

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017

PRONOUNCED ON : 05.06.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.A.No.98 of 2017

J.Sathish Appellant/Petitioner

-Vs-

1. The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy,
Chennai.
2. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy,
Chennai.
3. The Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai-600 009.
4. The Secretary to Government,
Environment Department,
Fort St.George, Chennai-600 009. ... Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.33124 of 2014 dated 13.06.2016.

W.P.No.33124 of 2014 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the Respondents 1 & 2 to consider and pass appropriate orders on the representation dated 20.11.2014 submitted by the Petitioner within a time limit that may be fixed by this Court.

For Appellant : Mr.AR.L.Sundaresan,
Sr.Counsel for Ms.AL.Gandhimathi

For Respondent : Ms.Rita Chandrasekar for R1 & R2
Mr.A.Kumar,
Special Government Pleader
for R3 & R4

JUDGMENT

R.MAHADEVAN, J.

This appeal has been filed against the order passed by this Court in W.P.No.33124 of 2014 dated 13.06.2016, wherein, a direction was given to the respondents 1 and 2 to give some preference to the appellant at least in the next selection process.

2.The case of the appellant is that he was not allowed to participate in the interview for the post of Assistant Engineer in Tamil Nadu Pollution Control Board, stating that the educational qualification acquired by the appellant was not equivalent to the qualification prescribed for the said post. Subsequently, it was clarified by the Government in G.O.Ms.No.190, dated 18.11.2014, issued by the Higher Education Department, that the degree in M.E.(Environmental Management) awarded by Anna University, acquired by the appellant, is equivalent to M.E. (Environmental Engineering), the qualification prescribed by the Tamil Nadu Pollution Control Board for the post of Assistant Engineer. But, since the recruitment process for the said post for the year 2012 have been completed, the appellant was informed that he can apply only in the next recruitment.

3.The learned senior counsel appearing for the appellant herein argued before the writ Court that as on the date of original notification issued for selection, the petitioner was qualified for the post of Assistant Engineer for which applications have been called for. Merely because there was a doubt in respect of the qualification of the appellant, he was not allowed to participate in the personal interview. It was also submitted that among the 12 candidates, 4 candidates did not join and since the appellant did not participate in the interview, he was not considered for the said post. He further stated that since as per G.O.Ms.No.190, dated 18.11.2014, the qualification acquired by the appellant as on the date of application, is equivalent to the qualification prescribed for the said post, the appellant has to be given appointment. Learned Special Government Pleader appearing on behalf of the respondents 3 and 4 submitted before the writ Court, that the said G.O. did not give retrospective effect and hence the appellant cannot claim appointment on the basis of the same.

4.This Court affirmed the view expressed by the learned Special Government Pleader that the appellant cannot claim appointment on the basis of original notification since he did not participate in the interview, because even though he could have participated in the interview, it is not sure that he will get appointment. But since, the appellant had acquired the requisite qualification at the time of interview, and only because of a doubt about his qualification he was not allowed to participate in the interview, a direction was given to the Tamil

Nadu Pollution Control Board to give some preference to the appellant at least in the next selection process.

5.Challenging the order passed in the writ petition, the present writ appeal has been filed.

6.Mr.AR.L.Sundaresan, learned senior counsel appearing for the appellant submitted that the learned single Judge ought to have seen that the appellant herein had passed M.E. (Environmental Management) from the College of Engineering, Anna University in the year 2005 and that the said qualification was an equivalent qualification to M.E.(Environmental Engineering), which was the prescribed qualification for the post of Assistant Engineer in the Tamil Nadu Pollution Control Board and hence, a mandamus ought to have been issued appointing the appellant as Assistant Engineer in the respondent Board. He specifically emphasised that the appellant had applied for the said post and he was called for the written examination, which was held on 15.04.2012 by the first respondent, and the appellant had also written the examination and he was called for oral interview on 28.05.2012, but he was not allowed for attending the interview on the wrong premise that he did not have the eligible qualification, which is not in accordance with law. He further submitted that the reason given by the learned single Judge in not granting the prayer as prayed for by the appellant in the writ petition, but only giving a direction to give preference to the appellant in the next selection process is erroneous and unsustainable in law. Thus, the learned senior counsel seeks to quash the order passed by the learned single Judge and also for a direction for appointing the appellant in the said post.

7.The learned standing counsel appearing for the Tamil Nadu Pollution Control Board as well as the learned Special Government Pleader appearing for the respondents 3 and 4 have reiterated their submissions made before this Court in the writ petition.

8.We have heard the learned counsel on either side and perused the materials available on record.

9.It is not in dispute that the appellant was not allowed to participate in the interview for the post of Assistant Engineer in the Tamil Nadu Pollution Control Board, on the premise that the educational qualification acquired by the appellant was not equivalent to the qualification prescribed for the said post. Subsequently, it was clarified by the Government in G.O.Ms.No.190, dated 18.11.2014, issued by the Higher Education Department, that the degree in M.E.(Environmental Management) awarded by Anna University, acquired by the appellant, is equivalent to M.E. (Environmental Engineering), the qualification prescribed by the Tamil Nadu Pollution Control Board for the post of Assistant Engineer. Now the appellant claims appointment on the basis of the original notification. As

the appellant did not participate in the interview, he cannot claim appointment on the basis of the original notification. Further, as rightly held by the learned single Judge, even though the appellant could have participated in the interview, it is not sure that he will get appointment. The clarification by the Government in G.O.Ms.No.190 was not made at the time of the recruitment process in question. Since the entire recruitment process has been completed and appointments have been done, the learned single Judge had given a direction to the respondents 1 and 2 to give some preference to the appellant in the next selection process. Further, the prayer made in the writ petition was only for a direction to the respondents 1 and 2 to consider the representation of the petitioner and pass appropriate orders. The appellant had not challenged any appointment made in the recruitment process in question, in the writ petition.

10. In view of the above stated circumstances, the writ appeal is disposed of directing the respondent Board to consider the case of the appellant for appointment to the said post, preferably in the next selection process as per law. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KMTo

1. The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy, Chennai.
2. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy, Chennai.
3. The Principal Secretary to Government,
Government of Tamil Nadu,
Higher Education Department,
Fort St.George, Chennai-600 009.
4. The Secretary to Government,
Government of Tamil Nadu,
Environment Department,
Fort St.George, Chennai-600 009.

+1cc to M/s.AL.Gandhimathi, Advocate, S.R.No.40269

+1cc to Ms.Rita Chandrasekar, Advocate, S.R.No.40135

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AK(CO)

CA(07/06/2017)

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