

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 03-03-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.No.1601 of 2016 &
CMP. 19813/2016

RM.Palaniappan ...Appellant

-vs-

1.The Principal Secretary to Government of Tamil Nadu,
Higher Education Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Technical Education,
Guindy,
Chennai-600 025.

3.P.T.Lee Chengalvaraya Naicker Trust,
represented by the Chairman,
Vepery,
Chennai-600 007.

4.S.Mohan ...Respondents

Appeal under Clause 15 of the Letters Patent, against the order, dated 01.09.2016, passed in W.P.No.21582 of 2015, on the file of this Court. Petition filed under Article 226 of the constitution of India praying for the issuance of the Writ of certiorarified Mandamus, to call for the records connected with the impugned proceedings of the 4th respondent bearing circular No.173/A3/2015 dated 17.6.2015 and the publication and to quash the same and direct 3rd and 4th respondents to consequently promote the petitioner to the post of Principal of the 4th respondent and to fixing the petitioners seniority.

For appellant : Sri S.Karthick,
Senior Counsel,
for Sri G.Mutharasu.

For respondents 1 & 2 : Sri P.S.Sivashanmugasundaram,
Spl.Govt.Pleader.

For respondents 3 & 4 : Sri M.R.Jothimanian

JUDGMENT

(Judgment of the Court was made by Nooty.Ramamohana Rao,J.)

This appeal is instituted by the writ petitioner, whose Writ Petition No.21582 of 2015 is disposed of by the impugned common order. The writ petitioner has challenged the proceedings, dated 17.06.2015, inviting applications from the internal candidates, who satisfied ad-hoc rules, for the post of 'Principal' of the Polytechnic College. Precisely put, the writ petitioner/appellant is aggrieved by that part of the notification, which required the candidates to possess, apart from a Master's Degree in an appropriate branch of Engineering/Technology, Ph.D. degree also.

2. The case of the writ petitioner is that he initially joined the service of the Polytechnic College as an 'Instructor' on 23.12.1985. He possessed the qualification of M.E.(Civil Engineering) Post-graduate degree. He possessed more than ten years of teaching experience. He was placed In-charge of Head of Department of Civil Engineering branch. The grievance of the writ petitioner/appellant is that contrary to the ad-hoc rules, the recruitment process to fill in the post of 'Principal' has been undertaken.

3. It is true that the Governor of Madras, in exercise of the power available to him under Article 309 of the Constitution of India, has framed 'Special Rules', governing the posts of Heads of Departments in Civil, Mechanical and Electrical Engineering branches in Government Polytechnics. Thus, Special Rules were notified through G.O.Ms.No.1685, Education Department, dated 28.10.1968. Rule 5 laid down the qualifications required to be possessed. It specifies a Bachelor's degree in the branch of Engineering relating to the

post concerned; experience for a period of not less than seven years in Design, Construction, Production, or Teaching in the branch concerned, out of which, at least, three years experience in a position not below the rank of Lecturer (Gazetted) in Polytechnic or equivalent grades (posts with comparable status and pay) in other institutions; and, at least, two years experience out of the three years mentioned above in teaching in a Polytechnic or in an Engineering College. Once again, the Governor of Tamil Nadu made amendments to the Special Rules, in exercise of the power available to him under Article 309 of the Constitution, in so far as the position of 'Principal' of Polytechnics is concerned and the amendments have been notified through G.O.Ms.No.341, Education Department, dated 05.03.1974. For the post of 'Principal', the following qualifications have been prescribed :

(i) (a) A Master's Degree in any branch of Engineering; and

(b) Experience for a period of not less than 7 years in design, construction, production or teaching in the concerned branch of which not less than 3 years must be in a position not below the rank of Head of Department in Polytechnics or equivalent grades in other institutions.

or

(ii) (a) A Bachelor's Degree in any branch of Engineering ; and

(b) Experience for a period of not less than 12 years in design, construction, production or teaching in the concerned branch of which not less than 5 years must be in a position not below the rank of Head of Department in a Polytechnic or equivalent grades in other institutions.

4. While revising the pay scales of the teaching staff of Polytechnics, the State Government has also updated the qualifications required to be possessed for various posts, through their G.O.Ms.No.1081, Higher Education Department, dated 19.08.1989. Dealing with the post of 'Principal', it has been spelt out therein that the Head of Department with a Master's Degree in Engineering and experience of five years of service will be eligible to become a 'Principal' of Polytechnic or Special Diploma institutions.

5. All India Council for Technical Education, henceforth, "AICTE", made certain regulations with regard to the

minimum educational qualifications to teach diploma courses. Those regulations have been accepted by the State Government through their orders contained in G.O.Ms.No.563, Higher Education Department, dated 31.12.2004. Consequently, the amended educational qualifications and experience criteria for various teaching posts have been published in the form of Annexure to a Circular, dated 11.06.2005, issued by the Directorate of Technical Education. The revised qualifications notified for the post of 'Principal' are spelt out as under :

Name of the Post	Qualification	Experience
PRINCIPAL	Master's Degree in any branch of Engineering/Technology with First Class at Master's or Bachelor's degree level. OR Ph.D.in any branch of Engineering/Technology/Technician education.	15 years experience in teaching out of which at least 5 years shall be at the level of Head of Department in Polytechnics or Equivalent grade. 10 years experience in teaching out of which at least 3 years shall be at the level of Head of Department or equivalent.
Note : Candidates from industry with First Class Bachelor's degree in appropriate branch of Engineering / Technology and with industrial experience which is equivalent to Master's degree with total 15 years of experience of which at least 5 years would be at a level comparable with Head of Department will also be eligible.		

6. The whole question that has been raked up by the writ petitioner/appellant is that since he possesses the qualifications, which are essential requisites for holding the post of Head of Department, it is not required of him to possess additional Ph.D. qualification.

7. When AICTE has prescribed the minimum qualifications, pay structure and also experience for appointment of teaching posts in diploma level technical institutions, the State Government had an occasion to consider the same and have preferred to adopt and follow the same. Orders have been passed by the State Government through their

G.O.Ms.No.111, Higher Education (C2) Department, dated 25.05.2010. In paragraph 4 of the said G.O., it has been notified as under :

"4. The Faculty norms given in the Appendix V shall be followed with effect from the date of issue of the order."

Appendix V has spelt out the norms. Dealing with the post of Head of Department, the norms specified are as under :

Post	Qualification	Experience
Head of Department Engineering/Technology	Bachelor's and Master's degree of appropriate branch in Engineering / Technology with First Class or equivalent either Bachelor's or Master's level OR Bachelor's degree and Master's degree of appropriate branch in Engineering/Technology with First Class or equivalent either Bachelor's or Master's level and Ph.D. or equivalent in appropriate discipline in Engineering / Technology	Minimum of 10 years relevant experience in teaching/ research/ industry Minimum of 5 years relevant experience in teaching/ research/ industry

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When it comes to the post of 'Principal', the norms are as under :

Post	Qualification	Experience
Principal	Qualification as above for the post of Head of Department and Ph.D. in engineering	Minimum of 10 years relevant experience in teaching/research/industry out of which at least 3 years shall be at the level of HOD or equivalent
	OR Qualification as above for the post of Head of Department.	In case of Architecture, professional practice of 10 years as certified by the Council of Architecture shall also be considered valid.

8. Heard Sri S.Karthick, learned Senior Counsel, for the appellant; Sri P.S.Sivashanmugasundaram, learned Special Government Pleader, for respondents 1 and 2; and Sri M.R.Jothimanian, learned counsel for respondents 3 and 4.

9. Learned Senior Counsel for the appellant would contend that for the post of Head of Department, one does not really require to possess the Ph.D. qualification and it is enough if he possesses either Bachelor's or Master's Degree in an appropriate branch of Engineering/Technology with First Class or Equivalent and a minimum of ten years of experience in Teaching/Industry/Research. Only if a candidate also possesses Ph.D. Degree, the minimum relevant experience required to be possessed gets reduced to five years. In other words, if a candidate has possessed Bachelor's and Master's Degree in relevant branch of Engineering/Technology and has obtained a First Class Degree either at Bachelor's level or at Master's level and possesses ten years of experience, it is enough for him to be considered for promotion/appointment as Head of

Department. It is unnecessary or obligatory for him to also additionally possess Ph.D. qualification. If he possesses Ph.D. qualification, the relevant quantum of experience gets reduced to five years.

10. In the instant case, according to the learned Senior Counsel for the appellant/writ petitioner, the appellant has possessed Master's Degree with First Class and has put in more than ten years of teaching experience and, hence, he ought to have been appointed on a regular basis, as a Head of Department. Even otherwise, for want of other relevant criteria, even if a regular promotion has not been accorded to the writ petitioner/appellant as Head of Department, when it comes to the question of filling up the post of 'Principal', the qualifications possessed by him are sufficient and adequate and, hence, his case ought to have been considered, instead of insisting that he should have possessed Ph.D. qualification as well.

11. The whole question is, whether the writ petitioner does possess the necessary qualifications, for being considered for appointment as 'Principal' of an aided Polytechnic institution ?

12. Though the writ petitioner has not applied pursuant to the impugned notification to the post of 'Principal', but preferred to apply only for the post of Head of Department and, consequently, it is easy for one to say that the question raked up by him need not be examined on that score. But, since the question can keep troubling, we have preferred to hear the learned Senior Counsel Sri Karthick, on merits.

13. It is also apt, at this stage, to note that the writ petitioner/appellant works for a private aided polytechnic and hence he is not governed by the rules framed by the Governor under the proviso to Article 309 of the Constitution, but by the rules/orders of the State Government concerning/relevant to private aided institutions. Further, it is only proper to recall and remember that the writ petitioner/appellant does not possess even a Bachelor's Degree of Engineering/Technology. He possesses AMIE qualification, but, he does possess the Post-graduate qualification in Engineering. When we examine the minimum qualifications prescribed by AICTE, it is only appropriate that the candidature of those who satisfied the minimum qualifications prescribed by AICTE can be considered for recruitment. To be recruited as Head of Department, one is required to possess a Bachelor's and Master's Degree in appropriate branch of Engineering/Technology with First Class or equivalent either at Bachelor's or Master's level. Rule making authority has prescribed a longer period of experience of ten years for such candidates. When it came to Ph.D. holders, the

minimum experience required has been reduced to five years. In juxta-position to that, the qualification for the post of 'Principal' is notified as qualification as above for the post of Head of Department and Ph.D. in Engineering or qualification as above for the post of Head of Department. There is a clear distinction, which can be deciphered. While the first part talks of qualification as above for the post of Head of Department, it has also added expressions 'and Ph.D. in Engineering'. Thus, expressions 'and Ph.D. in Engineering' are liable to be attracted only in cases where the Head of Department concerned does not possess Ph.D. degree, but possesses only a First Class Degree either at Master's or Bachelor's degree stage. The reason is, if he has already possessed Ph.D. degree and by virtue of that he became Head of Department, there is no further necessity for him to acquire another Ph.D. degree. We are, therefore, of the firm opinion that for the purpose of promotion as 'Principal', the minimum qualification prescribed/required the candidate to possess the Ph.D. qualification in Engineering subject.

14. However, Sri Karthick, learned Senior Counsel, has laid emphasis on the latter part of the rule, which specified qualification as above for the post of Head of Department, and he contends that whatever be the qualifications prescribed for the post of Head of Department, if one possesses the same, it is sufficient and it is not required to possess Ph.D., additionally.

15. The above argument may not hold good for two reasons. Firstly, the two sets of qualifications, prescribed for the post of 'Principal', are separated by the conjunction "OR". It was followed by "qualification as above for the post of Head of Department". When we examine the entire tabulated statement in Appendix V of G.O.Ms.No.111, dated 25.05.2010, it can be noticed that at one place the further expression "and Ph.D. in Engineering" is found, whereas, the latter one does not. It clearly conveys that so far as the Engineering subjects are concerned, one is required to possess additionally a Ph.D. degree, whereas, when it comes to the course of Architecture, to become 'Principal', it would be sufficient to possess the same qualification as that of Head of Department for Architecture. Otherwise, the expression "and Ph.D. in Engineering" would become otiose and meaningless. While interpreting, every effort should be made not to render any expressions "useless or meaningless".

16. Further, we also draw additional support from the notification, dated 04.01.2016, taken out by AICTE, wherein, various clarifications sought for in the matter of working out the regulations framed by AICTE have been answered. The clarification No.64, sought for from AICTE, reads as under :

"Whether Ph.D.is an essential qualification
for the post of Principal in Diploma Level
Technical Institutions."

The answer furnished by AICTE was a firm "Yes". It is, therefore, obvious that for holding the post of 'Principal' of a Diploma Level Training Institute, like that of a Polytechnic, the candidates are required to possess Ph.D. qualification. Since the petitioner does not possess Ph.D. qualification, he is not eligible to be appointed as 'Principal'. That could be one reason, why the writ petitioner/appellant himself has not chosen to apply for the said post, but, instead, applied for the post of Head of Department only.

17. For all the aforesaid reasons, we do not find any merit in this Writ Appeal, which, accordingly, stands dismissed. No costs. Consequently, the connected C.M.P.No.19813 of 2016 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Principal Secretary to Government of Tamil Nadu,
Higher Education Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Technical Education,
Guindy,
Chennai-600 025.

+2cc to M/S. G. Mutharasu, Advocate Sr. 14129
+1cc to M/S. M.R. Jothimanian, Advocate Sr. 14038
+1cc to the Government Pleader, Sr. 14720

W.A.No.1601 OF 2016

MP (CO)
VR(24/03/2017)