

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2017
Delivered on : 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.A No.1077 of 2011
M.P.No.1 of 2011

- 1.The State of Tamil Nadu,
Rep. by the Secretary,
Education Department,
Fort St.George, Madras -9.
 - 2.The Director of Technical Education,
Guindy, Chennai -25.Appellants
- Vs
- T.VenkatramanRespondent

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 11.06.2008 in W.P.No.25749 of 2006.

WP.No.25749 of 2006

Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the proceedings of the 1st respondent made in Lr.No.66029/I-2/94-3 dated 14.8.95 to quash the same and consequently direct the respondents to regularise the services of the petitioner as Associate Lecturer (Mechanical) from the date of initial appointment i.e.13.01.1984 and extend all consequential benefits both service monetary.

For Appellants : Mr.K.Dhananjayan
Special Government Pleader

For Respondent : No appearance

J U D G M E N T

K.K. SASIDHARAN, J.

This intra court appeal is directed against the order dated 11 June 2008 in W.P.No.25749 of 2006, whereby and where under, the learned single Judge, after quashing the order dated 14 August, 1995, directed the appellants to regularise the service of the respondent as Associate Lecturer (Mechanic) with effect from 01.01.1986.

Factual Matrix:

2. The respondent was appointed as Instructor on 13.01.1984. The respondent made a claim for retrospective appointment as Associate Lecturer taking into account his Post Graduate qualification. The case of the respondent was forwarded by the Additional Director of Technical Education with recommendation to give him retrospective appointment as Associate Lecturer with effect from 13.01.1985. The proposal was rejected by the Government. The said order was challenged in O.A.No.428 of 1997. The Original Application was transferred from the Madras Bench of the Tamil Nadu Administrative Tribunal to this Court.

3. The learned single Judge by placing reliance on the Government order in G.O.Ms.No.1081, Education Department, dated 19 August, 1989 accepted the case of the respondent, resulting in setting aside the order passed by the Government. Feeling aggrieved, the appellants have come up with this intra court appeal.

Submissions:

4. The learned Special Government Pleader contended that the initial appointment of the respondent was only to the post of Instructor and as such, he was not eligible for retrospective appointment as Associate Lecturer solely on account of his possession of M.E. qualification. According to the learned Special Government Pleader, the learned single Judge was not correct in giving the benefit of the Government Order in G.O.Ms.No.1081 to the respondent.

5. None appeared on behalf of the respondent.

Discussion:

6. The respondent was initially appointed as Instructor on 13.01.1984. Even when he was appointed as Instructor, the respondent was in possession of M.E. qualification. Therefore,

it is clear that notwithstanding the possession of higher qualification making him eligible for appointment to the post of Associate Lecturer, the respondent was appointed only to the post of Instructor. The respondent accepted the said post and continues to work for 13 years before making the claim for retrospective appointment to the post of Associate Lecturer.

7. The respondent made a claim for retrospective appointment as Associate Lecturer based on the Special Rules issued in G.O.Ms.No.2100 Education Department, dated 18.09.1981. According to the respondent, as per the Rules then in force, he could have been appointed as Associate Lecturer instead of Instructor. However, the fact remains that his initial appointment was only to the post of Instructor. The respondent never challenged his appointment as Instructor on the ground that he should have been appointed as Associate Lecturer taking into account his higher qualification.

8. The learned single Judge proceeded as if the respondent is entitled for retrospective appointment as Associate Lecturer on account of the Government Order in G.O.Ms.No.1081, Education Department, dated 19 August, 1989.

9. The Government took a policy decision not to appoint Instructors in Polytechnics and Special Diploma Institutions henceforth. It was decided to continue the existing designation of teachers in Polytechnics and Special Diploma Institutions as Associate Lecturer, Lecturer, Head of the Department and Principal. The statement contained in the Government Order in G.O.Ms.No.1081 dated 19 August, 1989 that the existing Instructors shall be promoted as Associate Lecturers as and when they acquire the required degree qualification appears to be the reason, which made the learned single Judge to allow the writ petition filed by the respondent.

10. The respondent was not entitled to claim regularisation in the post of Associate Lecturer from the date of his initial appointment as Instructor on 13.01.1984. Even on the date of his initial appointment as Instructor, the respondent was in possession of the qualification for appointment to the post of Associate Lecturer. Even then, he was appointed only as Instructor in accordance with the Rules then in force. In fact, the Government Order in G.O.Ms.No.721 Education Department, dated 28.04.1981 was in operation as on the date on which the respondent was appointed as Instructor.

11. The Government in G.O.Ms.No.721 made it clear that the Instructors in Engineering subjects with B.E. or other equivalent degree having 3 years of service and Instructors in Engineering subjects with Diploma having 10 years of service

shall be upgraded as Associate Lecturers. As per the said Government Order, the remaining Instructors will be upgraded as and when they complete 3 years or 10 years depending on whether they are degree holders or Diploma holders. Even as per the said Government Order, the respondent would be eligible for upgradation as Associate Lecturer only after completing 3 years. It is a matter of record that after completion of three years of service in the post of Instructor, the respondent was upgraded as Associate Lecturer with effect from 13.01.1987. The order was issued in accordance with the Government Order in G.O.Ms.No.721 Education Department, dated 28.04.1981. In short, the respondent was not eligible for retrospective regularisation in the post of Associate Lecturer taking into account his initial appointment on 13.01.1984 as Instructor. This vital aspect was not considered by the learned single Judge. We are therefore of the view that the impugned order is liable to be set aside.

12. In view of the reasons aforesaid, the order dated 11 June, 2008 is set aside. The writ petition in W.P.No.25749 of 2006 is dismissed.

13. In the up shot, we allow the intra Court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government of Tamil Nadu,
Education Department,
Fort St.George, Madras -9.
- 2.The Director of Technical Education,
Guindy, Chennai -25.

W.A No. 1077 of 2011

PA(CO)
CS/18/07/17