

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.17205 of 2013

G.Venkaetesan

... Petitioner

Vs.

1. The Director/Commissioner of Technical Education,
Directorate of Technical Education (DoTE),
Chennai-25.
2. P.T.Lee Chengalvaraya Naicker Polytechnic College,
rep. by its Principal,
No.2 & 3, E.V.K.Sampath Salai,
Vepery, Chennai-7.

... 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 of the said impugned order in Memorandum No.19315/C2/2012, dated 16.10.2012, passed by the 1st respondent and to quash the same with a consequential direction directing the respondents 1 and 2 to promote the petitioner, to the post of Vocational Instructor in the 2nd respondent College based on the selection made by the Selection Committee, pursuant to the interview conducted on 09.06.2008 and in accordance with the eligibility criteria prescribed in G.O.(Ms).No.421, Higher Education (D1) Department, dated 06.07.2004, which was in force, during the interview and selection.

For Petitioner : Mr.S.Ayyathurai

For respondents : Mr.A.Guneseakaran,
Additional Government Pleader
(For R1)
Mr.M.R.Jothimanian (For R2)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Memorandum No.19315/C2/2012, dated 16.10.2012, passed by the 1st

respondent and to quash the same and consequently, to direct the respondents 1 & 2 to promote the petitioner to the post of Vocational Instructor in the 2nd respondent-College based on the selection made by the Selection Committee, pursuant to the interview conducted on 09.06.2008 and in accordance with the eligibility criteria prescribed in G.O.(Ms).No.421, Higher Education (D1) Department, dated 06.07.2004, which was in force, during the interview and selection.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner has passed I.T.I in the year 1980 and got the Certificate in Electrical Trade and National Trade Certificate (NTC) and National Apprentice Certificate (NAC) in 1981 with 63% of marks. The petitioner is also having additional technical qualification in Electrical Supervisor's Competency, which is an Utilization Certificate course under the State Board of Technical Education & Training and Electrical Machinery Winding in Advanced Vocational Training System. The petitioner is also having practical experience as a Company Apprentice in Simpson & Co. Ltd from 01.09.1980 to 10.09.1981 and in Best & Crompton Engineering Limited, worked as an apprentice during the period from 14.02.1982 to 13.05.1985 and permanent operator during the period from 14.05.1985 to 07.04.1994 in Foundry Division of the said company.

2-2.The petitioner had been appointed as Lab Assistant on 30.06.1995 in the 2nd respondent - P.T.Lee Chengalvaraya Naicker Polytechnic College, which is a Government aided Institution. The petitioner was holding more academic, technical qualifications and practical experience than others i.e, among the 5 persons, who have been appointed along with the petitioner in the 2nd respondent-College. After working as a Lab Assistant for 10 years, the petitioner is presently working as Selection Grade Lab Assistant in the said College, for the past 7 years.

2-3.As per the Government Order in G.O.Ms.No.421, Higher Education (D1) Department, dated 02.07.2004, a notification was issued regarding the eligible criteria for the post of Workshop Instructor. As per the said GO, for the promotion or direct recruitment and recruitment by transfer the following requirements are fixed:-

(i)A Diploma in Mechanical or Electrical and Electronics Engineering or Electrical Engineering; or

(ii) a)An Industrial Training Institute Certificate/National Trade Certificate/National Apprenticeship Training

Certificate in Mechanical/Electrical Subjects.

b) Practical experience for a period of not less than three years in a recognized Mechanical / Electrical workshop not below the rank of Skilled Operative / Assistant.

The petitioner has got the above said requisite qualifications.

2-4. The petitioner has become eligible to be promoted to the post of 'Workshop Instructor'. The petitioner was, subsequently, directed by the 2nd respondent to appear for the interview on 09.08.2008 for the said post viz., Workshop Instructor. Accordingly, the petitioner has attended the interview and submitted all the required certificates.

2-5. The petitioner came to know that three persons including himself were selected by the Selection Committee, headed by a retired Judge of this Court, as directed by this Court, a nominee from the Directorate of Technical Education and the Principal of the 2nd respondent-College, to the post of Workshop Instructor and the list has been sent to the Director of Technical Education viz., the 1st respondent herein, for approval. But, for some reasons, the approval of his selection was getting delayed. The petitioner has also given representation on 24.07.2009 to the 1st respondent, by referring to the G.O.(Ms).No.421, Higher Education (D1) Department, dated 06.07.2004.

2-6. Thereafter, the petitioner had filed a writ petition in W.P.No.19532/2010 before this Court, praying to direct the respondents to complete the process/approval of promotion of the petitioner, to the post of Vocational Instructor in the 2nd respondent-College based on the selection made by the Selection Committee, pursuant to the interview conducted on 09.06.2008 and in accordance with the eligibility criteria prescribed in G.O.(Ms).No.421, Higher Education (D1) Department, dated 06.07.2004, which was in force during the interview and selection."

2-7. While admitting the said writ petition on 26.08.2010, this Court granted interim injunction restraining the respondents from filling up the single vacancy. In the said writ petition, the 2nd respondent had filed a counter affidavit stating that the 1st respondent vide Lr.No.21159/C2/2008, dated 02.07.2010 has not approved the proposal for appointment of the petitioner as Workshop Instructor in Foundry, which is related to Mechanical Trade. Thereafter, the petitioner amended the prayer in the said writ petition seeking to quash the order dated 02.07.2004 passed by the 1st respondent and to direct the respondents to promote

him to the post of Vocational Instruction in the 2nd respondent-College. Thereafter, in the said writ petition, this Court by order dated 30.03.2012, by setting aside the impugned order therein dated 02.07.2010 passed by the 1st respondent, remanded the matter to the 1st respondent for fresh consideration of the claim of the petitioner for promotion. Thereafter, the 1st respondent has passed the present impugned order dated 16.10.2012 rejecting the claim of the petitioner. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner by inviting the attention of this Court to G.O.Ms.No.421, Higher Education (D1) Department, dated 02.07.2004, submitted that as per the said GO, for the promotion or direct recruitment and recruitment by transfer, a person should possess a Diploma in Mechanical or Electrical and Electronics Engineering or Electrical Engineering; or an Industrial Training Institute Certificate/National Trade Certificate/National Apprenticeship Training Certificate in Mechanical/Electrical Subjects and practical experience for a period of not less than three years in a recognized Mechanical / Electrical workshop not below the rank of Skilled Operative / Assistant. The petitioner is possessing the necessary qualifications as prescribed in the said GO, for promotion to the post of Workshop Instructor/Vocational Instructor.

4. It is further submitted by the learned counsel for the petitioner that in fact, earlier in W.P.No.19532 of 2010 which was filed by the petitioner herein, this Court has passed the following order on 30.03.2012—

"11. It is seen from the records that apart from the petitioner, two others have been selected and their names have been approved by the committee, but only the petitioner's name was kept pending without approval. The petitioner also sent representations but they were not considered. In the meanwhile, on 06.07.2009, the Special Rules namely Tamil Nadu Technical Education Subordinate Service were amended and it came into effect, in which, for the post of Workshop Inspector, the following eligibility criteria have been made

"6. Workshop Instructor
Promotion, Direct

i. A Diploma in
Mechanical or Electrical
Recruitment and and Electronics
Engineering or Electrical

Recruitment by transfer
Engineering; or

ii.a) An Industrial
Training institute
Certificate/National Trade
Certificate National
Apprenticeship Training
Certificate in
Mechanical/Electrical subjects

b) Practical
experience for a period of not
less than three years in a
recognised Mechanical /
Electrical Workshop not below
the rank of Skilled Operative /
Assistant Provided that
appointment shall be made to
the post from among the holders
of

i) Diploma qualification
and

ii) Non-diploma
qualification mentioned in the
ratio 1:4 subject to the
availability of adequate number
of Diploma holders."

12. Admittedly, after the coming into
force of the amendment to the Service Rules,
the first respondent passed the impugned
order on the ground that the petitioner did
not possess the requisite qualification on
the basis of the amendment made to the
service rules. When the petitioner possess
the requisite qualification and experience
before the service Rules came to be amended
and only on that basis the other two
persons, whose claim for promotion was
forwarded to the committee for
consideration, were promoted, the first
respondent is not justified in applying the
amendment made to the Service Rules
subsequent to the completion of selection
process. As on the date of the selection,
the petitioner possessed adequate
qualification and experience and therefore,
the subsequent amendment will not be a bar
for rejecting the claim of the petitioner
for promotion. The first respondent is
therefore not justified in applying the
amendment made to the service Rules which
was not in force at the time of the

selection process. When once the selection was made on the basis of the eligibility criteria, which existed as on the date of selection, the reasoning assigned in the impugned order that the petitioner did not possess the requisite qualification and experience as per the amended Rules cannot be countenanced.

13. The learned counsel for the petitioner relied on the decision reported in (Madan Mohan Sharma and another vs. State of Rajasthan and others) 2008 3 SCC 724 for the proposition that recruitment should be made only according to the advertised educational qualification and the changes brought during the pendency of the selection process will not affect the eligibility criteria. In this case, the Honourable Supreme Court held that when once advertisement was issued and on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.

14. As held by the Honourable Supreme Court, in the present case, at the time of interview and selection process, the Service Rules were not amended and therefore, the amendment made to the Service Rules subsequently will not be put against the petitioner to deprive him of the promotional aspects.

15. It is brought to the notice by the learned counsel for the petitioner that in the impugned order it was stated that the petitioner did not produce any evidence to show that he worked in Best & Crompton Ambattur, however, subsequent to the filing of the petitioner, the petitioner also produced testimonials relating to his experience with the said company and therefore also, the impugned order is not sustainable.

16. Taking into consideration the above said factors especially when the impugned order of rejection was passed on the basis of the amendments brought into the Service Rules after the completion of the selection process, the impugned order of rejection

dated 02.07.2010 of the first respondent is per se invalid. The petitioner's claim for getting promotion has to be examined in the light of the eligibility criteria that existed at the time of his selection and if the petitioner fulfills the eligibility criteria that existed prior to the amendment to the Service Rules, the first respondent cannot deprive the petitioner's promotional opportunity. Therefore, the impugned order of the first respondent is set aside. The matter is remanded back to the first respondent for fresh consideration. The first respondent is directed to consider the claim of the petitioner for promotion in the light of the decision of the Honourable Supreme Court mentioned supra and pass orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order."

But, in spite of the above order, the present impugned order has been passed by the 1st respondent, rejecting the claim of the petitioner stating that the petitioner did not possess the requisite qualification.

5. Per contra, the learned Additional Government Pleader appearing for the 1st respondent would contend that the vacancy in question pertains to the Mechanical Engg. (Foundry) Trade; but, the petitioner is qualified only in Electrical Engg Trade; as such, the petitioner is not considered for the said post. Hence, according to the learned Additional Government Pleader, there is no infirmity in the impugned order passed by the 1st respondent.

6. Heard both sides and perused the materials available on record.

7. From a perusal of the materials available on record, it is seen that the qualification for the post in question has been prescribed by the Government vide G.O.Ms.No.421, Higher Education (D1) Department, dated 02.07.2004. The petitioner is also possessing the necessary qualifications as required by the said GO. Further, having selected the petitioner and allowed him to attend the interview, now the respondents cannot turn around and say that the petitioner did not possess the required qualification, particularly, when the petitioner is having the qualification in Electrical Trade, which is in accordance with G.O.Ms.No.421, Higher Education (D1) Department, dated 02.07.2004. Under such circumstances, I am of the opinion that the impugned order is liable to be quashed.

8.Hence, the writ petition is allowed and the the impugned order is quashed. The respondents are directed to pass appropriate orders, promoting the petitioner, to the post of Vocational Instructor/Workshop Inspector in the 2nd respondent-College based on the selection made by the Selection Committee, pursuant to the interview conducted on 09.06.2008 and in accordance with the G.O.(Ms).No.421, Higher Education (D1) Department, dated 06.07.2004, within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is allowed accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssv

To

The Director/Commissioner of Technical Education,
Directorate of Technical Education (DoTE),
Chennai-25.

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.54040
+1cc to Mr.S.Ayyathurai, Advocate, S.R.No.53882
+1cc to the Government Pleader, S.R.No.54196

W.P.No.17205 of 2013

TRM(CO)
CA(18/10/2016)

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