

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 11.11.2016

Delivered On : 18.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.26601 of 2016

and WMP.Nos.22792 and 25359 of 2016

S.Soundararajan

.. Petitioner

vs.

Tamil Nadu Pollution Control Board,
Rep. by its Chairman,
No.76, Mount Salai,
Guindy, Chennai-600 032.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the concerned records from the respondent, quash the order of the respondent dated 18.07.2016 bearing Proceedings No.PER/P2/035399/2014 as illegal, arbitrary and contrary to law and consequently direct the respondent to regularize the services of the petitioner in the post of Assistant Statistical Officer by declaring the probation from 07.09.2014 in the said post.

For Petitioner : M/s.Balan Haridas

For Respondent : Mrs.Rita Chandrasekar

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the order of the respondent dated 18.07.2016, in and by which the petitioner, who has been temporarily appointed by transfer of service to the post of Assistant Statistical Officer in the Scale of Pay of Rs.9300-34800 + GP Rs.4600, is reverted back to the post of Data Entry Operator in the Scale of Pay of Rs.5200-20200 + GP 2400 with effect from the date of issue of this order on the ground that he did not possess the educational qualification prescribed for the post of Assistant Statistical Officer as per Tamil Nadu Pollution Control Board Revised Service Regulations, 2010.

2. The petitioner is a holder of B.A. Economics Degree from Madras University and has also completed M.A. in Environmental Economics from Annamalai University through distance education. The petitioner passed Tamil and English Typewriting in Higher Grade and also Data Entry Course and he was appointed in the

respondent Board as Typist on 15.07.1991 and taking note of the fact that the petitioner is having prior experience in Computer Operations, he was upgraded to the post of Data Entry Operator in the year 1997. In the year 2010, the Service Regulations of the respondent Board was revised and the Tamil Nadu Pollution Control Board Revised Service Regulations, 2010 came into force on 03.11.2010 by way of Gazette Notification.

3. In the revised Rules, a new post of Assistant Statistical Officer was created and as per the Service Regulations, the said post can be filled up by transfer of service from one category to another or by deputation. The qualification prescribed under the Regulations to hold the said post are:

- (i) Bachelor Degree in Statistics or Economics with Statistics as ancillary
- (ii) Experience in the field of compilation of data/statistics for a period of not less than 5 years.

Taking note of the fact that the petitioner had worked as Assistant Statistical Officer (Computer) for about 3 ½ years when the regular personnel applied for leave for taking up employment abroad, he was appointed in the post of Assistant Statistical Officer by invoking Regulation 22(1) and 22(2) of the Revised Service Regulations. Though the appointment was on regular basis, the respondent Board in the order of appointment dated 7.9.2012 termed the same to be a temporary one and placed him under probation for two years on duty within a continuous period of three years of service and when the post is permanent, there cannot be an appointment on temporary basis.

4. The petitioner would further state that though he had completed 2 years of continuous service in the post of Assistant Statistical Officer, the respondent Board did not declare his promotion and therefore, he has sent repeated representations to the respondent seeking to declare his probation. The respondent instead of declaring the probation, vide communication dated 28.10.2015, addressed to the Controller of Examinations, Institute of Distance Education, University of Madras sought for clarification as to whether "Elements of Quantitative Techniques and Elementary Statistics for Economics" are equivalent or whether the Statistics subject is included in the paper "Elements of Quantitative Techniques. While so, to his shock and surprise, the respondent, vide order dated 18.07.2016, reverted him from the post of Assistant Statistical Officer to the post of Data Entry Operator. In the said order, it has been stated that on verification of the certificates of the petitioner it is found that in B.A. Economics course the petitioner has studied only Elements of Quantitative Techniques and he has not completed the ancillary subject of Statistics and further the University of Madras has also informed that the

subject "Element of Quantitative Technique" is not equivalent to Statistics/Ancillary Statistics. Challenging the said order, the present writ petition is filed.

5. This Court, while entertaining the writ petition on 29.07.2016, has granted an order of interim stay.

6. When the matter is taken up for consideration, Mr. Balan Haridas, learned counsel appearing for the petitioner submitted that as per the Revised Service Regulations, the post of Assistant Statistical Officer was created and as per the said Regulations, qualification prescribed for the post of Assistant Statistical Officer is (i) Bachelor degree in Statistics or Economics with Statistics as ancillary and (ii) Experience in the field of compilation of data/statistics for a period of not less than 5 years. The learned counsel appearing for the petitioner further submitted that "Elements of Quantitative Techniques" is a subject under "Statistics" and so also "Statistics" is a subject under "Quantitative Techniques" and therefore, the petitioner is having necessary qualification and the respondent Board after adopting due selection process appointed the petitioner by invoking Regulation 22(1) and 22(2) of the Revised Service Regulations on 07.09.2012 and he had also completed two years of continuous service of probation but the petitioner probation was not declared on completion of two years period. According to the petitioner, probation period was also not extended and therefore, it is deemed to be regularized. The learned counsel appearing for the petitioner has invited the attention of this Court to the impugned order dated 18.07.2016 and would submit that from the contents of the said order, it could be seen that the petitioner was reverted on the ground that the subject "Elements of Quantitative Technique" is not equivalent to Statistics/Ancillary Statistics and the respondent has also addressed a letter dated 28.10.2015 to the Controller of Examinations, Institute of Distance Education, University of Madras seeking clarification as to whether Elements of Quantitative Technique is equivalent to Statistics/Ancillary Statistics or not, for which the Controller of Examinations, University of Madras has sent a reply stating that Elements of Quantitative Techniques is not equivalent to Statistics and thus based on the said report only, the impugned order came to be passed. The learned counsel appearing for the petitioner further submitted that the petitioner has also sought information under the Right to Information Act to the Public Information Officer, University of Madras by raising a query as to whether "Quantitative Techniques" is a subject under "Statistics" or "Statistics" is a subject under "Quantitative Techniques", for which the Controller of Examinations, University of Madras has sent a reply dated 02.06.2016 to the effect that the syllabus for the year 1987-1989 batch does not contain any paper with the title Quantitative Techniques and

whether it is equivalent to Statistics or not is to be decided by the Board of Studies only and the petitioner will be informed in this regard in due course. While the Board of Studies is the competent authority to decide over the said issue, the impugned order passed by the respondent based on the report of the Controller of Examinations, University of Madras is unsustainable and it is liable to be quashed. The learned counsel appearing for the petitioner, in support of his submissions, placed reliance upon the following decisions:

(i) State Bank of India and Others v. Palak Modi and another [(2013) 3 SCC 607]

(ii) State of Tamil Nadu v. Dr.N.Sekar [2016 (3) LLN 245 (DB) (Mad.)]

7. Per contra, Mrs.Rita Chandrasekar, learned counsel appearing for the respondent has drawn the attention of this Court to the counter affidavit of the respondent wherein it has been stated that the petitioner is holding only B.A. Degree in Economics as Core Course as Paper-II Elements of Quantitative Techniques, which is not the prescribed qualification or the eligible criteria for holding the post of Assistant Statistical Officer (ASO) and in fact, vide proceedings dated 07.09.2012, the respondent temporarily appointed the petitioner as Assistant Statistical Officer by transfer of service and was placed under probation for two years on duty within a continuous period of 3 years and on completion of probation period, the petitioner made a representation to the respondent on 07.10.2014 seeking to issue an order for completion of probation in order to make him permanent in that post and at that time, the files relating to the petitioner was called for and perused. While perusing the files, it was found that the petitioner did not possess the required qualification for the post of ASO in terms of Regulations 22(1) and 22(2) of the Tamil Nadu Pollution Control Board Revised Service Regulation, 2010, as per which the incumbent should possess Bachelor Degree in Economics with statistics as ancillary subject, but the petitioner possessed Bachelor Degree in Economics with "Elements of Quantitative Techniques" and that is why, the respondent addressed a letter to the Controller of Examinations, University of Madras to ascertain as to whether the subject "Elements of Quantitative Techniques" is equivalent to Statistics/ Ancillary Statistics. Hence, vide proceedings dated 18.07.2016, the respondent Board reverted the petitioner to the post of Data Entry Operator. Thus the learned counsel appearing for the respondent prays for dismissal of this Writ Petition.

8. Keeping the submissions made on either side, I have gone through the entire materials available on record.

9. The petitioner was appointed as Typist in the respondent Board on 15.07.1991 and he was upgraded to the post

of Data Entry Operator in the year 1997. Subsequently, based on the Revised Service Regulations, 2010 new post of Assistant Statistical Officer (ASO) was created and the requisite qualification for holding the said post is (i) Bachelor Degree in Statistics or Economics with Statistics as ancillary and (ii) Experience in the field of compilation of data/statistics for a period of not less than 5 years. The petitioner is holding Bachelor Degree in Economics and he has also completed "Elements of Quantitative Techniques" and hence, he was transferred and appointed in the post of Assistant Statistical Officer in view of Regulations 22(1) and 22(2) of the TNPCB Revised Service Regulations, 2010. On completion of probation for a period of 2 years on duty within a continuous period of 3 years of service, the petitioner made a representation on 07.10.2014 to make him permanent in that post and on verifying the files, it was found that the petitioner did not possess the qualification for the post of Assistant Statistical Officer i.e., he did not possess Statistics as an ancillary subject. Hence, the respondent addressed a letter dated 18.11.2015 to the Controller of Examinations, Institute of Distance Education, University of Madras, to ascertain whether the subject "Elements of Quantitative Techniques" is equivalent to Statistics/Ancillary Statistics for which a reply was received on 25.04.2016 stating that "Elements of Quantitative Techniques" is not equivalent to Statistics/Ancillary Statistics and based on the reply of the Controller of Examinations, University of Madras, the impugned order of reversion was passed on 18.07.2016.

10. According to the learned counsel appearing for the petitioner, the "Elements of Quantitative Techniques" is a subject under Statistics and viz-a viz and he has also sought for information under Right to Information Act from the Public Information Officer, University of Madras on the said issue and the Public Information Officer replied that only the Board of Studies has to decide the issue as to whether "Elements of Quantitative Techniques" is equivalent to "Statistics" or not and therefore, the Controller of Examinations is not the competent authority to say that "Elements of Quantitative Techniques" is not equivalent to Statistics. Hence, the learned counsel appearing for the petitioner submitted that till the Board of Studies clarifies as to whether "Elements of Quantitative Techniques" is an ancillary subject equivalent to Statistics, direction may be given to the respondent to keep the impugned order in abeyance.

11. As per the Tamil Nadu Pollution Control Board Revised Service Regulations, 2010, for the post of Assistant Statistical Officer, the requisite qualification is (i) Bachelor Degree in Statistics or Economics with Statistics as ancillary and (ii) Experience in the field of compilation of data/statistics for a period of not less than 5 years. As on date, the Controller of

Examinations, Institute of Distance Education, University of Madras has also confirmed that the subject "Elements of Quantitative Techniques" is not equivalent to Statistics and therefore, the request of the petitioner was rightly rejected by the respondent, vide impugned order. Though the learned counsel appearing for the petitioner submitted that since probation of the petitioner is declared within three years, it is deemed to be regularized, the same cannot be accepted in the absence of any specific rules to that effect. The decisions relied on by the learned counsel appearing for the petitioner have also no application to the case on hand.

12. I do not find any reason to interfere in the impugned order and find no merit in this writ petition.

13. In the result, this Writ Petition is dismissed. No costs. Interim order already granted by this Court stands vacated. Consequently, WMP.No.22792 of 2016 is dismissed and WMP.No.25359 of 2016 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jvm

To
The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai-600 032.

+1 cc to M/s.Balan Haridass Advocate sr 66995

WEB COPY

W.P.No.26601 of 2016

aa22/12/2016