the feeder category post, he will be considered for promotion when his actual due turn of promotion comes out. This aspect would be considered by the respondents based on the actual vacancies available in the Department or Cadre. Therefore, the learned Special Government Pleader would contend that the mere acquiring of the qualification by the petitioner alone would not make him eligible to claim promotion, though he is eligible for consideration from the date on which, he acquired qualification or completed his service.

7.The learned Special Government Pleader would further contend that as far as the cases referred to by the petitioner with regard to grant of promotion is concerned only pursuant to the order passed by this Court their cases have been considered and granted promotion and not by the decision taken by the respondents and the same has been rightly pointed out by the respondents in the impugned order. In that view of the matter, the impugned order is sustainable and therefore, writ petition has to be dismissed.

8.This Court considered the rival submissions made by the respective learned counsel and perused the materials available on record.

9.At the out set, the following factors are not in dispute.

The petitioner was initially appointed as Draughtsman on 17.11.1980. Even before getting appointment, he possessed the Diploma qualification. The petitioner completed two years of service on 17.11.1982. Though G.O.Ms.No.1364, which was issued on 16.08.1988 amending the said Rules namely, the qualification and eligibility for promotion to the post of Instructor on completion of Diploma qualification and on completion of two years of service in the feeder category with retrospective force from 23.12.1981, the petitioner, who was working in the Department in the feeder category namely, Draughtsman was not considered.

10.The following factors are also not in dispute:

When some of the persons, who are similarly placed like that of the petitioner and junior in the service, had already approached this Court raised the issue and got benefits and this Court also regarding the same issue ultimately, passed the order in W.P.No.4660 of 2005 dated 30.10.2006 directing the respondents to give promotion to the petitioners therein by applying the rule from the date on which, those employers acquired the qualification and completion of two years of service. The said order was appealed by the respondents in W.A.No.261 of 2008 and the Division Bench of this Court, after considering rival claims, by order dated 08.04.2008 confirmed the order of the learned Judge and dismissed the Writ Appeal. After three years, the Government issued G.O.Ms.89 Higher Education (I 2) Department dated 31.03.2009 whereby, the orders of this Court referred to above have been implemented and at least for four persons, who were the petitioners in W.P.Nos.4660 of 2005 had been given promotion with retrospective effect namely, from the date of their actual eligibility, by acquiring qualification and completion of two years of service as per the amended rules.

11.As submitted by the learned counsel for the petitioner though orders have been passed by this Court on the same issue and in similar set of facts and those orders were implemented by the respondents in G.O.Ms.No.60 Higher Education (C2) Department dated 30.04.2012, G.O.Ms.No.126 Higher Education (C2) Department dated 30.07.2014 and G.O.Ms.No.56 Higher Education Department dated 25.03.2015, the respondents have not considered the case of the petitioner.

12.Though series of orders have been passed by this Court and the same have been accepted and implemented by the respondents, there is no justifiable reason for the respondents to deny the benefits sought for by the petitioner and to extend

the same to the petitioner by stating that all those individuals got benefits only pursuant to the orders of this Court.

13. In this context this Court wants to point out the reference of a speech made by the Prime Minister made at New Delhi that more than 40% of the litigations pending in the Courts are pertaining to the Government litigation. While making the said reference, the Prime Minister has further stated that in order to avoid the said litigations of the Government, some decisions can be taken. One of the illustrative suggestion as has been suggested by the Prime Minister, if any decision has been taken in respect of the issue with regard to service conditions/benefits of a teacher pursuant to the Court orders and if the same issue arisen on the similar set of facts, the same decision has to be followed to all similarly placed persons, so that multiplicity of proceedings can be avoided.

14. This speech of our Prime Minister can be squarely applied to the present facts of the case. In this case also in spite of orders have been passed by this Court and the same has been confirmed by the Division Bench of this Court, the respondents have not followed the same in the case of the petitioner, who is similarly situated.

15. It is needless to state that pursuant to the orders of this Court, the same benefits, which have been given to the similarly placed persons like that of the petitioner, the respondents ought to have given to the petitioner and others, who are eligible and entitled for getting the same. This kind of attitude will reduce the multiplicity of Government litigations, as has been pointed out by our Prime Minister.

16. In this case also though the petitioner has acquired the required Diploma qualification at the time of appointment and completed two years of service as early as on 17.11.1982 itself, the denial of promotion by applying the amended rules by the respondents is palpably wrong and unsustainable.

17. Moreover, the reason stated by the respondents in the impugned order is also unacceptable for the reasons, which have been referred to above. Therefore, this Court has no hesitation to quash the impugned order passed by the 2nd respondent. Accordingly, the impugned order is quashed.

18. Considering the fact that the petitioner has to be given promotion and he has retired from service, the respondents are hereby directed to give promotion to the petitioner from the date on which he completed two years of service i.e. from 17.11.1982 as Instructor and also his further promotion till Head of Department, though he attained superannuation, with

retrospective effect. The respondents are further directed to see the pay disparity if any and pay dues can be calculated and disbursed to the petitioner. This benefit can be extended to retirement and pensionary benefits also. The needful shall be done by the respondents within a period of four months from the date of receipt of a copy of this order.

19.The writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The State of Tamil Nadu
Rep. by its
the Secretary to Government,
Higher Education Department,
Chennai - 9.

2.The Principal Secretary/
Commissioner of Technical Education,
O/o. The Directorate of Technical Education,
Guindy, Chennai 25.

+1 cc to Mr.G.Elanchezhiyan, advocate, sr.62106

+1 cc to Govt.Pleader, sr.62139.

ev(co)
krd 7/12

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W.P.No. 24070 of 2010

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