

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.22626 of 2009

1.N.Nagarajan
Junior Draughting Officer,
Government Polytechnic,
Nagercoil,
Kanniyakumari District.

2.D.Ezhil Maran,
Junior Draughting Officer/Mechanical,
Institute of Chemical Technology,
Tharamani, Chennai-113.

3.S.Kombiah,
Boiler Foreman,
Tamilnadu Polytechnic College,
Madurai-11.

4.R.P.Bose,
Junior Draughting Officer,
Tamilnadu Polytechnic College,
Madurai-11.

.... Petitioners

-Vs-

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

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records connected with the Government order in G.O.Ms.No.149 Higher Education(C2) Department, dated 27.5.2009 of the 2nd respondent and quash the same in respect of cancellation of 178 posts of Instructor in para No.7 of the said Government order in so far as the petitioners are concerned and direct the respondents to follow

the Special Rules and to consider the case of the petitioners with regard to their promotion to the post of Instructor with all benefits.

For Petitioners : Mr.G.Elanchezhiyan
For Respondents : Mrs.M.E.Rani Selvam,
Additional Government Pleader

ORDER

This writ petition has been filed for the issuance of Writ of Certiorarified Mandamus to call for the records connected with the Government order in G.O.Ms.No.149 Higher Education(C2) Department, dated 27.5.2009 of the 2nd respondent quash the same in respect of cancellation of 178 posts of Instructor in para No.7 of the said Government order in so far as the petitioners are concerned and direct the respondents to follow the Special Rules and to consider the case of the petitioners with regard to their promotion to the post of Instructor with all benefits.

2.The learned counsel for the petitioners would submit that the 1st petitioner was initially appointed as Work Shop Assistant on 24.12.1975 with the ITI Qualification at Tamil Nadu Government Polytechnic College, Nagercoil, subsequently he has passed Diploma in Mechanical Engineer 1st Class in the year 1984 and thereafter he was promoted as Junior Draughting Officer in the same college in the year 1989 and as such he was continuously working without any promotional opportunity. The 2nd petitioner was initially appointed as Junior Draughting Officer on 23.05.1989 with the ITI Qualification at Institute of Chemical Technology at Tharamani, Chennai-113, subsequently he has passed Diploma in Mechanical Engineer in the year 1984 and as such he has continuously working without any promotional opportunity. The 3rd petitioner was initially appointed as Boiler Attendant Grade II on 23.02.1987 with ITI Qualification at Tamil Nadu Government Polytechnic College, Madurai, subsequently he has passed Diploma in Mechanical Engineering in the year April 1992 and thereafter he was promoted as Boiler Foreman in the same college in the year 1992 and as such he has continuously working without any promotional opportunity. The 4th petitioner was initially appointed as Fitter on 20.04.1979 with ITI Qualification at Tamil Nadu Government Polytechnic College, Madurai, subsequently he has passed Diploma in Mechanical Engineer in the year 1987 and thereafter he was promoted as Junior Draughting Officer in the same college in the year 1989

and as such he has continuously working without any promotional opportunity.

3.The learned counsel for the petitioners would submit that before the year 1988 there is no provision for promoting the person from the lower categories to the post of Instructor. Hence the Government issued an amendment to the Special Rules to the post of Instructor in G.O.Ms.No.1364, Education Department, dated 16.08.1988 wherein the Government created a new provision to the post of Instructor and also stated that promotion from the lower category (i.e) Foreman (or) Boiler Foreman (or) Electric Foreman (or) Workshop Instructor (or) Draughtsman possessing with Diploma qualification in the respective Branch of Engineering relating to the post is concerned with two years of service can be considered for promotion to the post of Instructor. The said Government Order also came into effect from 23.12.1981 onwards. As per the above said rules and Government orders, the petitioners are entitle to be considered for promotion to the post of Instructor in the existing vacancy. But the respondent did not consider the petitioners request for promotion to the post of Instructor. Hence the petitioners were all submitted several representations to the respondents with a request to promote them as Instructor as per the rules. But, the respondents evenafter receiving the petitioners request did not consider them for promotion as Instructor as per the rules.

4.The counsel for the petitioners would submit that in a similar case filed by Mr.R.Vijayakumar and others before this Court in W.P.No.9111 of 1997, this Court has granted direction to the respondents to consider the claims of the petitioner in the available vacancies for being promoted to the post of Instructor in accordance with the Special rules. Based on the High Court order, the said individual case was also considered by the respondents and they were all promoted as Instructors. Based on the High Court Order also, the petitioners submitted representations to the respondent to consider their case for promotion to the post of Instructor as was given to others as per rules, but there is no response from the respondents herein.

5.The counsel for the petitioners would submit that the petitioners were all waiting for their promotional opportunity from the year 1989 onwards. Though the rule provided for promotion from the Feeder Category, the respondents did not consider the request of the petitioners by citing the Government order issued in G.O.Ms.No.1081 Higher Education Department dated 19.08.1989 that the recruitment to the post of instructor was discontinued. Hence the Petitioners Association made a representation to the respondents with a request to follow the

Special Rules for the post of Instructor and accordingly promote the eligible persons to the post of Instructor. But there is no reply from the respondents herein. In the meantime, the 2nd respondent issued an order in G.O.Ms.No.149 Higher Education Department, dated 27.05.2009 wherein the 2nd respondent stated in para 7 of the G.O., that the 178 Instructor posts are cancelled herein after and surrendered to the Government. By the unilateral action of the respondents, the petitioner chance of getting promotion to the post of Instructor is deprived and the petitioners are all made to work only in the lower post without any further promotion. It is illegal and against the legitimate expectation of the petitioners and also against the Article 14 and 16 of the Constitution of India. However the petitioners were made a representation to the respondents on 18.09.2009 for promotion as Instructor, but there is no reply from the respondent herein.

6.Per contra, the counsel for the respondent would submit that the Government filed counter affidavit and stated that the 1st , 2nd and 4th petitioners have been appointed to the feeder post of Junior Draughting Officer in the year 1989 and the 3rd petitioner has been appointed to the feeder post of Boiler Foreman in the year 1992 and on the date of their appointment to the feeder posts, they were possessing the necessary qualifications prescribed for appointment by promotion to the post of Instructor (Engineering). Though they possess the requisite qualifications prescribed for the promotional post of Instructor (Engineering) on their respective dates of appointment in the feeder categories of posts of Junior Draughting Officer and Boiler Foreman in the years 1989 and 1992, their promotion is governed by the panel of list of approved candidates prepared on the crucial date and estimate of vacancies arrived at for the relevant panel year as per General Rule 4 and fixation of seniority as prescribed in General Rule 35 of the Tamil Nadu State and Subordinate Services Rules. As such, they cannot claim that merely because they possess the necessary qualifications prescribed for the higher post of Instructor (Engineering) on their respective dates of appointment in the feeder categories of posts of Junior Draughting Officer and Boiler Foreman, they are entitled for promotion to the said higher post of Instructor (Engineering). They can be promoted only as per their seniority fixed in the feeder category posts when their due turn up for promotion and comes up for consideration taking into account the number of vacancies that exists in the higher posts at the relevant point of time. Further, it is the prerogative and discretionary power of the Government of the appropriate authority to decide as to whether a Government Servant is to be given promotion to a higher post and no Government servant can claim it as a matter

of right. As such, the mere acquisition of the qualifications prescribed for a particular post would not automatically confer a right to be considered for promotion and it depends upon the availability of vacant posts and the seniority position of the petitioners and though the petitioners have claimed that they are eligible to be considered for appointment to the post of Instructor, no materials have been placed before this Court to support their contention that they had reached the zone of consideration.

7.The counsel for the respondent would submit that based on the guidelines issued by the All India Council for Technical Education Implementing U.G.C. Scales of Pay for teachers of Engineering Colleges, Polytechnics and Special Diploma Institutions the Government decided to revise the pay scales for teachers in Polytechnics and Special Diploma Institutions in Tamil Nadu and accordingly issued orders in G.O.Ms.No.1081, Education (J-1) Department, dated 19.08.1989. In the said G.O., the nomenclature of teaching posts in Polytechnics and Special Diploma Institutions were changed and the post of Associate Lecturer (now re-designated as Lecturer) was made as the entry level teaching post. The Government has also ordered in the said G.O. that the recruitment to Instructor Cadre in Polytechnics and Special Diploma Institutions will be discontinued, however, the existing Instructors shall be promoted as Associate Lecturers (now Lecturers) as and when they acquire the required Degree qualification. In view of the above orders issued in the said G.O., recruitment to the post of Instructor in Polytechnics and Special Diploma Institutions was stopped from the year 1989. As such the petitioners cannot be promoted to the post of Instructor as on date, eventhough the post of Instructor still exists in the Special Rules governing the said post. Moreover, the post of Instructor has been retained in the said Special Rules only in order to safeguard the existing Instructors who have already been promoted as Instructors prior to 1989 and who still continue in service as on date. Therefore, the prayer of the Writ Petitioners in the present Writ Petition to promote them as Instructors is not feasible of compliance.

8.The counsel for the respondent would submit that in a similar case filed by Thiru.R.Viyayakumar and others were considered and promoted as Instructors, only based on the orders of the Division Bench of this Hon'ble Court passed in W.A.No.1039 of 2006 filed against W.P.No.9111 of 1997 and the petitioner cannot claim promotion as Instructor based on the said High Court Order.

9.The counsel for the respondent would submit that though the Service Rules provides for promotion to the post of Instructor from the lower category posts of Junior Draughting Officer, Boiler Foreman and the said post of Instructor is still continues to be existence in the Service Rules as contended by the petitioners, yet they cannot be promoted to the post of Instructor in view of the change of nomenclature of teaching posts as per the Government Order issued in G.O.(Ms).No.1081, Education (J-1) Department, dated 19.08.1989 based on the guidelines of the All India Council for Technical Education as per which recruitment to the post of Instructor was ordered to be discontinued and the post of Associate Lecturer (now Lecturer) became the entry level teaching post. Further, it has also been ordered in the said G.O. (Ms).No.1081 that the existing Instructors shall be promoted as Associate Lecturers (now Lecturers) as and when they acquire the required Degree qualification. In view of the above orders, as a large number of Instructors appointed prior to the year 1989 are likely to be promoted as Associate Lecturers (now Lecturers) after acquiring the required Degree Qualification, in order to accommodate them, the Government issued orders in G.O.(Ms).No.149, Higher Education (C2) Department, dated 27.05.2009 abolishing 178 posts of Instructors and alternatively creating 178 posts of Lecturers in their place. Hence, the action of the Respondents in abolishing 178 posts of Instructors in the impugned order is not illegal, arbitrary or against the law as contended by the petitioners and therefore the writ petition is liable to be dismissed.

10.I heard Mr.G.Elanchezhiyan, learned counsel for the petitioner and Mrs.Rani Selvam, learned Additional Government Pleader for the respondents and perused the entire materials available on record.

11.The case of the petitioner is that they were all fully qualified and eligible to be promoted as Instructor as per the existing Service Rule. But the respondent by citing the Government Order issued in G.O.Ms.No.1081, Education Department, dated 19.08.1989 has denied the claims of the petitioner for promotion as Instructor though there were several vacancies arose.

12.In a similar case this Court has passed several order and issued a direction to the respondent therein to consider the case of the petitioner and promote the petitioner therein as Instructor in the existing vacancies without reference to the

G.O.Ms.No.1081, Education department, dated 19.08.1989. The respondent has complied all the High Court Orders and granted promotion to the petitioner therein as Instructor.

13.Though the petitioner submitted his representation to the respondent for promotion as Instructor as per the Service Rule and as per the seniority in the feeder category. But the respondent has not passed any order on the same till filing the writ petition. Without passing orders on the representation of the petitioner, the respondent has issued G.O.Ms.No.149, Higher Education Department, dated 27.05.2009 and abolished 178 posts of Instructor and requested to create 178 Lecturer posts instead of Instructor.

14.By surrendering the 178 Instructor posts, the opportunity of getting promotion of the writ petitioner is deprived and the right to consider their claims for promotion to the post of Instructor is deprived and it is a case of violation of Article 14 & 16 of the Constitution of India. Hence the writ petitioner filed writ petition and obtained interim order on 13.11.2009 that to keep one post of Instructor as vacant for each writ petitioners.

15.During the course of argument the petitioner counsel has produced Government Order issued in G.O.Ms.No.168, Higher Education Department, dated 26.09.2014 wherein the 1st petitioner Mr.Nagarajan case was consider by the Government and promoted him as Instructor by creating supernumerary post. The said facts was conceded by Mrs. Rani Selvam, Additional Government Pleader and she submitted that to issue a direction to the Government to consider the case of the other writ petitioner on par with N.Nagarajan in the reserved vacancy ordered by the Hon'ble High Court in W.P.No.22626 of 2009 dated 13.11.2009.

16.In view of the above said submission made by the counsel for the respondent this Court has passed the following order:

(a) the writ petition is allowed;

(b) the respondents are directed to consider the case of the 2nd, 3rd and 4th petitioners for promotion as Instructor on par with 1st petitioner Mr.N.Nagarajan, who was granted promotion by the Government in G.O.Ms.No.168, Higher Education Department, dated 26.09.2014 and consequently promote them as Instructor

notionally in the reserved vacancy;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

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

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

+3cc to Mr.G.Elanchezhian, Advocate, S.R.No.61567.

W.P.No.22626 of 2009

rrs 19/09/2018

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