

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.5150 of 2014

and M.P.Nos.2 and 3 of 2014 and WMP.No.33006 of 2016

- 1.S.Arockiasamy
- 2.A.Uma Mageshwari
- 3.P.Thirupathi
- 4.S.Sadagopan
- 5.D.Nagarajan
- 6.V.Vel
- 7.G.Sakthivel
- 8.U.Thirumalai
- 9.P.Bakya
- 10.P.Karthik
- 11.S.Palmurugan
- 12.A.Dillibabu
- 13.B.Raja
- 14.R.Velayutham
- 15.A.Muthukumar
- 16.R.Balamurugan
- 17.J.Jayakanthan
- 18.R.Ramesh
- 19.M.Vediyappan

... 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 Certiorari and Mandamus calling for the records relating to

the first respondent's order made in G.O.Ms.No.291, 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.S.Arokiasamy- First Petitioner/
Party-in-Person.

Mr.L.Chandrakumar for
petitioners 2 to 19

For Respondents: Mrs.M.E.Raniselvam,
Additional Government
Pleader for R1 & R2

Mr.J.Madanagopal Rao,
Central Govt. Standing
Counsel for R3 & R4

O R D E R

The first petitioner along with 18 others had filed this writ petition and later on, the first petitioner with the Leave of this Court is appearing as party-in-person and for rest of the petitioners, Mr.L.Chandrakumar, learned counsel is appearing.

2. The first petitioner has sworn to the affidavit on his behalf and also on behalf of the other petitioners and it is stated by them that they are all I.T.I. holders and obtained National Craft Instructor Certificate from the National Council for Vocational Training [in short "NCVT"] and they also got themselves enrolled in the Employment Exchange and came to be in live rolls for being considered for appointment as Junior Training Officer [in short "JTO"]. It is further averred that as per the Special Rules for Tamil Nadu Employment & Training Subordinate Service, appointment to the post of JTO is to be made by any one of the following modes i.e., (1) By Promotion; or (2) By Direct Recruitment; or (3) By recruitment by transfer from any other service and the qualifications for all the above modes of appointment have also been prescribed. As per G.O.Ms.No.152, Labour & Employment Department dated 17.11.1998, ratio among National Trade Certificate/National Apprenticeship Certificate/Diploma Holders as 1:1:1 and the said ratio was modified to the effect of 1:1 between Degree/Diploma and National Trade Certificate/National Apprenticeship Certificate holders vide G.O.Ms.No.288, Labour & Employment Department dated 13.12.2013, pursuant to which revised staff pattern was sought to be introduced, vide G.O.Ms.No.291, Labour and Employment Department dated 13.12.2013. According to the petitioners, the said Government Order has no statutory backing .

3. It is the case of the petitioners that the act of the respondents in resorting to not only revision of ratio but also to violate the statutory guidelines issued by the Directorate of Employment and Training, New Delhi and as such, it is arbitrary and though they are fully qualified as well as eligible for appointment to the post of JTO, the said post is sought to be filled up clandestinely without any notification or advertisement as per rules and without putting the petitioners on notice, interview has been conducted and selection has been made in flagrant violation of the Rules and Regulations and therefore, came forward to file the present writ petition, challenging G.O.Ms.No.291, Labour & Employment (Pl) Department dated 13.12.2013 with a consequential prayer to fill up the said posts only by considering persons having National Trade Certificate Holders and appoint them to the said posts.

4. The Writ Petition was admitted on 18.02.2015 and in the petition for direction, this Court has granted an interim direction on 24.02.2014, directing the respondents to reserve one post of JTO for each of the petitioners and the said interim order has not been modified.

5. The first petitioner/party-in-person as well as Mr.L.Chandrakumar, learned counsel appearing for rest of the writ petitioners would contend that in order to accommodate Diploma/Degree holders, ratio has been prescribed and for the post of JTO, the petitioners, being National Trade Certificate Holders are fully eligible and the said post have also been filled up without issuing any advertisement calling for applications and the selection process has also not been done in transparent manner and prays for interference.

6. 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.

7. 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.

8. Mr.J.Madanagopal Rao, 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.

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

10. 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.

11. The primordial submission made by the first petitioner/party-in-person as well as the learned counsel appearing for rest of the petitioners is that since the petitioners have got specialization in the form of National Trade Certificate obtained from NCVT, they are fit to hold the post of JTO. In the considered opinion of the Court, the said submission lacks merit and substance.

12. 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."

13. The petitioners want a positive direction from this Court to consider their case of National Trade Certificate from NCVT 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.

14. As already pointed out, pendency of the writ petition, the petitioners had obtained interim orders dated 24.02.2014 in M.P.No.3 of 2014 to reserve one post of JTO for each of the petitioners and accordingly, 19 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.

15. 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.

16. 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

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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.J. Madanagopala Rao, Advocate, S.R.No.9615
+1cc to Mr.S. Arockiasamy, Advocate, S.R.No.9674
+1cc to the Government Pleader, S.R.No.10249
+1cc to Mr.L. Chandrakumar, Advocate F.9735

NMI (CO)
EU 01.03.17

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