

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.29561 of 2011

B.Senthamizh Chelvi

... Petitioner

vs.

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

2.The Principal Secretary/
Commissioner of Technical Education,
O/o.The Directorate of Technical Education,
Guindy, Chennai - 25.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records connected in Letter No.15138/P4/2009, dated 23.10.2009 passed by the 2nd respondent and quash the same and direct the respondents to promote the petitioner as instructor on completion of Diploma Qualification with effect from 1981, as per the G.O.Ms.No.1364, Education Department, dated 16.8.188 and give consequential promotion as Associate Lecturer and Senior Lecturer, as given to others based on the order passed by this Court inW.A.No.261 of 2008 dated 8.4.2008 and also G.O.Ms.No.89, Higher Education (12) Department, dated 31.3.2009 and fix the petitioner's pay on par with juniors and pay arrears.

For petitioner : Mrs.A.V.Bharathi
for M/s.E.Martin Jeya Kumar

For respondents : Mr.A.Rajaperumal,
Additional Government Pleader

ORDER

The learned counsel for the petitioner submitted that the petitioner was appointed as Draughtsman in Civil Engineering at Government Polytechnic College, Trichy, by order of the Principal in Proc.No.3677/A2/82 dated 15.7.1982. After

acquiring B.E.Degree, he was promoted as Instructor on 29.12.1988. Again, he was promoted as Lecturer on 29.12.1991 and Senior Lecturer on 29.12.2001. By virtue of G.O.Ms.No.1364 Education Department, dated 16.8.1988, the petitioner and one Thiru Vinayagamoorthy were promoted as Instructor in Mechanical Engineering during December 1988. He joined in the promotion post on 21.12.1988. As per the said G.O., the petitioner was eligible to hold the post of Instructor on completion of Diploma Qualification as there were vacancies arose. Without considering the request of the petitioner, the respondent appointed some of other person as instructor through direct recruitment. If his name had been considered in that vacancy as per G.O.Ms.No.1364, Education Department, dated 16.8.1988, he would have got the post of instructor from the date of his acquiring qualification. While so, after the introduction of new scale of pay in G.O.Ms.No.1081, Education Department, dated 19.8.1989, the system of recruitment of instructors was stopped and Associate Lecturers were made as entry level post. Accordingly, the post of Instructor was abolished by the Government based on the above G.O.,. He made a representation to the respondents requesting retrospective promotion as Instructor and also promote him as Associate Lecturer and Lecturer etc., retrospectively. The said request made by the petitioner was rejected by the respondents stating that there was no provision to consider so. But, the Government has considered the claim of one instructor, viz., Vinayagamoorthy by way of G.O.Ms.No.472, Higher Education Department, dated 10.9.1998 and also ordered the retrospective promotion and regularisation with effect from 7.1.1982 by creating a supernumery post of Instructor from 7.1.1982 to 20.12.1988 with consequential service and monetary benefits, during which period, he had actually worked as Draughtsman in Mechanical Engineering and pursuant to this order, he has been given retrospective upgradation as Associate Lecturer and as Lecturer and now as Senior Lecturer, based on the existing rules for upgradation. While so, the request of the petitioner for similar relief was rejected in an arbitrary manner. Aggrieved against the rejection of the similar request, the similarly placed persons like Vinayagamoorthy, filed Original Application before the Tamilnadu Administrative Tribunal seeking to set aside the impugned order of rejection in O.Mu.5785/P4/2000 dated 4.9.2000 of the Additional Director of Technical Education, Chennai and to promote them as Instructor on completion of Diploma Qualification and consequently, promote them as Associate Lecturers as has been given to the said Vinayagamoorthy and fix pay on par with him. After hearing both sides, the Tribunal directed the respondents to consider the representation of the applicants on merits based on the orders passed in the case of the said M.Vinayagamoorthy. After receipt of the said order, the first respondent rejected the

claim of some of the individuals therein in Lr.No.7831/12/2002-22 dated 1.12.2004 without following the Court Order dated 4.8.2000 and 14.3.2002 without assigning any valid reasons. Against this order, aggrieved persons filed Writ Petition No.4660 of 2005 challenging the rejection order dated 1.12.2004 on various grounds. After hearing both sides, this Court, by order dated 30.10.2006 quashed the impugned order therein and directed the respondents to consider the case of the petitioners therein within 30 days. Against the said order, the respondents preferred Writ Appeal No.261 of 2008 before a Division Bench of this Court. By judgment dated 8.4.2008, the Division Bench dismissed the Writ Appeal, confirming the order of the learned Single Judge. Thereafter, the order of this Court was complied with by the respondents by G.O.Ms.No.89, Higher Education Department, dated 31.3.2009 and gave promotion as Instructors with retrospective effect from the date of acquiring qualification. The learned counsel for the petitioner also relied upon a decision of this Court in W.P.Nos.28308 of 2014 and 6996 of 2015 dated 17.11.2016 wherein this Court allowed the Writ Petitions following the order passed in W.P.No.25604 of 2014 dated 19.9.2014. Further, in support of his contention, the learned counsel for the petitioner relied on the decision of this Court in W.A.Nos.74 to 76 of 2011 dated 04.11.2013 wherein a Division Bench of this Court dismissed the Writ Appeal filed by the respondents against the order passed in the respective Writ Petitions granting the relief sought for by the petitioners. Therefore, in the light of the above submissions, the learned counsel for the petitioners prays that the Writ Petition may be allowed as prayed for.

2. On the contrary, refuting the allegations made by the petitioner, counter affidavit has been filed by the respondents. It is stated in the counter affidavit that based on the recommendations of the University Grants Commission, the post of Senior Instructor and Junior Instructor were merged together and re-designated as Instructor vide G.O.(Ms) No.265, Education Department, dated 09.02.1978. In G.O.Ms.No.1936, Education Department, dated 31.08.1981 orders were issued revising rules for the post of Associate Lecturer and Instructor and there were no provisions for recruitment by transfer to the post of Instructor. Only direct recruitment was prescribed as method of appointment to the post of instructor. No one was appointed as Instructor by transfer of service from 18.12.1980 to 16.12.1988. However, in G.O.(Ms.) No.1363, Education Department, dated 16.8.1988 orders were issued making provisions for appointment of instructors by transfer of service from Workshop Instructor / Draughtsman / Workshop Foreman / Boiler Foreman / Electrical Foreman etc., for the period from 9.12.1978 to 22.12.1981 who were possessing Diploma qualification with more than two years of service in the

respective posts. It is further stated that the said Vinayagamorthy made several representations to the Director of Technical Education as well as Government for retrospective regularisation in the post of instructor from the date on which he completed 2 years experience i.e. from 25.6.1981 as per G.O.Ms.No.1363, Education Department, dated 16.8.1988. The Director of Technical Education did not consider the demands of the said Vinayagamorthy. He representation to the Secretary to the Government, Higher Education Department, on 10.6.1996 for retrospective regularisation in the post of Instructor from 25.6.1981. Then, he approached the Tamil Nadu Administrative Tribunal and the Tribunal has passed an order dated 9.8.1996 in O.A.No.4286 of 1996 directing the respondent to consider the representation of the said Vinayagamorthy dated 10.6.1996. In view of the order passed by the Tribunal, the Government considered the representation of the said Vinayagamorthy. Subsequently, many representations were made by the other instructors seeking to consider the same relief for them. Since the Government rejected such claims, they approached the High Court and on the orders of the High Court, the claims of some of the instructors were re-considered.

3. On the earlier occasion, the learned Additional Government Pleader was directed to get instructions as to whether any appeal is pending before this Court challenging the orders passed in the Writ Petitions allowing the similar prayer made in the present Writ Petition. The learned Additional Government Pleader submitted that orders passed in Writ Appeal No.261 of 2008 dated 8.4.2008 has become final and no appeal is pending as on today.

4. Therefore, in the light of the decisions cited supra, I have no hesitation to set aside the impugned order passed by the second respondent and allow the Writ Petition in the light of the order passed in W.P.Nos.28308 of 2014 and 6996 of 2015 dated 17.11.2016. Accordingly, the second respondent is directed to pass orders in the light of the order dated 17.11.2016 passed in W.P.Nos.28308 of 2014 and 6996 of 2015, within a period of 8 weeks from the date of receipt of a copy of this order.

5. In the result, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

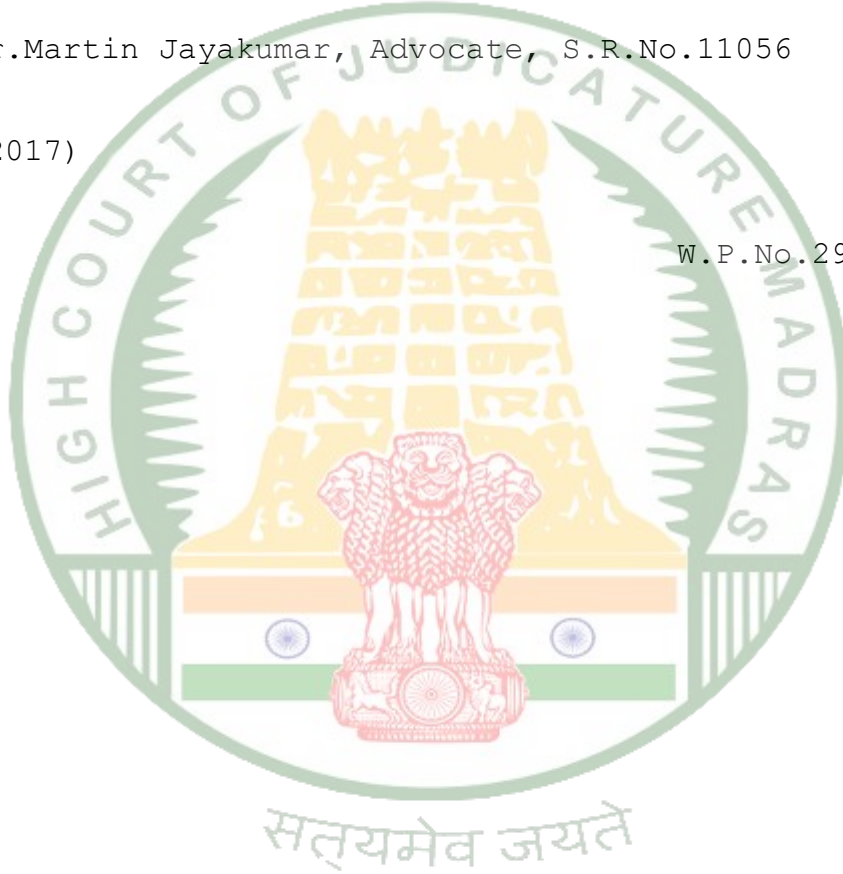
To

1. The Secretary to Government,
Government of Tamilnadu,
Higher Education Department,
Chennai - 9.
2. The Principal Secretary/
Commissioner of Technical Education,
O/o.The Directorate of Technical Education,
Guindy, Chennai - 25.

+1cc to Mr.Martin Jayakumar, Advocate, S.R.No.11056

AD(CO)
RS(16/03/2017)

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