

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 03.03.2017

CORAM

WEB COPY

THE HON'BLE Mr. JUSTICE R. SURESH KUMAR**W.P. (MD) No.4204 of 2011****AND****M.P. (MD) No.2 of 2011**

Dr. C.Natarajan

... Petitioner

-vs-

1. The Secretary
Ministry of Human Resource Development
Department of Technical Education,
Government of India,
Shastri Bavan, New Delhi.

2. The Chairman,
National Institute of Technology
Thuvakudi, Trichy.

3. The Director,
National Institute of Technology
Thuvakudi, Trichy.

4. Dr. S. Selvakumar

5. Dr. K. Sankaranarayanan

6. Dr. S. Natarajan

7. Dr. A. Noorul Haq

8. Dr. N. Anantharaman

9. Dr. Radhakrishnan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records pertaining to the impugned order of promotions given to 4th to 9th respondents as far as they are concerned in consequent to the approval of the 25th Board of Governors Meeting dated 02.12.2010 of the National Institute of Technology, Trichy, on the file of the 2nd respondent, quash the same and consequently direct the 2nd respondent & 3rd respondents to promote the



petitioner in view of the recommendation by the HRFC to the Board of Governors and give promotion to the petitioner as Professor from 29.10.1991 and give all attendant benefits from thereon.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.G.R.Swaminathan for R1

Ms.Maria Roseline for R2 & R3

No appearance for R4 to R9

ORDER

The prayer in the writ petition is for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of promotion given to 4th to 9th respondents, as far as they are concerned in consequent to the approval of the 25th Board of Governors Meeting dated 02.12.2010 of the National Institute of Technology, Trichy, on the file of the 2nd respondent, quash the same and consequently direct the 2nd & 3rd respondents to promote the petitioner in view of the recommendation by the Human Resource Felicitation Committee (HRFC) to the Board of Governors and give promotion to the petitioner as Professor from 29.10.1991 and give all attendant benefits from thereon.

2. The petitioner was appointed as Lecturer of the 2nd and 3rd respondent Institute, which was then called as Regional Engineering College, in Civil Department. Thereafter, he applied for appointment by way of direct recruitment to the post of Assistant Professor in 1986. Though the petitioner had been selected initially, in view of some litigations, the appointment was not actually given to the petitioner and only in the year 1992, after the litigation was withdrawn on 19.05.1992, the petitioner had been given appointment as Assistant Professor at the 2nd respondent Institute. Till 01.07.2005, he worked as Assistant Professor. Since the Institute had been following the regulations to give promotion by way of Career Advancement Scheme (in short 'CAS') being implemented in the Higher Education Institutions in the Country, selection committee had been constituted by the 2nd and 3rd respondents and in the year 2004, the petitioner had been directed to appear before the Committee for consideration to promotion to the post of Professor.

3. According to the respondents, since the petitioner had not become qualified or failed before the Selection Committee, he had not been considered for promotion as Professor under CAS scheme pursuant to 2004 selection committee proceedings. Subsequently, the petitioner has been directed to appear before the Committee for selection, under CAS Scheme, in the year 2006, where also, the petitioner had appeared and this time, the petitioner had become successful and with the result, the petitioner had been given promotion to the post of Professor from 01.07.2006 only.



4. The grievance of the petitioner, as projected before this Court in this writ petition, is that in respect of number of persons, atleast in respect of private respondents ie., from R4 to R9, even though they had been similarly placed, like the petitioner, they also had been considered for selection to the post of Professor by way of CAS scheme, and they appeared before 2004 selection committee, they had been given promotion as Professor by predated promotion or retrospective promotion and in some cases, such retrospective promotions were given 10 years back. Therefore, the petitioner, since had not been considered for retrospective promotion as has been given to these private respondents herein, even after he become successful, after appearing before the selection committee before 2006, as according to the petitioner, he would be eligible to be considered for promotion to the post of Professor in the year 1991 itself, had been given promotion under CAS scheme only in the year 2006. Therefore, questioning the wisdom of the respondents 2 and 3 in giving such retrospective promotion under CAS scheme to the private respondents herein and also any consequential relief of extending the similar benefit to the petitioner, he has approached this Court by way of this writ petition with the aforesaid prayer.

5. Heard both sides.

6. The learned counsel for the petitioner would contend that the Board of Governors meeting', which had been held on 2nd December 2010, had taken some drastic decisions through which, retrospective promotions have been given to six persons. He would also submit that the petitioner become eligible to be considered for Professor on completion of five years service as Assistant Professor in the year 1991 itself, if such promotion had been given in the year 1991. Since the petitioner had been appointed as Assistant Professor on 19.05.1992, as per the criteria, which was followed by the 2nd respondent Institute for consideration for grant of promotion to the post of Professor under CAS scheme was eight years an incumbent must have been Assistant Professor, the petitioner would have completed eight years period by 2000 itself and therefore, he would become eligible to be considered for the post of Professor in the year 2000 itself. In spite of this eligibility criteria, which the petitioner had fulfilled and though he had been permitted to attend before the Selection Committee in the year 2004, the petitioner's candidature had been rejected by the respondent Committee saying that as some of the eligibility criteria, since has not been fulfilled, he had not been considered for promotion to the post of Professor by the said Selection Committee. However, even according to the respondents, since the petitioner has become successful in the year 2006 selection process conducted by the Committee, the actual promotion should have been given to him atleast from 2000 by way of retrospective or predated promotion under CAS scheme, as has been given in respect of other private respondents herein.



7. However, the learned standing counsel for the respondents 2 and 3 would rely upon the eligibility conditions, which was followed by the said respondents for giving promotion under CAS Scheme, during the relevant point of time, where both the petitioner as well as the private respondents herein were considered by the Committee for such promotion. According to the learned counsel for the respondents 2 and 3, it is not the mere requirement of completing eight years service as Assistant Professor alone shall be the criteria for consideration of promotion for Professor under the said Scheme. That apart, an incumbent must have also fulfilled certain criteria, such as obtaining a Ph.D., degree or equivalent, publication in research contributions, books, articles etc., and he should have attended seminar and conferences and at least must have attended four seminars and conferences on National and International level or must have attended summer, winter classes, short term courses of total duration of four weeks. He should have significant contribution to teaching/academic environment, institutional corporate life and must have involved in adequate extension and field outreach activities and he should also have completed development of course material/Monographs, Participation in Continuing Education Programme. These are all other eligibility criteria, which should have also been completed by an incumbent from eight years of service as Assistant Professor. That apart, mainly the incumbent should have published at least four paper publication in the journals as required by way of Research Contribution, books or articles etc. All these criteria as has been prescribed by the AICTE, which was directed to be followed by the 2nd and 3rd respondents Institution, as per the directive issued by the higher education department of Government of Tamil Nadu through their letter No.16433/C2/2001-7 dated 30.05.2003 and all these criteria had been part of G.O.Ms.No.304 and 305 of the Higher Education Department dated 18.07.2000, which was in force and the same was, in fact, followed by the 2nd and 3rd respondent Institute.

8. In this regard, the learned standing counsel for the 2nd and 3rd respondents would further submit that based on these criteria, the Selection Committee constituted in this regard has interviewed and verified the credentials of each of the candidate including the petitioner during the year 2004. The committee, after valued the credentials and performances and satisfying with all the criteria, as has been indicated above, has given its recommendations. Insofar as the petitioner is concerned, the selection committee's recommendation dated 13.02.2004 reads as follows:

"SUMMARY SHEET OF SELECTION COMMITTEE RECOMMENDATIONS
CIVIL ENGG. DEPARTMENT 13.02.2004 : 9.45 A.M

S. No	Name for faculty	Post for which applied for promotion	Date from which effected	Recommendations of the committee
1	Dr.V.Jothiprakash	Lect. To Lect. (SS)	24.01.2004	Recommended
2.	Dr.G.Swaminathan	Lect.SS To Lect. (SS)/AP	09.11.2001	Recommended for AP
3	Dr.Samson Mathew	Lect.SS To Lect. (SG)/AP	15.09.2003	Recommended for AP
4	Mr.N.Krishnamoorthy	Lect. (SG) To Asst. Prof.	BOG	Not recommended for AP
5	Mr.R.Jayashankar	Lect. (SG) To Asst. Prof.	BOG	Not Recommended
6	Dr.C.Natarajan	Asst. Prof. to Professor	BOG	Not recommended

Since the petitioner's name has not been recommended by the Selection Committee, during the year 2004, he was not considered for promotion under the Scheme. He would further submit that however, insofar as the other private respondents are concerned, especially, respondents 4 and 6, the recommendation of the Committee on the very same day, reads as follows:

S. No	Name for faculty	Post for which applied for promotion	Date from which effected	Recommendations of the committee
-------	------------------	--------------------------------------	--------------------------	----------------------------------

7.Dr.S.Selvakumar Asst.Prof.To Professor 1.04.2001 Recommended for Professor.

2.Dr.S.Natarajan Lect.(SG)/AP 09.10.1998 Recommended for AP

9. Insofar as the 5th respondent is concerned, the recommendation of the committee dated 14.02.2004, the following has been made:

S. No	Name for faculty	Post for which applied for promotion	Date from which effected	Recommendations of the committee
8.	Dr.K.Sankaranarayananamy	A.P.To Prof.	14.02.2004	Recommended

10. Therefore, the learned standing counsel would submit that only based on the said recommendation given by the selection committee, the promotion to the post of Professor under CAS Scheme had been given to these private respondents and insofar as the candidature of the petitioner is concerned, as extracted above, Committee has not given recommendation. Therefore, he was not considered for promotion in the year 2004. However, in the year 2006, committee was constituted and it had sittings, wherein, the



13. However, the learned counsel for the petitioner would point out that insofar as the respondents 7 and 9 are concerned, they were directly appointed as Professors and they had never been subjected to the process of getting promotion under CAS scheme by appearing before the Committee constituted in this regard. However, in respect of the 9th respondent is concerned, though he had been appointed as Professor directly on 23.04.2007, he had been given retrospective confirmation as Professor from 01.02.2007, few months ahead of his original appointment. However, in respect of R7, Noorul Huq is concerned, though he had been appointed as Professor directly on 01.04.2005, the effect of Professor, which has been conferred on him retrospectively as on 15.12.1998, ie., 7 years prior to his direct appointment as Professor, absolutely, there is no reason to give such a retrospective confirmation of Professor status to the 7th respondent and therefore, this kind of retrospective promotions either under CAS scheme or otherwise to these private respondents, if it is in violation of the Regulations, which, according to the respondents, they have followed scrupulously in giving promotions to these people, then, certainly, either their promotions, which have been confirmed retrospectively, have to be cancelled or the very same treatment, which has been extended to those private respondents, has to be extended to the petitioner also.

14. Therefore, the learned counsel for the petitioner make an alternative plea that either the petitioner shall be given such kind of retrospective promotion by way of CAS Scheme from the date, he become eligible to claim such promotion ie., in the year 2000 or the entire promotions given to the private respondents under CAS scheme or outside the purview of CAS Scheme, atleast in respect of two persons, have to be canceled, as even though they had been appointed by way of direct recruitment, they had also been given as predated promotion as Professor. If these aspects are reviewed by a Committee to be constituted in this regard by the 2nd and 3rd respondents Institute, then only all these anomalies can be rectified and both the petitioner as well as the private respondents would get their due promotions only from the actual date of eligibility.

15. In this regard when this said issue has been specifically referred to, by this Court during the hearing, the learned standing counsel for the respondents 2 and 3 would rely upon the averments made by the respondents 2 and 3 in the additional counter affidavit dated 01.03.2017.

16. The learned standing counsel for the respondents 2 and 3 would rely upon paragraph Nos.5 and 6 of the said additional counter affidavit and submit that in spite of the eligibility criteria, which was fixed for consideration for giving promotion under CAS Scheme to the post of Lecturer to Assistant Professor,



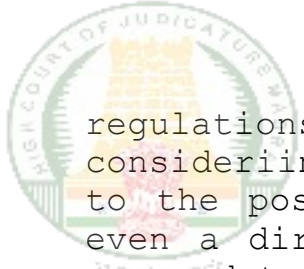
Assistant Professor to Professor, the petitioner, since has not been fulfilled one of the criteria ie., publication of their Research and Technical papers, atleast in four journals, he was not considered for the selection committee.

17. This Court has considered all those rival submissions made by the learned counsel for the parties and also the entire materials placed before this Court for perusal.

18. Even though the learned Standing counsel has produced the Selection Committee recommendations for the year 2004, the selection committee recommendation for the year 2006 was not produced before this Court and only a list of candidates, who had been recommended for the 2006 selection had been produced, where the name of the petitioner is found place. The non consideration of the candidature of the petitioner in the year 2004 selection committee for promotion to the post of Professor, according to the 2nd and 3rd respondents, is that the petitioner has not fulfilled the publication of Research and Technical papers atleast in four journals. If that is the only reason for which his promotion was denied by the Committee in the year 2004, where all other private respondents have fulfilled all the conditions including the one ie., the publication of Technical papers in journals before the 2004 Committee, has not been specifically projected before this Court, by filing any documents.

19. Even though the selection committee, which was constituted for this purpose, has gone into these aspects, such a doubt has arisen because in respect of the candidature of Dr.S.Natarajan, ie., the 6th respondent herein, even though the committee's recommendation dated 13.02.2004 was that he can be recommended for Assistant Professor from 09.10.1998, he has been given Professorship in the year 2001 itself. Therefore, between 1998-2001, within a period of three years, the 6th respondent has been given promotion as Professor, whereas the regulations stipulated that a person in the capacity as Assistant Professor must have worked for atleast eight years, then only he would be considered for promotion to the post of Professor under the Scheme.

20. If the recommendation to the Committee is the sole criteria, then such kind of promotion within three years to the 6th respondent should not have been given. In this regard, the learned standing counsel would submit that even though Committee has recommended in respect of the 6th respondent to give promotion as Assistant Professor in the year 1988, subsequently, as per the recommendations of Human Resource Felicitation Committee (HRFC), recommendation, he had been considered for promotion to the post of Professor in the year 2001 and accordingly, he was given. If these aspects are taken into account, it is highly doubtful, whether the 2nd and 3rd respondents Institute has followed definite



regulations or procedure or eligibility criteria for giving or considering the candidature of various persons to give promotions to the post of Assistant Professor and Professor. In one case, even a direct recruitment Professor has been given retrospective or predated promotion by way of Professor. In another case, even though the Committee recommended to give Assistant Professorship for a particular candidate in the year 1988, within three years, he had been considered for giving promotion for Professor.

21. If these anomalies are still persist, this Court has to necessarily draw adverse inference, unless and until, satisfactory materials are produced before this Court to satisfy or convince that each and every candidate, who are the private respondents herein, had been given promotion as Professor or otherwise only based on the eligibility criteria, which was strictly followed by the 2nd and 3rd respondents Insitute and only on that basis, such promotions were given to them under CAS Scheme. Then, the natural corollary would be that something went wrong at somewhere and the same had never been rectified even till date. In this regard, it is pertinent to note that at the additional counter affidavit filed by the 2nd and 3rd respondents, dated 01.03.2017, in their penultimate paragraph, the following has been stated:

"In view of the above stated rule position in para 5, it is therefore, respectfully prayed that this Honourable Court may be pleased to pass appropriate and suitable orders as this Honourable Court deems fit and proper in the nature and circumstances of the case and thus render justice."

22. From the reading of the said lines at the additional counter affidavit of the 2nd and 3rd respondents, it can be easily inferred that even the said respondents are not definite in their stand or convincing with the way in which, promotions had been given to various individuals by giving predated or retrospective promotions without following any uniform set of procedure or regulations or eligibility criteria. In respect of the petitioner's candidature is concerned, though he has completed 8 years service as Assistant Professor and has fulfilled in all other respects, assuming that he has not fulfilled that required minimum of four publication of Technical papers in journals, whether that shall be the sole criteria, based on which, the promotion, otherwise, to the post of Professor can be denied up to the year 2006, whereas he became Assistant Professor in the year 1992. Therefore, in respect of the case of the petitioner, he had been conferred with the Professorship only after 14 years, whereas in respect of the 6th respondent, the same has happened within a short span of three years. All these happenings had not been satisfactorily explained before this Court by the 2nd and 3rd



23. Even though notices have been served by this Court to all the private respondents, none of them are present before this Court to defend themselves and no counsel seems to have been engaged by them. Therefore, this Court has no other option except to draw adverse inference, insofar as the allegations made against the private respondents and this would be possible because of perusal of at least minimum records, which are produced before this Court by way of typed set of papers by the 2nd and 3rd respondents. The promotions given by way of retrospective or predated promotion to these private respondents were not on the basis of the crystal clear regulatory criteria but on the basis of some other criteria, which is best known to them only.

24. Therefore, for all these reasons, this Court has no hesitation to hold that the promotions given to the private respondents by way of predated or retrospective promotions cannot be termed as valid promotions within the meaning of the said Scheme, namely, CAS and the eligibility criteria fixed by the authorities concerned under the said Scheme.

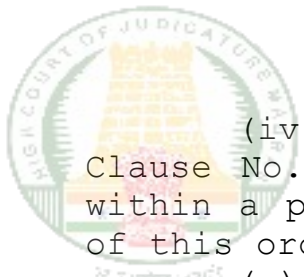
25. Therefore, the said predated or retrospective promotions given to these private respondents, namely, from respondents 4 to 9 are liable to be interfered with and the same has to be necessarily revisited by the 2nd and 3rd respondents by constituting a special committee in this regard.

26. In the result, the following orders are passed in this writ petition:

(i) The impugned promotions by way of retrospective/predated promotions to the post of Professors conferred on respondents 4 to 9 are hereby set aside;

(ii) The 2nd and 3rd respondents are hereby directed to constitute a special committee consist of renowned academicians from any other higher learning institution of Government of India consisting of not less than three members and the said committee shall be given the specific task of reviewing the retrospective or predated promotions/promotions given to these private respondents pursuant to the 2004 selection committee recommendation or otherwise and to submit a report to the 2nd and 3rd respondents as to the rectification measures to be taken by them.

(iii) On receipt of such report from the Committee to be constituted, the 2nd and 3rd respondents, after giving an opportunity of being heard to all the private respondents herein including the petitioner, pass suitable orders giving promotions to these persons only from the date actually, they become eligible as per the eligibility criteria fixed under Regulations/Government Orders of the authorities concerned, which was prevailing during the relevant point of time and if such promotions are given to respondents, they will be eligible to all other service benefits only from that date.



(iv) The constitution of the Committee as indicated at Clause No.(ii) above shall be done by the 2nd and 3rd respondents within a period of four weeks from the date of receipt of a copy of this order ;

(v) The Committee once so constituted shall take three months time to complete the task to give the report to the 2nd and 3rd respondents.

(vi) Once the report is received from the Committee, the 2nd and 3rd respondents shall complete the exercise as indicated above in Clause (iii) within a period of eight weeks thereafter.

27. With the above observations and directions, the writ petition is ordered. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary
Ministry of Human Resource Development
Department of Technical Education,
Government of India,
Shastri Bavan, New Delhi.
2. The Chairman,
National Institute of Technology
Thuvakudi, Trichy.
3. The Director,
National Institute of Technology
Thuvakudi, Trichy.

+1cc to M/S. N.MOHIDEEN BASHA, Advocate, SR.No.12724.

+1cc to M/S. J.MARIA ROSELINE, Advocate, SR.No.12254.

W.P. (MD) No.4204 of 2011
and M.P.No.2 of 2011
03.03.2017

RR

SDS/SV:MMS/SAR 3/29.06.2017/11P/6C