

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.5474 of 2011

P.Chandramurthy

.. Petitioner

vs.

1.The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 9.

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

3.The Principal,
Natchimuthu Polytechnic,
Pollachi - 642 03,
Coimbatore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 3rd respondent in proceeding A4/96/2010 dated 6.12.2010 and quash the same and consequently, direct the respondents to regularise the services of the petitioner in the post of Lecturer with effect from 01.09.1997 and award the senior scale with effect from 1.9.2007 and grant consequential monetary benefits, arrears of pay and all other service benefits.

For petitioner : Mr.R.Prem Narayan

For respondents 1 and 2 : Mrs.P.Rajalakshmi,
Government Advocate

For 3rd respondent : No appearance

ORDER

The petitioner has filed this Writ Petition before this Court against the order passed by the third respondent dated 6.12.2010.

2. According to the petitioner, he was initially appointed in the post of Lecturer on 1.9.1997 through Staff

Selection Committee duly constituted by the direction of the Commissioner of Technical Education. He was given senior scale of pay with effect from 1.9.2009 by the proceedings of the third respondent dated 11.2.2010. As per the Government Orders, he was entitled for Senior Scale on completion of 10 years of service and accordingly, the respondents ought to have given the Senior Scale of Pay with effect from 1.9.2007. Therefore, he filed an appeal to the second respondent Commissioner on 15.2.2010. But, the third respondent issued the impugned order in Proceedings dated 6.12.2010 rejecting his claim on the ground that his services as temporary Lecturer from 1.9.1997 to 31.8.1999 was not taken into account and those services were not regularised. The reason stated in the impugned order that two years of service from 1.9.1997 was taken as experience, is unwarranted and contrary to the rules.

3. On the contrary, refuting the allegations of the petitioner, the second respondent has filed a counter affidavit. In the counter affidavit, it is stated that the petitioner was initially appointed as Associate Lecturer (Non-Engineering) (Maths) on temporary basis on 1.9.1997 in the respondent College which is a Government Aided Polytechnic College. The Director of Technical Education, by his proceedings No.12065/C3/1997 dated 8.8.1987 regularised his services in the post of Associate Lecturer (Non-Engineering) (Maths) temporarily and it had been stated that only after acquiring 2 years experience in the said post, necessary proposal for his regularisation will be sent to the Directorate. The petitioner had possessed two years previous experience as Teaching Assistant in Ramakrishna Nallammal Polytechnic College before his appointment in the third respondent College. As per the Special Rules for the Tamil Nadu Technical Educational Subordinate Service for the post of Associate Lecturer (Non-Engineering) (Maths) in Polytechnics, the following qualification was then prescribed as follows:-

" (I) A first or second class Master's Degree of any University in the State or a Degree of equivalent standard by examination or research in the subject relating to the post concerned; and

(ii) teaching experience for a period of not less than two years in the subject concerned in a College or Polytechnic."

The petitioner had not completed the two years teaching experience in the post of Associate Lecturer and hence, his services were regularised only on 1.9.1999 i.e. after completing 2 years service in the post of Associate Lecturer from 1.9.1997 to 31.8.1999 in the third respondent College. Hence, his services in the post of Associate Lecturer (Maths) was regularised with effect from 1.9.1999 in the Director of Technical Education Proceedings No.43180/C3/1999 dated

5.10.1999. The Teaching Assistant post held by the petitioner in Self Financing Polytechnic College before his temporary appointment in the third respondent college cannot be taken into consideration as teaching experience for the Associate Lecturer (Non-Engineering) Post under the Special Rules for the Tamil Nadu Technical Educational Subordinate Service. Hence, the Writ Petition deserves to be dismissed.

4. The learned counsel for the petitioner submitted that the non-regularisation of the services of the petitioner from his initial date of appointment on 1.9.1997 is arbitrary and in violation of Articles 14 and 16 of the Constitution of India. It is further submitted by the learned Counsel that one Mr.Ganesan, who was appointed along with the petitioner by the very same Staff Selection Committee, was regularised from his initial date of appointment and he was awarded with Senior Scale on completion of 10 years. Therefore, the petitioner alone was discriminated and the respondents cannot adopt different yardstick for the similarly placed persons. In support of his contention, the learned counsel for the petitioner relied on the Judgment of a Division Bench of this Court in S.Shanmugavel v. Chief General Manager, State Bank of India reported in (2015) 2 MLJ 513 and also a Judgment of the Apex Court in the Direct Recruit Class-II Engineering Officer's Association and others v. State of Maharashtra and others.

5. On the contrary, the learned Government Advocate for the respondents 1 and 2 reiterating the averments made in the counter affidavit submitted that the Teaching post held by the petitioner in Self Financing Polytechnic College/third respondent College before his temporary appointment cannot be taken into consideration as teaching experience for the Associate Lecturer (Non-Engineering) Post under the Special Rules for the Tamil Nadu Technical Educational Subordinate Service. The experience gained in the post of Teaching Assistant cannot be construed as that of the experience in the post of Lecturer. Hence, the petitioner's service in the post of Associate Lecturer (Non-Engineering) could be regularised only after serving in the said post for two years. Therefore, only after completion of 2 years from the date of his initial temporary appointment as Associate Lecturer (Non-Engineering) i.e. 1.9.1997, he is eligible for the regularisation in the post of Associate Lecturer (Non-Engineering). It is further submitted by the learned Government Advocate that G.O.Ms.No.534, Higher Education Department, dated 19.11.2004 upgrading 236 Instructors working in the Government Polytechnic Colleges and Special Institutions as Lecturer from 19.8.1989 or from the date of their initial appointment or from the date of their acquiring the required qualification whichever is later by upgrading the Instructor posts as Lecturer posts as in the annexure to the

said G.O.Ms.No.1081, Education Department, dated 19.8.1989, the recruitment to the post of Instructor was dispensed with and all the incumbents of the post of Instructor as and when they acquire B.E., First Class Qualification will be promoted to the post of Associate Lecturer (later redesignated as Lecturer). Further, the concession of upgradation given G.O.Ms.No.534 Higher Education Department, dated 19.11.2004 is only to the persons annexed to the said Government Order. The said order is not applicable to the petitioner. The petitioner's name was recommended by the Employment Exchange and he appeared before the staff Selection Committee of the Aided College and Staff Selection Committee on 15.2.1997 had selected him for the post and from the date of his joining to the post of Associate Lecturer (Non-Engineering) his temporary appointment was approved by the Directorate. Thiru.V.Ganesan, who was referred to by the petitioner had previous teaching experience for 2 years as Lecturer in S.N.R.Science College, Coimbatore. Based on that teaching experience, the said Ganesan was regularised from the date of his initial appointment from the date of joining i.e., 1.12.1997 whereas the petitioner had not acquired teaching experience as required. For the reasons stated above, the Writ Petition is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for respondents 1 and 2.

7. Admittedly, the petitioner was appointed in the post of Lecturer on 01.09.1997. Subsequently, the petitioner was given Senior Scale of pay from 01.09.2009. With regard to the contention of the petitioner that as he was appointed on 1.9.1997, he ought to have been given Senior Scale of Pay on 01.09.2007 after completion of 10 years, it is contended by the learned Government Advocate for respondents 1 and 2 that as per the Special Rules for the Tamil Nadu Technical Educational Subordinate Service for the post of Associate Lecturer (Non-Engineering) (Maths) in Polytechnics, teaching experience for a period of not less than two years in the subject concerned in a College or Polytechnic is compulsory. As the petitioner had not possessed experience as Lecturer, his service was regularised after two years of service. At this juncture, it is pointed out by the learned Government Advocate that the petitioner has not challenged the proceedings of the Director of Technical Education bearing No.43180/C3/1999 dated 5.10.1999 issued regularising the service of the petitioner after two years of his appointment as he did not possess previous experience for 2 years. Nextly, in the case of a similarly placed person, viz., Thiru V.Ganesan, he had acquired experience for two years as Lecturer. Therefore, the experience of the petitioner as Teaching Assistant cannot be equated to that of the post of Lecturer. Apart from that, the petitioner is challenging the

Scale of Pay fixed by the department after 10 years. Hence, on the ground of laches also, the Writ Petition is liable to be dismissed. In the aforementioned Judgments relied on by the petitioner, it was the issue which dealt with initial appointment made with as to whether as per the procedure or on adhoc basis appointment was made and if the appointment is not made in accordance with rules, the employee is not entitled for regularisation from the date of initial appointment. It is not the case of the respondents that initial appointment was not made following the procedure laid down by the rules. Hence, those judgments are not applicable to the facts of the present case. What is relevant in the present case, is the eligibility and qualification of the petitioner for regularisation of service as per the rules. Since as per the Special Rules, the petitioner ought to have two years experience for regularisation. Accordingly, the services of the petitioner was regularised after acquiring two years experience in the post of Lecturer and after completion of 10 years from that point of time, he was given Senior Scale of pay. Therefore, there is no infirmity in the order passed by the third respondent.

8. In the light of the above discussions and reasons, there is no merit in the Writ Petition. Hence, the Writ Petition is dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

asvm

To

- 1.The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 9.
- 2.The Commissioner of Technical Education,
Guindy, Chennai - 25.
- 3.The Principal,
Natchimuthu Polytechnic,
Pollachi - 642 03,
Coimbatore District.

+lcc to Mr.R.Prem Narayan, Advocate SR.No.6283
+lcc to Government Pleader SR.No.6994

W.P.No.5474 of 2011

SR(CO)
GN(04/04/2017)