

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP.No.15965 of 2011 and
WP.No.33539 of 2012

WP.No.15965 of 2011

1.K.Rajasekar

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by its
Secretary to Government,
Higher Education Department,
Chennai - 9.

2.The Deputy Secretary to Government,
Higher Education Department, Chennai - 9.

3.The Principal Secretary/Commissioner,
Directorate of Technical Education,
Guindy, Chennai - 25.

4.The Principal,
Central Polytechnic College,
Tharamani, Chennai-113.

... Respondents

Prayer in WP.No.15965 of 2011: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records connected in Memo No.16450/P2/2005, dated 15.07.2005 of the 3rd respondent and in Lr.No.22336/C2/2008-1, dated 23.09.2008 of the 2nd respondent and in Lr.No.31766/P2/2008-1, dated 14.07.2009 of the 3rd respondent and quash the same in so far as the petitioner is concerned and direct the respondents to promote the petitioner either as Instructor or as Lecturer based on the Tribunal orders dated 23.04.1993 in O.A.No.2044 to 2050 and 2244 of 1993 and this Court orders dated 19.02.2010 in W.P.No.6321 of 2006.

WP.No.33539 of 2012

C.S.Christopher

Vs.

... Petitioner

1.The Principal Secretary/Commissioner,
Directorate of Technical Education,
Guindy, Chennai - 25.

2.The Secretary to Government,
Higher Education Department,
Chennai - 9.

3.The Assistant Director (Administration),
O/o the Director of Technical Education,
Chennai - 25.

... Respondents

Prayer in WP.No.33539 of 2012: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records connected in Memo No.10045/P2/2012, dated 26.09.2012 of the 3rd respondent and quash the same and direct the respondents to promote the petitioner as Instructor as per the Rules with all benefits as given to others based on this Court orders.

(In both the WPs)

For Petitioner : Mr.G.Elanchezhian

For Respondents: Mr.Govindasamy

Special Government Pleader

COMMON ORDER

The prayer in the writ petition in WP.No.15965 of 2011 for the issuance of a Writ of Certiorarified Mandamus to call for the records connected in Memo No.16450/P2/2005, dated 15.07.2005 of the third respondent and in Lr.No.22336/C2/2008-1, dated 23.09.2008 of the second respondent and in Lr.No.31766/P2/2008-1, dated 14.07.2009 of the 3rd respondent and quash the same in so far as the petitioner is concerned and direct the respondents to promote the petitioner either as Instructor or as Lecturer based on the Tribunal orders dated 23.04.1993 in O.A.No.2044 to 2050 and 2244 of 1993 and this Court order dated 19.02.2010 in W.P.No.6321 of 2006.

2.The prayer in WP.No.33539 of 2012 for the issuance of a Writ of Certiorarified Mandamus to call for the records connected in Memo No.10045/P2/2012, dated 26.09.2012 of the third respondent and quash the same and direct the respondents to promote the petitioner as Instructor as per the Rules with all benefits as given to others based on the High Court Orders.

3.The learned counsel appearing for the petitioner submits that the writ petitioner in W.P.No.15965 of 2011 was appointed as Artisan on 15.06.1984. Thereafter, he passed Diploma in Engineering in April 1989 and also passed B.E. Degree in the year 1997 and then he was given promotion as Workshop Instructor on 22.10.2009. Then he was allowed to continue in the same post till the date of his superannuation on 30.06.2015.

4.The learned counsel appearing for the petitioner submits that the writ petitioner in W.P.No.33539 of 2012 was appointed as Lab Assistant on 26.12.1990. Then he passed Diploma in Engineering in 1997 and then he passed B.E., in 2005. Thereafter he was granted promotion as Workshop Instructor on 15.02.2010. Then he passed M.E., in the year 2011 and he is continuing in the same post.

5.The learned counsel appearing for the petitioner would submit that the Government issued amendments to the Special Rules for the Tamil Nadu Technical Educational Subordinate Service through the Government Order in G.O.Ms.No.1364, Education Department, dated 16.08.1988 and stating that the post of Instructor may be filled up either by way of promotion or by way of direct recruitment. For the purpose of promotion, there are certain feeder categories are classified such as, Boiler Foreman, Electrical Foreman, Workshop Instructor, and also Draughtsman Grade-III. The Government issued an order in G.O.Ms.No.1081, Education Department, dated 19.08.1989 wherein the Government has taken a decision to discontinue the recruitment to the post of Instructor. Thereafter, the Government stopped the recruitment to the post of Instructor by following G.O.Ms.No.1081, Education Department, dated 19.08.1989. Aggrieved by the non filling the post of Instructor, one Mr.Vellaichamy and others were filed O.A. before the Hon'ble Tamilnadu Administrative Tribunal, (hereinafter called Tribunal) for a direction to consider their case for promotion as Instructor. After hearing both side arguments the Hon'ble Tribunal was pleased to passed order on 23.04.1993 that the 1st respondent should consider the representation of the applicant and to obtain order of Government before proceedings with action for regularisation of contract Instructor (or) direct recruitment. Based on the Hon'ble Tribunal's order, the Government has issued an order in Lr.No.960, Education, Science and Technology Department, Secretariat, Madras-9, dated 20.12.1995 and appointed Mr.Vellaichamy and others as Instructor in Government Polytechnic. Thereafter, they were all given further promotion as Lecturer in G.O.Ms.No.584, Higher Education Department, dated 19.11.2004.

6. Based on the orders of the similarly placed persons (Vellaichamy and others) one Thiru.Dharanipathi has submitted a representation to the respondent with a request to promote him as Instructor as he has completed B.E., Degree 1st class. After receiving his representation the Director of Technical Education has sent a proposal to the Government to consider the promotion of Mr.O.G.Dharanipathi as Instructor by extending the benefits of the Tribunal order dated 23.04.1993, the Government after accepting the proposal of the Director of Technical Education has issued an order in G.O.(2D).No.46, Higher Education Department, dated 14.05.1998 wherein the Government direct that Thiru.O.G.Dharanipathi, Draughtsman (Civil), Dr.Dharmambal Polytechnic College for Women, Chennai, holding B.E., (1st class) Degree be promoted as Instructor, in the existing vacancy, with effect from the date of his joining in the post.

7. Based on the said Government Order the petitioners are also submitted representation to the respondents to consider their claims for promotion as Instructor as was given to the similarly placed persons but the said request of the petitioners has been rejected by the third respondent through his proceedings in Memo No.16450/P2/2005, dated 15.07.2005, Government Letter No.22336/C2/2008-1, dated 23.09.2008, Lr.No.31766/P2/2008-1, dated 14.07.2009 and Pro.No.10045/P2/2012, dated 26.09.2012. In the said rejection order, the third respondent has stated that through the Government Order in G.O.Ms.No.1081, Education (J-1) Department, dated 19.08.1989, the appointment/promotion to the post of Instructor had been stopped.

8. Challenging the said rejection orders dated 15.07.2005, 23.09.2008, 14.07.2009 and 26.09.2012 the petitioners have approached this Court and challenged the said rejection order with a consequential direction to promote the petitioner as Instructor as was given to Vellaichamy and others and based on the Hon'ble Tribunal order. The petitioners mainly assailing the rejection orders on the ground of discrimination and also violation of Article 14 of the Constitution of India. Once Court order attaining finality and implemented to some of the persons and the same should be extended to similarly placed persons otherwise if the benefit has not been extended which act is amounts to violation of Article 14 of the Constitution of India.

9. While the above said Writ petition is pending the other similarly placed persons were approached this Court for promotion as Instructor as was given to Mr.Vellaichamy and others also. This Court has passed order in their case in W.P.No.14823 of 2013 that to consider their case for promotion to the post of Instructor based on the similarly placed person Government Order issued in G.O.Ms.No.48, Higher Education (C2)

Department, dated 28.03.2013, G.O.Ms.No.95, Higher Education (C1) Department, dated 26.02.2008, G.O.Ms.No.54, Higher Education (C1) Department, dated 18.03.2010, G.O.Ms.No.121, Higher Education (C1) Department, dated 01.04.2011. Against which a Writ Appeal was also filed before this Court in W.A.No.807 of 2015, etc., and the same was dismissed on 19.06.2015 by the Hon'ble Division Bench of this Court. Against which S.L.P. was also filed before the Hon'ble Supreme Court of India in SLP.No.23252 of 2015 and the same was dismissed on 28.09.2015. Thereafter, this Court order was complied by the respondent in G.O.Ms.No.20, Higher Education Department, dated 01.02.2016 and the said individuals were given promotion to the post of Instructor based on the B.E., Degree qualification.

10.The learned counsel would also submit that pursuant to the order passed by the learned Judge, as has been cited supra, the said orders have been implemented by the respondents in Government Letter No.960, Education, Science and Technology Department, dated 20.12.1995 and in G.O.Ms.No.20, Higher Education Department, dated 01.02.2016 and granted promotion as Instructor those who possessed B.E., Degree.

11.The learned counsel appearing for the petitioner would submit that they mainly relied upon the judgment of the Hon'ble Supreme Court reported in 2008 (9) SCC 24 (Maharaj Krishnan Bhatt and another v. State of Jammu and Kashmir and other] and para 23 it is held as follows:

"in fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ petitioners. It, however, challenged the order passed by the learned Single Judge. The Hon'ble Division Bench of this Court ought to have dismissed the letters patent appeal by affirming the order of the learned Single Judge. The letters patent appeal, however, was allowed by the Hon'ble Division Bench and the judgment of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored".

In another judgment reported in 2015 (1) SCC 347 (State of U.P. v. Aravind Kumar Srivastava and others) it is held by the Hon'ble Apex Court as follows:

"The normal rule is that "when a particular set of employees is give relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violate of Article 14 of

the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

12. Per contra, Mr. Govindasamy, learned Special Government Pleader, appearing for the respondents, would contend that though originally rule got amended by way of G.O.Ms.No.1364, dated 16.08.1988, immediately, G.O.Ms.No.1081, Education Department, dated 19.08.1989, was issued, whereby, it was specifically mentioned that recruitment to Instructor cadre in Polytechnics and Special Diploma Institutions will be discontinued. Subsequently, the post of Instructor are all surrender to the Government in G.O.Ms.No.48, Higher Education Department, dated 26.03.2013. Subsequently, thereafter the Government also issued an amendment to the Special Rules for Tamil Nadu Technical Education Sub-Ordinate Service Rules by way of G.O.Ms.No.184, dated 15.10.2014, and by virtue of the said amendment, since the very post of Instructor was deleted or dispensed with, the question of considering any more candidates for promotion to the post of Instructor does not arise. Therefore, the impugned order rejecting the request of the petitioner to give promotion as Instructor is fully justifiable. The learned Special Government Pleader further submits that in view of the amendment to rule, which is in force now, there is no post of Instructor available, for which, the petitioner can be accommodated. Therefore, the learned Special Government Pleader would submit that the impugned orders are fully justifiable and sustainable and requires no interference from this Court.

13. This Court has considered the rival contentions made by both sides and perused the entire materials available on records.

14. I have carefully perused the order of the Tribunal as well as the order of this Court dated 29.05.2013 and the order of the Division Bench dated 19.06.2015 and the Judgments rendered by the Hon'ble Apex Court in SLP(C)No.23252 of 2015 dated 28.09.2015 and I am of the view that the issues raised by the petitioners are covered by the judgment of the Tribunal, this Court and the Hon'ble Apex Court and it reached its finality.

15. The service rule was amended in G.O.Ms.No.1364, Higher Education Department dated 16.08.1988 and introduced the method of promotion from the feeder category to the post of Instructor

in Polytechnic. According to the said amended rules one must have 2 years experience with diploma qualification for promotion to the post of Instructor. Thereafter, the respondent as per the G.O.Ms.No.1081, Education Department dated 19.08.1989 has stopped the recruitment to the post of Instructor. As the qualifying candidates are stagnating in the lower category, some of the individuals were approached the Tamilnadu Administrative Tribunal for issuing direction to the respondents to consider their case for promotion to the post of Instructor, as they got B.E., degree qualification for the said post. The Tribunal was also granted direction as prayed for. Based on that, the respondents have considered their request in Government Letter No.960, Education, Science and Technology Department, dated 20.12.1995 and promoted them as Instructor and then promoted as Associate Lecturer in G.O.Ms.No.534, Higher Education Department, dated 19.11.2004, by relaxing the relevant rules.

16.The Government also considered the request of one Mr.Dharanipathi who was worked as Junior Draughting Officer and he passed B.E. Degree and promoted as Instructor as per the Government Order in G.O.(2D)No.46, Higher Education Department, dated 14.05.1998 based on the orders of the Tribunal dated 23.04.1993, whereas the very same Government did not consider the request of the petitioner for promotion as Instructor based on the Court orders. Though they are also similarly placed persons.

17.The Government also issued another order in G.O.(Ms) No.20, Higher Education Department, dated 01.02.2016 and have considered the request of the many individuals namely Mr.M.Selvaraj and others for promotion to the post of Instructor by creating supernumerary post in pursuance to order of this Court dated 29.05.2013 in W.P.No.14823 of 2013 which was confirmed by the order's of the Hon'ble Division bench of this Court dated 19.06.2015 in W.A.No.807 of 2015 and also confirmed by the order of the Hon'ble Supreme Court of India dated 28.09.2015 in SLP(C)No.23252 of 2015. But the very same respondents did not consider the request of the petitioner for promotion to the post of Instructor. It is nothing but discrimination. The Government should be a model to others, it should not take different policy between the equals. Once the Government have taken a policy decision to implement the Court order, it should be implemented equally to others also otherwise it will lead to discrimination and it is also amounts to violation of Article 14 of the Constitution of India.

18.The Service Rules provided promotion to the post of Instructor from the post of lower categories such as Draughtsman, Workshop Instructor, Boiler Foreman and etc. The said rule was amended only on 15.10.2014. As long as the old

rule was in force and also provided promotional opportunity and also vacancy was available prior to the amendment, the petitioners are entitled to be considered for promotion to the post of Instructor as per the unamended rules in view of the law laid down by the Hon'ble Apex Court in Y.V.Rangaiah case reported in 1983 (3) SCC 284 and another case reported in 2015 (3) SCC 177 (Kulwant Singh and others v. Daya Ram and others). But in contrary, the respondent has rejected the request of the petitioner on the ground of no vacancy is available and also no rules is available as on today. Hence, the impugned orders are liable to be set aside on the sole ground of non application of mind.

19. In so far as the contention made by the learned Special Government Pleader appearing for the respondents, that by virtue of amendment made through G.O.Ms.No.184, dated 15.10.2014, the post of Instructor has been deleted or dispensed with, and therefore, the petitioner cannot be considered for promotion to the post of Instructor, is concerned, the answer is available in G.O.Ms.No.20, Higher Education Department, dated 01.12.2016.

20. It is relevant to note that through the said order, which was passed now in the year 2016, after the amendment made in the year 2014, promotions have been given for a number of persons, noting that the post of Instructors have already been deleted or dispensed with. The respondents therein have thought it fit to give promotion to those eligible persons, by creating supernumerary post of Instructor. If this logic is applied to the case of the petitioner, they shall also be entitled to claim promotion by way of creation of supernumerary post of Instructor.

21. Therefore, the said argument advanced on behalf of the respondents that the amendment now has been made in the year 2014, and therefore, by way of challenge before this Court, the petitioner could not be considered for promotion to the post of Instructor, cannot be accepted, as in their own order passed in the year 2016, promotions have been given to persons to the post of Instructor, by creating supernumerary posts. Therefore, this Court is of the considered view that the petitioners shall also be entitled to claim promotion to the post of Instructor, as was given to the similarly placed person in view of the law laid down by the Hon'ble Apex Court in Maharaj Krishnan Bhatt case reported in 2008 (9) SCC 24 and in Aravind Srivastava case reported in 2015 (1) SCC 347.

22. In the result:

(a) both the writ petitions are allowed and the impugned order passed by the respondents in Pro.No.16450/P2/2005 dated 15.07.2005, Government Letter No.22336/C2/2008-1 dated 23.09.2008, Government

Letter No.31766/P2/2008-1 dated 14.07.2009 as well as the Memo No.10045/P2.2012 dated 26.09.2012 are set aside;

(b) the respondents are directed to consider the claims of the petitioner and promote them as Instructor notionally as was given to Mr.Vellaichamy and others, Mr.O.G.Dharanipathi and also Mr.Selvaraj and 7 others.

(c) the needful, as has been directed by this Court, shall be done within a period of eight weeks from the date of receipt of a copy of this order.

23.With these directions, both the writ petitions are allowed to the extent indicated above. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs
To

- 1.The Secretary to Government,
Higher Education Department,
Chennai - 9.
- 2.The Deputy Secretary to Government,
Higher Education Department,
Chennai - 9.
- 3.The Principal Secretary/Commissioner,
Directorate of Technical Education,
Guindy, Chennai - 25.
- 4.The Principal,
Central Polytechnic College,
Tharamani, Chennai-113.
- 5.The Assistant Director (Administration),
O/o the Director of Technical Education,
Chennai - 25.

+ 1 cc to M/s.G.Elanchzhiyan, Advocate Sr.59427

+ 1 cc to M/s.G.Elanchezhiyan, Advocate SR.59428(6.09.17)

WP.No.15965 of 2011
and

WP.No.33539 of 2012

CS-IV
EU 1.09.17