

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Writ Appeal No.1704 of 2014
& M.P.No.1 of 2014

1. The State of Tamil Nadu, Rep. by its Secretary to Government,
Higher Education Department, Secretariat, Chennai 600 009
2. The Director of Technical Education,
Guindy, Chennai 600 025 ... Appellants

versus

1. Thiru M.Aravindhan
2. The Principal, Muthiah Polytechnic,
Annamalai Nagar, Chidambaram Taluk,
Cuddalore District ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order, dated 23.09.2013, passed in Writ Petition
No.26414 of 2013.

PRAYER IN WP.26414 OF 2013:

Writ Petition is filed Under Article 226 of the Constitution of India for issuance of writ of mandamus Directing the respondents to consider the petitioner for promotion to the Post of Instructor (Mechanical Department) in the existing vacancies in the 3rd respondent Polytechnic as per Special Rules for Tamil Nadu Technical Education Subordinate Services from the date of acquiring qualification with all consequential service and attendant benefits including arrears of salary in the light of orders passed by this Honourable Court in W.A.No.207 of 2002 etc, cases dated 1.8.2007 and as well as the orders of Government issued in G.O.Ms.No.95 Higher Education Department dated 26.3.2008 and G.O.Ms.No.121 Higher Education Department dated 1.4.2011 by considering the representation dated 8.8.2013, within a time frame to be fixed by this Hon'ble court and to pass such order further order or orders as this Hon'ble court mad deem fit and proper in the facts.

For Appellants : Mr. Aravind Pandian, AAG., for,
Assisted by, Mr. K.Karthikeyan,
Govt. Advocate (Edn.)

For Respondents : No Appearance.

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

The Writ Petitioner, M.Aravindhnan, was appointed as Workshop Instructor in Muthiah Institute of Technology, from 10.01.1996. The petitioner wanted promotion to the post of Instructor/Mechanical Engineering Department, in terms of G.O.Ms.No.1364, dated 16.08.1988 and G.O.Ms.No.2200 dated 06.07.2009. The petitioner submitted a representation dated 08.08.2013.

2. The case of the writ petitioner is that even though the post of Workshop Instructor is in the category of "Non-teaching", he is entitled to be promoted to the post of "Instructor (teaching post)", by virtue of the Special Rules for Tamil Nadu Technical Education Subordinate Service, which was amended with effect from 23.12.1981 as per the Notification dated 16.08.1988.

3. The further case of the writ petitioner is that, he is qualified with a Diploma in Mechanical Engineering in the year 1983 and further, he was qualified himself with the Bachelor of Mechanical Engineering in the year 1994 and therefore, having acquired the required qualification, he is eligible to be promoted as Instructor.

4. So contending, the writ petitioner filed a writ petition seeking for the issuance of a writ of mandamus directing the respondents to consider the petitioner for promotion to the post of Instructor (Mechanical Department) in the existing vacancy in the second respondent (in the appeal)-Polytechnic, as per the special rules for Tamil Nadu Technical Education Subordinate Services from the date of acquiring qualification with all consequential service and attendant benefits including arrears of salary, in the light of the orders passed by this Court in Writ Appeal No.207 of 2002, etc., cases, dated 01.08.2007.

5. The learned Single Judge, while considering the case of the writ petitioner, relied upon a case of a similarly placed person in whose case, in Writ Petition No.9905 of 2001, has been allowed by this Court, on 10.07.2009 and that order has also been implemented by the issuance of the Government Order in G.O.Ms.No.121 dated 01.04.2011. As the writ petitioner was seeking the similar relief, the learned Single Judge thought it fit to grant the relief.

6. Challenging the same, the first and second respondents in Writ Petition No.26414 of 2013 have filed this writ appeal.

7. The contention of the learned counsel appearing for the appellants is that the writ petitioner is not entitled to claim promotion from the non-teaching post to that of a teaching post and therefore, the prayer in the writ petition itself is not maintainable.

8. The learned counsel appearing for the appellants reiterated the grounds which are mentioned in the writ appeal, as arguments

9. The learned counsel for the first respondent herein / petitioner in the writ petition submitted that the case of the petitioner is on par with the case of one Tamilselvi who succeeded by filing writ petition No.9905 of 2001 and therefore, the appellants are not justified in declining the relief to the writ petitioner herein. The learned counsel for the first respondent herein pointed out the relevant observation of the learned single Judge in para-2 of the order wherein it is pointed out that in the case of a similarly placed person, who succeeded in the writ petition the order has been "acted upon" by issuance of G.O.Ms.No.121 dated 01.04.2011.

10. When the claim of a similarly placed person has been accepted and acted upon, there is no justification for the appellants to challenge the direction given by the learned single Judge to consider the representation of the writ petitioner on par with the claim made by a similarly placed person.

11. The relevant observation of the learned Single Judge reads as under:

"4. Considering the fact that the writ petitioner was working from the year 1996 as Workshop Instructor and also considering the position that the post of Instructor is not dispensed with by amending the specific rules, it is appropriate to direct the respondents therein to consider the petitioner's claim on par with the similarly placed person, namely, M.Tamilselvi, who got order by filing W.P.No.9905 of 2001 on 10.07.2009, within a period of twelve weeks from the date of receipt of a copy of the order."

12. It is not pointed out, as to how the case of the petitioner would stand out from that of the similarly placed person, in whose case the order passed by this Court has been implemented. In such circumstances, the writ appeal ought not to have been filed and the appellants herein / respondents 1 and

2 in the writ petition should have considered the case of the first respondent herein / writ petitioner, as directed by the learned Single Judge, within a period of twelve weeks from the date of receipt of a copy of the order (as directed therein).

13. In such circumstances, we deem it fit to dispose of the writ appeal, with a direction to the appellants herein to consider the case of the writ petitioner / first respondent herein, as directed in paragraph 4 of the order in Writ Petition No.26414 of 2013, dated 23.09.2013.

14. In the result, this writ appeal is disposed of, with the above directions. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

srk
TO

1. The Secretary to Government,
Higher Education Department,
Secretariat, Chennai 600 009
2. The Director of Technical Education,
Guindy, Chennai 600 025
3. The Principal, Muthiah Polytechnic,
Annamalai Nagar, Chidambaram Taluk,
Cuddalore District

+1cc to the Government Pleader, S.R.No. 26281

W.A.No.1704 of 2014
& M.P.No.1 of 2014

WEB COPY

LRS (CO)
TR(25/04/2018)