IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.31810 of 2006
& M.P. No.1 to 3 of 2006

.... Petitioner

M.Gopalakrishnan

Versus

1.The Union of India,
rep. by its Secretary,
Ministry of Social Justice and Empowerment,
Government of India, New Delhi.

2.National Institute for the Visually Handicapped,
rep. by its Director,
No.116, Rajpur Road,
Dehradun-248 001.

3.The National Institute for the Visually Handicapped,
Regional Centre,
rep. by its Regional Director,
Karaiyanchavadi,
Poonmalle, Chennai-56. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a certiorarified mandamus to call for the records pursuant to the notification made in Employment News dated 24.06.2006 by the second respondent calling for the application from the new candidates for the post of Vocational Training and Placement Officer and quash the same and to direct the respondents to regularize the services of the petitioner herein as Vocational Training and Placement Officer in the office of the third respondent herein.

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For Petitioner : Mr.B.Vijayakumar
For R1 : Mr.J.Madana Gopal Rao
For R2 & 3 : Mr.R.Priyakumar

ORDER

The petitioner has approached this Court seeking the following relief:

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''To issue a certiorarified mandamus to call for the records pursuant to the notification made in Employment News dated 24.06.2006 by the second respondent calling for the application from the new candidates for the post of Vocational Training and Placement Officer and quash the same and to direct the respondents to regularize the services of the petitioner herein as Vocational Training and Placement Officer in the office of the third respondent herein''.

2. The case of the petitioner is as follows:

The petitioner is a visually impaired person, (having 100% of visually disability). He was appointed as Braille Shorthand Instructor by the second respondent, which organisation is functioning under the control of the first respondent Ministry. He was appointed as such on 12.09.1986. The second respondent Institute was established by the Central Government for imparting Training for the visually handicapped persons and for providing them with counseling, placement by uplifting their lives. The petitioner was originally posted at Dehradun and was transferred to Chennai to the third respondent Institute on 19.09.1988. In the third respondent Institute, the petitioner was given the additional charge for the post of Vocational Training and Placement Officer in the year 1994 and has been working as such in the same capacity till date.

3.Since the petitioner had been working for a number of years continuously without any break and he was having a requisite qualification for regular appointment as Vocational Training and Placement Officer, he has submitted a representation on 11.04.2005 for regularisation of his services. However, no action was taken on the petitioner's representation by the respondents nor there was any reply to his representation, the petitioner states that he belongs to Schedule Caste community.

4.While matter stood thus, a notification was issued on 24.06.2006, calling for applications for filling up of various posts in the respondent Institute including as that of Vocational Training and Placement Officer. As far as the position held by the petitioner is concerned, one vacancy was reserved for Other Back Ward Class(OBC) community. The petitioner while being aggrieved by the action initiated by the respondents calling for applications from open competition, over looking the legitimate claim of the petitioner, has approached this Court challenging the said notification in respect of the post of Vocational Training and Placement Officer and sought consequential direction for regularisation of his services on

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the basis of a long years of service.

5.Upon notice, Mr.J.Madana Gopal Rao, learned counsel entered appearance for the first respondent and Mr.R.Priyakumar, learned counsel entered appearance for the respondents 2 & 3 and filed a detailed counter affidavit. In the counter affidavit, it is stated that the claim of the petitioner was sought to be resisted that the post in which the petitioner occupied, is to be filled up only by way of direct recruitment and therefore, an open advertisement was given and it is always open to the petitioner to participate in the selection alongwith the other candidates from open competition.

6.According to the learned counsel for the respondents that originally the petitioner has approached the Central Administrative Tribunal in O.A.No.504 of 2006. However, the same was withdrawn, since the respondent Society, which was registered under the Societies Registration Central Act was not amenable to the jurisdiction of the Tribunal. According to the learned counsel for the respondents, that only by virtue his long years of service, no vested right is created on the petitioner for claiming regular appointment. According to the learned counsel, the regular reservation policy of the State has to be strictly followed since as per notification, the subject post is reserved for OBC category.

7.Per contra, the learned counsel for the petitioner would strongly urge this Court that the respondents having continued the services of the petitioner and extracted work as that of Vocational Training and Placement Officer from the year 1994, cannot turn around today and submit that no right has been accrued to the petitioner for claiming regularisation. The petitioner has been in service of the Institute for 30 years. He has been working as Vocational Training and Placement Officer for more than 20 years and therefore, the Institute shall stand benefited by the vast experience of the petitioner and therefore, in the interest of the Institute his services ought to be regularised, which would benefit to a larger extent to the students of the Institute.

8.This Court after having considered the rival submissions of the learned counsel for the parties and perusing the documents and pleadings placed on record, is in full agreement with the contentions putforth by the learned counsel for the petitioner. The petitioner having rendered the services for more than 20 years in the post of Vocational Training and Placement Officer, his services required for the Institute in a larger public interest and for the benefit of the students, who are studying in the Institute. Although this Court is conscious of the fact that as per the notification, the said post is reserved for OBC category, nevertheless, this Court has to consider the larger interest of the petitioner vis-

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a-vis Institute and therefore, hold that the petitioner is entitled to regularisation of his services as Vocational Training and Placement Officer, in view of his long uninterrupted service. According to the petitioner, he is fully qualified for the post, which fact has not been disputed in the counter affidavit. Moreover, by virtue of the admitted fact that the petitioner has been continued for more than 20 years in the same post, even assuming that there is any short coming in the qualification, the same cannot be held against the petitioner. Particularly, the Institute itself has extracted the services of the petitioner in the same post for more than 20 years.

9. As regards the reservation to the post in the OBC category is concerned, this Court is of the view that the constitutional protection given to the Schedule Cast category must prevail and preference to OBC category cannot result in negation of the right of the persons belonging to SC category. While holding so, this Court is of the view that the very notification for the subject post is arbitrary, unreasonable and irrational since already the petitioner was available for being regularly appointed and such being the case, the question of notifying the vacancy for direct recruitment does not arise at all. Therefore, this Court has no other option except to conclude that the impugned notification in respect of the subject post namely the Vocational Training and Placement Officer calling for applications from open competition is liable to be interfered with.

10. In view of the above, the writ petition is allowed. The impugned notification dated 24.06.2006 issued by the second respondent made in Employment News in respect of the post of Vocational Training and Placement Officer is set aside and a consequential direction to the respondents to regularise the services of the petitioner as Vocational Training and Placement Officer from the date of his initial appointment as such, with all attendant benefits. It is also made clear that the respondents would also take the efforts to regularise the post by getting necessary permission from the first respondent and accommodate the petitioner against Schedule Caste category, if such contingency arises. Such exercise shall be completed by the respondents within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Secretary, The Union of India,
Ministry of Social Justice and Empowerment,
Government of India,
New Delhi.

2.The Director,
National Institute for the Visually Handicapped,
No.116, Rajpur Road,
Dehradun-248 001.

3.The Regional Director,
The National Institute for the Visually Handicapped,
Regional Centre,
Karaiyanchavadi,
Poonmalle,
Chennai-56.

+1cc to Mr.J.Madanagopal, Advocate SR.No.78325
+1cc to Mr.R.Priyakumar, Advocate SR.No.77708

W.P.No.31810 of 2006

DK(CO)
GN(27/12/2017)

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