

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.5133 of 2014
and M.P.Nos.2 and 3 of 2014

1.A.Paneerselvam
2.G.Parthiban
3.N.Balasubramani
4.R.Valeeswaran
5.E.Krishnamoorthy
6.S.Muthukumarasamy
7.P.Sukumar
8.V.Ganeshraj .. Petitioners

vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
Labour and Employment Department,
Fort St.George, Chennai-9.
2.The Director/Commissioner,
Directorate of Employment and Training,
Guindy, Chennai-32.
3.The Director General of
Employment and Training,
Government of India, New Delhi.
4.The Secretary,
National Council for Vocational
Training,
New Delhi. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the first respondent's order made in G.O.Ms.No.288, Labour & Employment (P1) Department dated 13.12.2013, to quash the same insofar as Diploma Holders are concerned prescribing the ratio of 1:1 at the entry level post of Junior Training Officer (JTO) and by confining only to National Trade Certificate (NTC) Holders and consequently, appoint the petitioners herein as Junior Training Officer forthwith and extend all benefits.

For Petitioners:Mr.A.Alagarsamy

For Respondents:Mrs.M.E.Raniselvam,
Additional Government Pleader for R1 & R2
Mr.V.Venkatesan,
Senior Central Govt. Standing Counsel
for R3 & R4

O R D E R

The petitioners are qualified in various trades like Turner, Mechinist, Fitter etc. and all of the them having qualification of Industrial Training Institute (ITI) in their respective trades and they registered with the District Employment Exchange in their respective specialization during 1984 to 1997. The petitioners would further aver that they were qualified for interview for direct recruitment to the post of Junior Training Officer (JTO) by the Commissioner of Employment and Training and they have undergone the interview and successfully completed the formalities and are anxiously waiting for declaration of the results and till date the results have not been declared. The petitioners would further aver that they waited nearly for 2½ decades and they are already over aged due to employment ban. The petitioners would also aver that the first respondent, vide G.O.Ms.No.152, Labour and Employment Department dated 17.11.1998, had prescribed ratio among National Trade Certificate/National Apprenticeship Certificate/Diploma Holders as 1:1:1 and it was subsequently modified to that of 1:1 as between Degree/Diploma Certificate holders vide G.O.Ms.No.288, Labour and Employment Department dated 13.12.2013, pursuant to which revised staff strength sought to be introduced and however, the said amendment are yet to be issued. It is the specific case of the petitioners that the said Government Order, in the absence of statutory backing, have no force at all and conferring rights in favour of the petitioners sought to be negated and therefore, came forward to challenge the said Government Order.

2. The Writ Petition was admitted on 07.03.2014 and in the petition for direction, this Court has granted an interim direction on 21.02.2014, directing the respondents to reserve one post of JTO for each of the petitioners and the said interim order has not been modified.

3. The learned counsel appearing for the petitioners would submit that without reposing to statutory instructions of the Director General of Employment and Training, Government of India, New Delhi, the ratio of 1:1 came into being and since the petitioners acquire vested right, it cannot be altered in the form of impugned Government Order in G.O.Ms.No.288, Labour and Employment dated 13.12.2013 by the first respondent and therefore, prays for interference.

4. Per contra, Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 and 2 had invited the attention of this Court to the counter affidavit and would submit that the National Council for Vocational Training (NCVT) is the policy making body at National Level in respect of courses conducted by Industrial Training Institutes all over the country and all the Government Industrial Training Institutes are affiliated to National Council for Vocational Training and they impart training and has fixed norms and standards, subject to availability of space, tools and equipments, power, staff qualification etc. and fulfillment of the norms fixed by NCVT is mandatory to get affiliation and as per the norms, for each of the trade/course, atleast two units have to be started and for each of the unit, atleast one Diploma Holder must be appointed, but more number of Certificate Holders had been appointed as instructors for handling classes for the Industrial Training Institute trainees and the same has not been accepted by NCVT and also in order to comply with the norms of NCVT, the first respondent has issued G.O.Ms.No.288, Labour and Employment Department dated 13.12.2013 by fixing the instructor ratio of 1:1 between the Diploma holders and National Trade Certificate holders and it is also followed by amendment to recruitment rules, vide G.O.Ms.No.289, Labour and Employment Department dated 13.12.2013 and as such, it cannot be faulted with.

5. It is the specific stand of the respondents 1 and 2 that in order to satisfy the norms fixed by NCVT regarding appointment of instructor, amendments to existing rule is essential and as such, G.O.Ms.No.289 dated 13.12.2013 came into being. Insofar as inclusion of Diploma holders, it is the stand of the respondents 1 and 2 that Diploma holders have to undergo 3 years of training, whereas the Industrial Training Institute Certificate holders have to undergo 1 or 2 years of training and thereby making diploma holders more qualified and further, Industrial Training Institutes qualified persons alone cannot teach Industrial Training Institutes trainees and the Diploma holders can impart training more qualitatively and for imparting training or teaching subjects to Industrial Training Institutes students, higher qualified instructors like Diploma/Degree holders are more suitable than persons possessing Industrial Training Institutes qualification alone and taking into consideration of the same, amendments have been made to service rules. It is also admitted by the respondents 1 and 2 that the petitioners are possessing National Trade Certificate, which is also prescribed as one of the qualifications for the post of JTO and therefore, prays for dismissal of this writ petition.

6. Mr.V.Venkatesan, learned Central Government Standing Counsel appearing for the respondents 3 and 4 has drawn the attention of this Court to the counter affidavit of the

respondents 3 and 4 and would submit that appointment of JTO as per the Special Rules of Tamil Nadu Employment and Training Subordinate Service is the subject matter of State Government and DGET/NCVT have no role to play and therefore, prays for appropriate orders.

7. This Court paid its best attention and anxious consideration to the rival submissions and also perused the entire materials placed before it.

8. The first respondent had issued G.O.Ms.No.288 dated 13.12.2013 by considering the proceedings of the Director of Employment and Training dated 08.02.2013 and 13.03.2013, wherein it has been stated when NCVT starts inspection afresh in all Government Industrial Training Institutes with regard to instructor qualification, it may not become possible to maintain atleast one instructor with Diploma qualification and even by the method of transfer of Diploma holders and managing the situation also cannot be possible as no enough Diploma holders in place due to the previous recruitment policy of 1:1:1 among National Trade Certificate : National Apprenticeship Certificate : Diploma holders and therefore, suggested that the ratio of 1:1 between Diploma/Degree: National Trade Certificate/National Apprenticeship Certificate may be approved and the Government had also elaborately considered the same and thought fit to issue G.O.Ms.No.288 dated 13.12.2013.

9. The primordial submission made by the learned counsel appearing for the petitioners is that since the petitioners have got specialization in the form of Industrial Training Institute Certificates, they are fit to hold the post of JTO. In the considered opinion of the Court, the said submission lacks merit and substance.

10. In Union of India and Others v. Pushpa Rani and Others [(2008) 9 SCC 242], judicial review of policy matters relating to creation/abolition of posts, formation/restructuring of cadres, sources/mode of recruitment, prescription of qualifications, selection criteria, evaluation of service records came up for consideration and it is relevant to extract the following portion of the said judgment (paras 37 to 39):

"Matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of employees fall within the exclusive domain of employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. Power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or

statutory provision or is patently arbitrary or is vitiated by malafides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merits of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

11. The petitioners want a positive direction from this Court to consider their case for selection and appoint to the post of JTO and this Court is not in a position to accede to the said request and in the light of the ratio laid down in the above cited judgment, it is the prerogative of the authorities conducting selection process, to prescribe qualification and eligibility criteria and this Court cannot assume the role to prescribe the qualification.

12. As I already pointed out, pendency of the writ petition, the petitioners had obtained interim orders dated 21.02.2014 in M.P.No.3 of 2014 to reserve one post of JTO for each of the petitioners and accordingly, 8 posts are kept vacant. Since this Court is not inclined to accede to the prayer sought for by the petitioners, the interim orders granted by this Court is liable to be vacated and accordingly, it is vacated.

13. The respondents, in the event of filling up future vacancies of Junior Training Officers, shall also adopt transparency and act strictly in accordance with the relevant norms and regulations and if the petitioners are eligible for consideration, subject to fulfillment of prescribed criteria, their claims have also to be considered.

14. In the result, this Writ Petition is dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary,
The State of Tamil Nadu,
Labour and Employment Department,
Fort St.George, Chennai-9.
 - 2.The Director/Commissioner,
Directorate of Employment and Training,
Guindy, Chennai-32.
 - 3.The Director General of Employment and Training,
Government of India, New Delhi.
 - 4.The Secretary,
National Council for Vocational Training,
New Delhi.
- +1cc to Mr.V. Venkatesan, SCGSC, Advocate, S.R.No.9662
+1cc to Mr.A.Alagarsamy, Advocate, S.R.No.9608
+1cc to the Government Pleader, S.R.No.10250

NMI (CO)
EU 1.03.17

W.P.No.5133 of 2014

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