

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2018

PRONOUNCED ON : 04.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.12886 & 12887 of 2011

M.P.No.1 of 2012 in W.P.No.12886 of 2011

M.P.Nos.2 & 2 of 2011 in W.P.Nos.12886 12887 of 2011

V.Santhi ..petitioner in
W.P.No.12886 of 2011
M.Asha Devi ..petitioner in
W.P.No.12887 of 2011

Vs

1.The Industries Commissioner and Director of
Industries & Commerce,
Chepauk,
Chennai-600 005.

2.The Principal Secretary to Government,
Micro, Small & Medium Enterprises Department,
Secretariat,
Chennai-600 009.

in both WPs.

.. Respondents

Prayer:- Writ Petitions filed under Article 226 of the
Constitution of India praying for issue of Writ of
Certiorarified Mandamus:

(i)to call for the records relating to order in
No.3468/E.I.2/2008-5 dated 13.10.2010 passed by the second
respondent and the consequential order in Proc
No.31798/EDS1/2004 dated 19.05.2011 passed by the first
respondent and quash the same and to direct the second

respondent to amend the Special Rules to the post of Assistant Engineer(Industries) and consequently, regularise the service of the petitioner to the post of Assistant Engineer(Industries) with effect from 22.05.2007(prayer in W.P.No.12886 of 2011).

(ii)to call for the records relating to order in No.3468/E.I.2/2008-5 dated 13.10.2010 passed by the second respondent and the consequential order in Proc No.31798/EDS1/2004 dated 19.05.2011 passed by the first respondent and quash the same and to regularise the service of the petitioner to the post of Assistant Engineer(Industries) with effect from 22.05.2007 (prayer in W.P.No.12887 of 2011).

For Petitioners(in both WPs) :
M/s.S.Rajeni Ramadass

For Respondents(in both WPs): Mr.R.Janaki,

Additional Government Pleader

COMMON ORDER

Heard M/s.S.Rajeni Ramadass, learned counsel for the petitioners and Mrs.R.Janaki, learned Additional Government Pleader, appearing on behalf of the respondents and with their consent, both the writ petitions are taken up for final disposal. Since the issue involved in both the writ petitions is one and the same, both are heard together and disposed of by the following common order.

2. It appears that the petitioners had appeared the examination conducted by the Tamilnadu Public Service Commission for recruitment in the Group II Combined Subordinate Services Exam and came out successful. After their such success in their examination, they were appointed as direct Assistants by the first respondent in its department. The petitioner in W.P.No.12886 of 2011 was however, having B.E., qualification in Electronics and Communications and the petitioner in W.P. No.12887 of 2011 was also a Engineering graduate having a qualification in B.E., (Electrical and Electronics). The respondent/department had posts of Assistant Engineers (Industries), which were required to be filled up in accordance with the Tamilnadu Industries Subordinate Service Rules (hereinafter referred to as the Rules). The Rules for appointment to the post of Assistant Engineer (Industries) is (i) by promotion (ii) by direct recruitment (iii) by recruitment by transfer from any other Class or category (iv) by recruitment by transfer from any other service and the educational qualifications prescribed for any of the aforesaid methods of recruitment is B.E. Degree in Mechanical engineering or Electrical Engineering or Automobile Engineering or Chemical Engineering or Chemical Technology or Diploma in Automobile Engineering issued by Madras Institute of Technology, Chennai.

However, subsequent to the notification of the Rules prescribing the aforesaid qualification as degree in Engineering in many more discipline had came into existence, individually as well as combined with the discipline prescribed in the Rules, a proposal was submitted by the respondent no.1 to the respondent no.2 to amend the Service Rules to include the B.E. qualification in the discipline Electronics and Communication Engineering, Electronics and Instrumentation, Information and Technology, Computer Science, Bio-Technology and Textile Technology as equivalent to the said qualification for the appointment to the post of Assistant Engineers(Industries) by the aforesaid methods. The respondent no.2 vide G.O.Ms.No.86, Small Industries, (E.I.2) Department dated 16.12.2004, directed the respondent no.1 to send the proposal for amendment of the Rules including in the qualification the aforesaid discipline. The first respondent thereafter submitted the necessary proposal for amendment of the Rules pursuant to the said Government Order on 05.08.2005. But pending amendment of such Rule considering, the representations of the petitioner and in the exigency of the work, the petitioners were appointed on transfer from other services, a mode of recruitment prescribed in the Rules vide proceeding No.31798/EDS I/2004 dated 22.05.2007 subject to the condition that their appointment to the post of Assistant Engineer(Industries) was purely temporary and liable for reversion at any point of time, by the second respondent. Accordingly, the petitioners joined in the post and while so working, they made a request in writing to regularize their services by a representation to the first respondent but to their shock and surprise though they were recruited temporarily as they possessed the equivalent qualification required for appointment to the post of Assistant Engineer (Industries), the respondents rejected their proposal on the ground that since they do not possess the qualifications prescribed in the Service rules framed under Article 309 of the Constitution of India, hence they are ineligible for appointment and, as such, not entitled to regularization in the post vide the impugned order in Letter No.3468/E-1.2008-5 dated 13.10.2010 and the consequential order passed in Proc No.31798/EDS I/2004 dated 19.05.2011 of the first respondent. The petitioners, therefore, impugned such orders of the authority reverting them back to the post which they were holding before they were appointed on transfer temporarily as Assistant Engineer (Industries), inter-alia on the grounds that since they have the requisite qualification which was proposed to be included as equivalent to the qualifications prescribed in the Rules. They could not have been reverted back after rendering unblemishly for a long period, more so when the petitioner in W.P. No.12887 of 2011 can very well said to have the requisite qualification as she is having a degree in Electrical Engineering also along with Electronics. Therefore,

the petitioners are entitled to the relief sought for.

3. The aforesaid averments however, have been countered by the respondents on the ground that since the petitioners admittedly not possessed the qualification prescribed under Rules framed under Article 309 of the constitution of India, but by an executive instruction the same was held to be the qualification possessed by them to be equivalent qualifications prescribed and they were promoted that too temporarily and permission sought for by the respondent no.1 to appoint them having not been given by the respondent no.2, they cannot claim as a matter of right to continue in the said post. Their appointment being irregular and illegal one as they do not have the requisite qualification in view of Rule 39 (a) (i) of the General Rules for Tamil Nadu Industries Subordinate Service Rules (herein after referred to as 'the rules') which stipulates that only fully qualified persons alone can be promoted temporarily to the higher post and therefore, they are liable to be reverted and accordingly they have been reverted denying their prayer for regularization. Since the same is in accordance with law, both the writ petitions filed challenging the impugned orders are devoid of merit and are liable to be dismissed.

4. The learned counsel for the petitioners would submit that admittedly, though the petitioners were having no qualification for appointment of Assistant Engineer (Industries) as they were not having B.E. degree in the discipline prescribed in the Rules, but they were appointed on transfer from other services temporarily when proposal was submitted to include their discipline to be a qualification prescribed for appointment to the post of Assistant Engineer (Industries) by any method of recruitment is not in dispute. In the meanwhile also the Higher Education (J2) Department vide G.O. (Standing) No.262 dated 28.07.2009 has clarified that, a person possessing degree in Electrical and Electronics Engineering can be said to have possessed a degree in Electrical. The aforesaid being the nature of a clarification, it cannot be said that the writ petitioner in W.P. No.12887 of 2011 was having no requisite qualification for being appointed as Assistant Engineer (Industries) on the date of her appointment. Otherwise also, proposal to include the degree obtained in the discipline possessed by the writ petitioners to be an essential qualification for being appointed on any of the methods of recruitment when pending with the respondents, more particularly the respondent no.1, the petitioners in the exigency of the work were appointed and served accordingly in the department as Assistant Engineer (Industries) and while they are continuing so for a considerable period unblemishly, the proposed amendment has already been made as revealed from G.O.(Ms) No.04, Micro, Small and Medium Enterprises (E1(2) Department dated 20.01.2016

including the Bachelor of Engineering in the discipline of the petitioners as necessary qualification to consider for appointment to the post of Assistant Engineer (Industries), in such premises, the petitioners have a case for regularization in the post of Assistant Engineer (Industries) since the date of their appointment though temporarily, more so in view of the law laid down by the Apex Court in the case of Vimal Kumari Vs. State of Haryana and Others, reported in (1998) 4 SCC 114. Hence, their writ petition deserves to be allowed with the relief sought for, is also the submission of the learned counsel for the petitioner.

5. Per contra, learned counsel appearing for the respondents has submitted that since the aforesaid Rules framed under Article 309 of the Constitution of India prescribe the necessary qualification for being appointed as Assistant Engineer (Industries) by any of the four methods as stated above and the petitioners having no such qualification as prescribed in the aforesaid Rules, were appointed on transfer from other service, a mode of recruitment, which is contrary to Rule 39 (d) (i) of the General Rule for Tamilnadu Industries Subordinate Services prescribes that a person only having full qualification can be promoted temporarily to a higher post, rejection of their prayer for regularization vide the impugned order of the first respondent and the consequential order of the second respondent reverting and relieving them from the post to which they were temporarily promoted, cannot be found fault with. Hence both the writ petitions filed by them seeking their regularization in the said post as they now have possessed, the necessary qualification in view of the amendment to the Rules, are devoid of merit. It is submitted that when there is no Rule governing the field and Government wants to bring certain Rules, which is at the draft stage, draft Rules can also be acted upon in the interregnum in the exigency provided there is a sincere intention to get the Rules amended. Therefore, the ratio in the case of Vimal Kumari supra having been rendered in a different context, i.e., in the absence of any Rule, but here in this case a regular rule being there prescribing the qualification and the petitioners having been appointed temporarily without the requisite qualification, their prayer to seeking their regularization from the date of their appointment and challenging their reversion vide the impugned order is devoid of merit.

6. There is no manner of doubt that the petitioners when appointed temporarily in the exigency of public work in the post of Assistant Engineer (Industries) on transfer from other services, they were not possessing the degree in the discipline prescribed in the Rules for such appointment to the post. But, it cannot be lost sight of that, by then a proposal to amend the rule was already submitted and their services were utilized in the exigency of public work and they continued to work in the said post. In the meanwhile, clarification has also been given to the Tamil Nadu Public Service Commission by the Higher Education (J2) Department dated 28.07.2009, that persons possessing a Degree in Electrical and Electronics can be considered for appointment prescribing qualification in the discipline of Electrical Engineering vide G.O.(Standing) No.262, Higher Education(J2) Department dated 28.07.2009. No doubt, the same was not in the context of the present petitioners, but the same is in the nature of a clarifications of qualification with regard to the appointment on public services. Therefore, the petitioner in W.P. No.12887 of 2011 cannot be said to had no requisite qualification, inasmuch as her such qualification can be considered as B.E. Degree in Electricals, a prescribed qualification under the Rules for her appointment as such. Her appointment, therefore, though temporary is not open to challenge on the ground that she was not an appropriately qualified person. So far as the petitioner in W.P. No.12886 of 2011 is concerned, she was appointed when a proposal for amendment was pending indicating to include the B.E. Degree qualification in the discipline possessed by the petitioner and in the meanwhile, it is not in dispute vide G.O. (Ms) No.04, Micro, Small and Medium Enterprises (E1(2) Department dated 20.01.2016, the Rule has been amended including the Degree in the discipline possessed by the petitioner. But, on the very date of her appointment she was not possessing the qualification prescribed. The Apex Court in the case of Vimal Kumari Vs. State of Haryana and Others, reported in (1998) 4 SCC 114 wherein it has been held as follows :-

"It is open to the Government to regulate the service conditions of the employees for whom the rules are made by those rules even in their 'draft stage' provided there is clear intention on the part of the Government to enforce those rules in the near future. Recourse to such draft rules is permissible only for the interregnum to meet any emergent situation. If however the intention is not to enforce or notify the rules at all, as is evident in the instant case, recourse to draft rules cannot be taken. Such draft rules cannot be treated as to be rules made under Article 309 of the Constitution

and cannot legally exclude the operation of any existing executive or administrative instruction on the subject covered by the draft rules nor can such draft rules exclude the jurisdiction of the Government or for that matter, any other authority, including the appointing authority, from issuing the executive instructions for regulating the conditions of service of the employees working under them.''

7. Since the Authority pending amendment of the Rules prescribing the qualification of the petitioners, more particularly the petitioner in W.P.No.12886 of 2011, the respondent concerned has appointed her on transfer from other service temporarily in the exigency of work and it is not in dispute that she has served unblemished in the said post and in the meanwhile the Rule has been amended, placing reliance on the aforesaid decision of the Apex Court, it can very well be said that the petitioner in W.P. No.12886 of 2011 has also case challenging her reversion.

8. Accordingly, both the writ petitions stand allowed. Consequently, the impugned orders directing their reversion are quashed. The respondents are directed to regularize their service from the date they were temporarily appointed on transfer, a prescribed mode of appointment to the post of Assistant Engineer (Industries) in the Service Rules, within a period of three months of receipt of this order. However, in the circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Industries Commissioner and Director of

Industries & Commerce,

Chepauk,

Chennai-600 005.

2.The Principal Secretary to Government,

Micro, Small & Medium Enterprises Department,

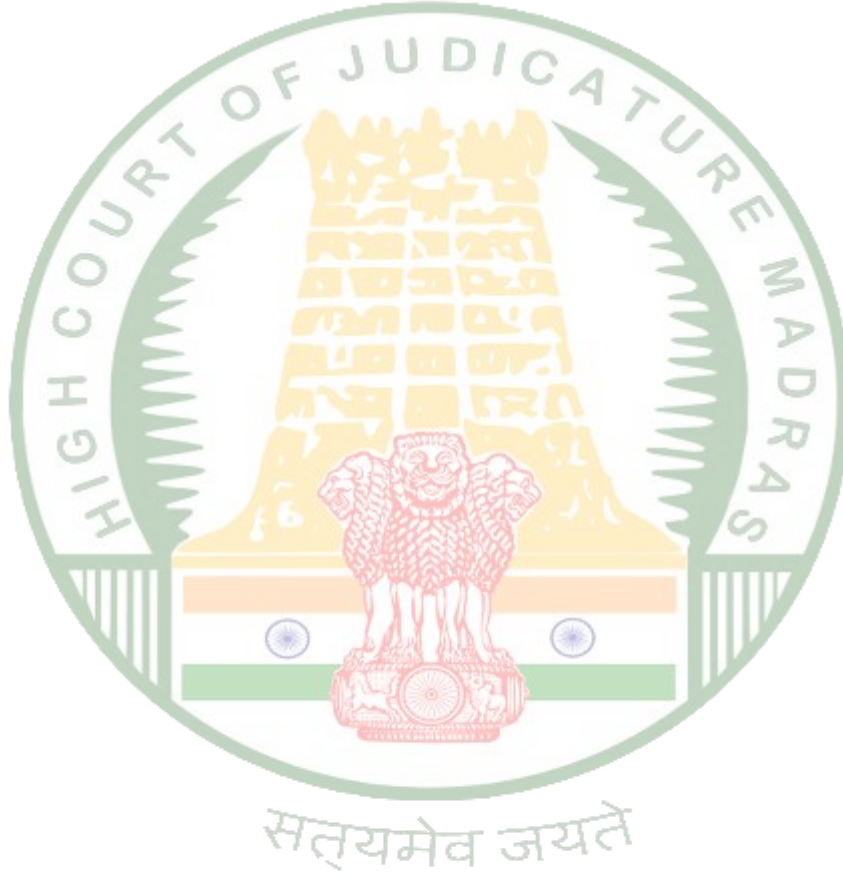
Secretariat,

Chennai-600 009.

+2cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.34932
+1cc to Mr.M.Digvijayapandiyan, Advocate, S.R.No.34522

W.P.Nos.12886 & 12887 of 2011

GSP (07/06/2018)



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