

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

Coram

The Honourable Mr. JUSTICE R. SURESH KUMAR

W.P.No.9897 of 2010

P.J.Elizabeth

...Petitioner

versus

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

2. The Commissioner of Technical Education,
Directorate of Technical Education,
Guindy,
Chennai - 25.

...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected in Letter (ID) No.239, dated 29.10.2009 of the first respondent and quash the same and direct the respondents to promote the petitioner as librarian in any one of vacant post with all consequential benefits.

For Petitioner : Mr.G.Elanchezhian
For Respondents: Mr.A.Zakir Hussain,
Government Advocate

O R D E R

The prayer in this writ petition is that a writ of Certiorarified Mandamus, calling for the records connected in Letter (ID) No.239, dated 29.10.2009 of the first respondent and quash the same and direct the respondents to promote the petitioner as librarian in any one of vacant post with all consequential benefits.

2.The case of the petitioner is that the petitioner was appointed as Lab Assistant in the year 1983 at a Government

polytechnic college. At that time, the petitioner was having the qualification of Diploma in Lab Technology. Thereafter, the petitioner completed Bachelor degree in Library Science in the year 2006 and thereafter in the year 2008 the petitioner also acquired the qualification of Master degree in Library and Information Science. After working in various stations, the petitioner was transferred and posted at the Government Polytechnic College, Coimbatore as Lab Assistant, where he has been continuously working till date.

3. Though, the petitioner has put in more than 24 years of service there was no promotion given to him as the promotional avenue was almost bleak.

4. The further case of the petitioner is that the Government issued Adhoc Rules under Article 309 of the Constitution of India to fill up the post of Librarian at Government polytechnics in the State. The said Adhoc Rules were issued by G.O.Ms.No.64 Education (TES I) Department dated 13.01.1989. As per Clause 2 of the said Government Order, the said rule was retrospectively brought into force from 18th July 1979. According to the said rule, there are three methods to fill up the posts of Librarian at Government Polytechnic. One by direct recruitment and another one by transfer from any other class or category and the third one is by recruitment by transfer from any other services.

5. According to the said Adhoc Rules, the educational qualification and experience, as has been prescribed therein, is that the person who have qualification of the degree in Arts, Science or Commerce as well as degree in Library Science with two years experience as Junior Assistant, Assistant or Librarian in a technical library, alone would be considered for appointment to the post of Librarian in Government Polytechnics, by way of transfer from other class or category or recruitment by transfer from any other service.

6. In this regard since the petitioner, even though was appointed and working as a Lab Assistant at Government Polytechnic for long years, since she has acquired the necessary qualification, namely, Bachelor of Library Science and Information as well as the higher qualification, namely, Master of Library Science and information and also she had the experience of atleast six months in a technical library attached with the Polytechnic college, where she is working, she requested the respondents to consider her candidature for appointment by way of recruitment by transfer to the post of librarian at any one of the Government Polytechnics, including Government Polytechnic at Coimbatore, where she is working.

7. Since the request of the petitioner was not considered, the petitioner had already approached this Court by filing a writ petition in W.P.No.12944 of 2009, where a direction was issued by this Court on 13.07.2009 directing the respondent therein to consider the request of the petitioner and to pass orders.

8. Pursuant to the said directive issued by this Court, the first respondent has issued a Government letter in I.D.No.239 dated 29.10.2009, which is the order impugned herein, whereby the first respondent has rejected the request of the petitioner and therefore challenging the same, the petitioner has come out with the present writ petition.

9. Mr. G. Elanchezhian, learned counsel appearing for the petitioner has invited the attention of this Court on the Adhoc Rules issued by the Government in G.O.Ms.No.64 Education (TES I) Department dated 13.01.1989. The relevant portion of the said Adhoc Rules is extracted hereunder.

In exercise of the powers conferred by the Proviso to Article 309 of the Constitution of India, the Governor of Tamilnadu hereby makes the following rules:

2. The rules hereby made shall be deemed to have come into force on the 18th July, 1979.

RULES

The General rules applicable to the holders of the permanent posts in Class I of the Tamil Nadu General Subordinate Service shall apply to the holders of the temporary post of Librarian sanctioned from time to time for the Government Polytechnics subject to the modification specified in the following rules:

2. Constitution: The post shall constitute a separate category in the said class of the said service.

3. Appointment: Appointment to the post shall be made

- i. By direct recruitment; or
- ii. By transfer from any other class or category; or
- iii. By recruitment by transfer from any other service.

4. Appointing Authority: The appointing authority for the post shall be the Additional Director of Technical Education, Madras.

5. Qualifications: (a) Age: No person shall be eligible for appointment to the post by direct recruitment, if he has completed or will complete the age of 28 years on the first day of July of

the year in which the selection for appointment is made.

(b) Other qualifications: No person shall be eligible for appointment to the post, unless he possesses the following qualifications, namely:-

- (i) A degree in Arts, Science or Commerce;
- (ii) A degree in Library Science; and
- (iii) Experience as Junior Assistant, Assistant or Librarian in a technical Library for the period of not less than two years, subsequent to acquiring the above degrees.

Explanation: The "Technical Library" shall mean a Library attached to a Technical Education Institution or a Library attached to a University or the Connemara Library.

10.The learned counsel for the petitioner would further submit that as per Clause 3 of the Government Order referred to above, there are three methods of recruitment, out of which, the third method being the recruitment by transfer from any other service, the respondent can take candidates from any other service provided if such candidates are possessing necessary educational qualifications as well as the experience mentioned at clause 5(b) of the Government Order. Since the petitioner is already possessing the qualification of a UG degree with Bachelor of Library Science as well as Master of Library Science and also the petitioner had worked as a Librarian at the Government Polytechnic College, Coimbatore, between 20.07.2005 and 20.01.2006, her candidature can very well be considered for appointment to the post of Librarian.

11.The learned counsel for the petitioner would also submit that in so far as the Government Polytechnics in the State are concerned, as per the information available to the petitioner, there are 16 vacancies as of now available and in this regard, the learned counsel invited the attention of this Court at paragraph 5 of the additional affidavit filed by the petitioner which is reproduced hereunder:

5.I humbly submit that on verification, I came to understand that there are 16 vacancies in the Librarian post available in the Government Polytechnic Colleges is as follows:

Sl.No	Place of the Polytechnic	No. of Vacancies
1	Government Polytechnic, Coimbatore	1
2	Government Polytechnic, Karur	1

Sl.No	Place of the Polytechnic	No. of Vacancies
3	Government Polytechnic, Perundurai	1
4	Government Polytechnic, Krishnagiri	1
5	Government Polytechnic for women, Madurai	1
6	Government Polytechnic, Aranthangi	1
7	Government Polytechnic, Thiruchirapalli	1
8	Government Polytechnic, Tuticorin	1
9	Government Polytechnic, Nagercoil	1
10	Government Polytechnic, Villupuram	1
11	Government Polytechnic, Jolarpet	1
12	Government Polytechnic, Dharmapuri	1
13	Government Polytechnic, Uthangarai	1
14	Bharathiyar Century Memorial Womens Polytechnic, Ettayapuram.	1
15	Government Polytechnic, Melur	1
16	Government Polytechnic, Srirangam	1

12. Though there are number of vacancies for the post of Librarian are available and are kept vacant for several years, as these posts have not been filled up for atleast seven years, the respondent can very well choose the eligible candidates under clause 3(iii) of the Adhoc Rules and appointment can be made by way of recruitment by transfer.

13. The learned counsel for the petitioner would also submit that in fact in the year 1994 itself through G.O.Ms.No.729 Education, Science & Technology Department dated 26.08.1994, 11 posts of Junior Assistant, where people were working in various Government Polytechnics throughout the State, had been converted

temporarily as Librarian and all the 11 persons worked as Junior Assistant had been posted as Librarian by invoking Rule 3(iii) of the Adhoc Rules. In this regard, the learned counsel for the petitioner would invite the attention of this Court to paragraph 3 of the said G.O.Ms.No.729, dated 26.08.1994, which reads thus:

"3.The Director of Technical Education has stated that the existing Junior Assistants/Assistants would not be converted as Librarians with same scale of pay and persons in the category of Junior Assistants/Assistants who are fully qualified to hold the post of Librarian would be appointed and they would be given the scale of pay of Rs. 2200 - 4000 and that the recurring annual additional financial commitment involved in the process of appointment of Junior Assistants/Assistants as Librarian by transfer of service would be Rs.27,000/- for one post and Rs.3,51,000/- for 13 posts of Librarians in 13 Polytechnic including Government Polytechnic, Aranthangi and Bharathiar Centenary Memorial Girls Polytechnic, Ettayapuram. He has also stated that the existing Junior Assistants (Library) would be given postings alternatively as Junior Assistant if they are not qualified to hold the post of Librarian and in respect of persons, who satisfy the educational qualifications, lack of experience, they would be temporarily appointed till they acquire the required experience."

14.Therefore, the learned counsel for the petitioner would submit that at the time of converting 11 persons from the post of Junior Assistant to Librarian, they were not qualified with experience wise, as they admittedly did not have the required experience of two years as per clause 5(b)(iii) of the Adhoc Rules. Nevertheless, they have been appointed as Librarian with a condition that their appointment would be temporary in nature, till they acquire the necessary required experience.

15.The learned counsel would submit that when such a gesture had been shown for 11 persons in the year 1994 i.e. well after the Adhoc Rules came into effect, the denial on the part of the respondents to consider the candidature of the petitioner or like persons who are having the necessary qualification as well as the experience is not only discriminatory but also unjustifiable.

16.In respect of the lack of experience of still 1½ years with the petitioner, as admittedly she had an experience of only six months at a technical library, the learned counsel would submit that either the petitioner can be considered and posted

as librarian and on such posting given to the petitioner, certainly the petitioner would gain the experience and only after the completion of the required period of two years experience, the probation as given under Proviso to Rule 7 of the Adhoc Rules can be declared in respect of the petitioner. In alternate, the petitioner can straight away be posted as Librarian temporarily to gain the experience as has been done in the earlier occasion, where she has gained six months experience and after getting qualification with the experience of two years, she can be permanently posted as Librarian. Therefore, at any rate, the qualification acquired by the petitioner cannot be allowed to go waste, as in order to give appointment to the post of Librarian to the in-service candidates, the third method of recruitment under rule 3(iii) has been provided in the Adhoc Rules. Therefore, the learned counsel for the petitioner would submit that the rejection of the request of the petitioner made in the impugned order of the first respondent is not only against the Adhoc Rules but also against the interest of the smooth running of the library in Government Polytechnics and therefore the said impugned order is liable to be interfered with.

17. Per Contra Mr. A. Zakir Hussain, learned Government Advocate for the respondents would contend that the Adhoc Rules is very clear and specific as to the qualification and experience of the persons to be considered for the post of Librarian in Government Polytechnics. Even though the petitioner is having the educational qualification as required under clause 5(b)(i) and (ii) of the Adhoc Rules, she does not have the required experience, admittedly, i.e. two years experience in a technical library.

18. The learned Government Advocate would also submit, by relying upon the averments made in the counter affidavit filed by the second respondent, that the post of Librarian at Government Polytechnics was only a temporary creature and therefore the Government deem it that it is a vanishing category and therefore the Government has directed not to fill up the post of Librarian in Government Polytechnics. In this regard, the learned Government Advocate would rely upon the following averments made in the counter affidavit.

"Further, the post of Librarian comes under the purview of the Tamil Nadu Public Service Commission.

Moreover, there are only two Non-teaching Technical Staff who have acquired M.Lis Degree at present and hence, providing 1:1 ratio in the adhoc rules for their sake cannot be considered.

Further, the posts of Librarians in Government Polytechnics created by conversion

of 11 posts of Junior Assistants in G.O.Ms.No.729, Education, Science and Technology Department, dated 26.08.1994 has been treated as vanishing category - Vide G.O. (Ms.).No.435, Higher Education Department, dated 23.10.2008 and so the Government have informed that the posts of Librarians in Government Polytechnic should not be filled up further, as it is a vanishing category."

19. In response to the arguments made on behalf of the petitioner that when 11 persons were appointed by converting the post of Junior Assistant in the year 1994, none of them had the required experience and therefore the method adopted in respect of appointment of the said 11 persons can very well be adopted or extended in the case of the petitioner also, the learned Government Advocate would submit that during that time, i.e. in the year 1994 since libraries functioning in the Government Polytechnics were in dire need of hands to handle the library and therefore only as adhoc or temporary basis, those 11 persons, from the post of Junior Assistant, had been converted and posted as Librarian, that to, only as a temporary measure and unless and until they gain experience, they would be treated only as temporary appointees. In this regard, the learned Government Advocate would submit that such temporary measure taken only once, in order to meet out the contingency, cannot be a rule and therefore, the same cannot be expected to be repeated or perpetuated forever. Therefore, the learned Government Advocate would submit that since the petitioner admittedly does not have the required experience of two years as Librarian in a technical library and moreover, the Government has decided not to appoint Librarian in the Government Polytechnics as the said category of post, namely, Librarian in the Government Polytechnics being a vanishing category, the question of considering the candidatures like the petitioner from a different service/category of service does not arise and therefore, the request of the petitioner was rightly turned down by the first respondent through the impugned order. Hence, it is justifiable and requires no interference from this Court.

20. This Court has considered the rival submissions made on behalf of both sides and also perused the materials placed before this Court.

21. In so far as the educational qualification of the petitioner is concerned, there is no controversy on that aspect as the petitioner is admittedly is having required qualification, namely, a U.G. Degree as well as Bachelor Degree in Library Science and also having a Master Degree in that subject. Only in respect of the experience, the petitioner

admittedly is having six months experience whereas the rule requires two years experience. In so far as comparison, the learned counsel appearing for the petitioner wanted to make with the 11 persons who had been appointed in the year 1994 by converting the post of Junior Assistant into the Librarian, the submission made by the learned Government Advocate is that it is only an adhoc or temporary measure.

22. In this regard, the learned Government Advocate, though has submitted, that it was only an adhoc or temporary measure, the respondents have not come forward to place any material to show that those incumbents who had been given the posting of Librarian in the year 1994 without the required experience, had been subsequently drifted away from the said post. Therefore in all probabilities their continuance in the post of Librarian, of course after gaining the experience of two years to satisfy the Adhoc Rule, cannot be ruled out.

23. As far as the case of the petitioner is concerned, already the petitioner had been posted in the library during the year 2005 and she worked there for six months. Therefore, only for administrative reason, an inter-departmental transfer was given and the petitioner was again re-posted in January 2006 as Lab Assistant. Therefore, the post of Assistant as well as the Librarian is inter-changeable in Government Polytechnics and therefore, whenever an Assistant or Lab Assistant is posted in the Library and he or she looks after the library for some time, such an incumbent would gain the experience. This is how the relative experience as required under the Adhoc Rule is expected to be fulfilled. This is the only possible view because, under Rule 5 of the Adhoc Rule, an explanation clause is inserted whereby the word 'technical library' has been explained, according to which, the technical library means a library attached to a technical Educational Institution or a library attached to an University or the Connemara Library.

24. In a common parlance, it is well known that, no experienced Librarian working in an University Library or the Connemara Library would opt to go to hold the post of Librarian in a Government Polytechnic. Therefore, the only option to gain experience of two years in a technical library for those who are having the educational qualification otherwise, is to get such an experience only from the library attached with a Government Polytechnic alone. Therefore, if at all, the Rule requiring experience has to be strictly construed, the same can be construed only in the manner enabling the inside candidates to gain such experience by posting them as Librarian wherever requirement arises or vacancy available and only by way of such temporary appointments, those inside candidates can gain such experience. Otherwise, the said requirement of experience

clause made under Rule 5(b)(iii) cannot be fulfilled easily by any candidate and in the result, no candidate with such prior experience would be available to be recruited by way of transfer from any other service.

25. Therefore, the said experience laid under Rule 5(b)(iii) can also be construed that if eligible candidate otherwise i.e. by satisfying the educational qualification, is posted temporarily either without experience or with lesser experience i.e. the two years experience as required under the Rule, such candidate, only on being appointed temporarily as a Librarian, would gain such experience and only after gaining such an experience for two years, his/her probation can be declared, within the meaning of Proviso to Rule 7 of the Adhoc Rules. In fact this is the only way out to satisfy the rule and that is why in the year 1994, the Government themselves thought to issue a Government Order in G.O.Ms.No.729 Education, Science & Technology Department dated 26.08.1994 by which 11 such persons, who were working as Junior Assistant, had been converted and transferred to the post of Librarian in various Government Polytechnics and at the time of such appointment by transfer, none of them had the experience of two years as required under Adhoc Rules. If this method is adopted, as has already been adopted by the respondents in the year 1994, then there can be no difficulty in taking the candidates like the petitioner, who is otherwise qualified.

26. In this regard it is also pertinent to point out, the stand taken by the second respondent in the counter affidavit which is reproduced hereunder for better appreciation of the issue:

"However, there is already a provision in the said adhoc rules for the post of Librarian in Government Polytechnic to recruit candidates by transfer from any other service. But, even for the above method of recruitment of candidates by transfer from any other service, only those who possess the educational qualification and experience qualification prescribed in the adhoc rules can be considered for the post of Librarian. Therefore, the petitioner can also be considered, for appointment to Librarian post in Polytechnics, if she acquires the education and experience qualifications prescribed in the adhoc rules."

27. From the averments made by the second respondent in the counter affidavit, it can easily be found that the petitioner candidature can also be very well considered for appointment for the post of Librarian in Polytechnic College, as he has

educational qualification to hold the post, provided if he gains or acquires experience as per the Adhoc Rules. The said experience as per the Adhoc Rules can be gained or acquired by the candidate like the petitioner only by way of the method as has been discussed above, whereby, if temporary appointments or incharge is given to them in the Libraries attached with the Polytechnic Colleges, certainly they would gain the experience.

28. Since the recruitment by way of transfer from other service is also one of the recognized method to fill up the post of Librarian in the Government Polytechnic, as per the Adhoc Rule, the educational qualification acquired by the candidates like the petitioner can very well be utilized by the Department and therefore, in this regard, this Court is of the view that the request of the petitioner can very well be considered in the light of the aforesaid discussion, which in the opinion of this Court, has not been considered in proper perspective and in the result, the present impugned order has been passed. This Court therefore is of the considered view that the said impugned order is liable to be interfered with.

29. In so far as the further contention made on behalf of the respondents that the said post of Librarian in Government Polytechnics is a vanishing category and therefore the Government decided not to fill up the post and the Government also has informed that the post of Librarian in Government Polytechnics shall not be filled up further is concerned, though such an averment alone has been made in the counter affidavit, there is no such order or directive issued by the Government by way of a Government Order or Government letter has been filed or produced before this Court. No Government decision can be made orally and unless and until such a decision is taken with the wisdom of the Government, the same cannot be pressed into service, as has been averred in the counter affidavit filed by the second respondent. Therefore, the said reason attributed for non-consideration of the candidature like the petitioner for appointment to the post of Librarian, is totally untenable and unacceptable.

30. In view of the aforesaid facts and circumstances, this Court has no hesitation to hold that the impugned order is liable to be quashed and accordingly it is quashed. Now the matter is remitted to the respondents, especially the first respondent, to take a decision at Government level as to whether the post of Librarian at Government Polytechnics should be filled up or not? If any such decision is taken by the Government not to fill up the post of Librarian in Government Polytechnics, the Government must also spell out as to how the library, namely, the technical library attached with the Government Polytechnics is going to be managed. As per the

information available before this Court, there are number of Librarian post kept vacant at various Government Polytechnics throughout the State. The Government must take a quick decision on this aspect and once the Government decides that as per the Adhoc Rule, appointments can be made either by way of direct recruitment through the State Service Commission or by way of appointment by transfer from other service, certainly the candidature like the petitioner shall be considered as admittedly the petitioner is having the necessary educational qualification and also having some experience as required under the Adhoc Rule, if not the full experience of two years. At any rate, the decision as has been indicated above shall be taken by the respondents as early as possible, but atleast before three months from the date of receipt of a copy of this order and accordingly, the request of the petitioner can also be decided.

31. With this direction, the writ petition is ordered to the terms indicated above. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asi/sli/cse

To

1. The Principal Secretary to Government
Higher Education Department
Chennai - 9.
 2. The Commissioner of Technical Education,
Directorate of Technical Education,
Guindy, Chennai - 25.
- +1 CC to Mr.G. Elanchezhian, Advocate sr 24172
+1 CC to Govt. Pleader sr 24484

W.P.No.9897 of 2010

KJI (CO)
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