

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 31.07.2017
pronounced on : 07.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.5290 of 2013

T.Anandan

.. Petitioner

vs

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

2.The Central Polytechnic,
rep. by its Principal,
Taramani, Chennai - 600 0113.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records from the file of the first respondent made in Memo No.O.Mu.5888/B6/2010 dated 29.04.2011 and quash the same and consequently, direct the respondents to give notional promotion to the petitioner as Workshop Instructor with effect from 18.08.2010 when several Juniors to the petitioner were promoted vide proceedings No.7636/B-6-2010-2 dated 18.08.2010 with all the attendant benefits including monetary and service benefits as applicable for Workshop Instructor and Instructor and to pay the petitioner back wages as workshop Instructor with effect from 18.08.2010.

For Petitioner : Mr.Su.Srinivasan

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus, calling for the records from the file of the first respondent in Memo No.O.Mu.5888/B6/2010 dated 29.04.2011 and quash the same and consequently, direct the respondents to give notional promotion to the petitioner as Workshop Instructor with effect from

18.08.2010 when several juniors to the petitioner were promoted vide proceedings No.7636/B-6-2010-2, dated 18.08.2010 with all the attendant benefits, including monetary and service benefits as applicable for Workshop Instructor and Instructor.

2. The case of the petitioner is that his father was working as a Skilled Assistant in the second respondent and while in service, he died on 16.12.1993. On an application, the petitioner was appointed as Skilled Assistant on 28.02.1996 on compassionate grounds. At the time of appointment, the petitioner possessed Diploma in Electronics & Communication Engineering. Though the Diploma holders are eligible to be appointed to the post of Workshop Instructor, the petitioner was appointed as Skilled Assistant and the petitioner has no quarrel over the same. Thereafter, the services of the petitioner were regularised on 28.02.1998.

3. According to the petitioner, he was directed to work in the Workshop Foundry between 28.02.1996 to 30.01.2003 and subsequently, in Electronics Lab from 01.02.2003 to 02.06.2010. It is alleged that after obtaining due permission, the petitioner studied B.Tech. in Information and Technology and had passed in First Class. Pursuant to the acquiring of higher qualification, the petitioner was asked to work in CNC Machine Shop and CAD Lab. According to the petitioner, he is entitled to be promoted as Workshop Instructor way back on 28.02.2003 by which time the petitioner was eligible to be promoted to the next higher grade.

4. The case of the petitioner is that some of the persons who were appointed along with him, though working in Electrical, Electronics, Computer, were promoted from Skilled Assistant to Workshop Instructor. In fact, one Vinod Kumar, a holder of Diploma Mechanical Engineer, was appointed directly as Workshop Instructor in 1998, whereas the petitioner, who was also a Diploma holder was appointed as Skilled Assistant and till date he is continuing as Skilled Assistant.

5. According to the petitioner, two skilled Assistants (Diploma in Electronics) who were working in Electronics and Computer Labs prior to the petitioner were promoted as Workshop Instructors. As the petitioner had completed seven years in Electronics Lab in the second respondent, he ought to have been promoted as Workshop Instructor. There are no promotional avenues for those who were appointed as Skilled Assistants in Electronics Lab and extracting work from the Diploma Holders of Electronics and Communications without providing any avenue for promotion is discriminatory. The respondent authorities denied promotion to the petitioner stating that he was not possessing Diploma in the prescribed branch and, therefore, as per the Rule

in vogue, he cannot be promoted as Workshop Instructor.

6. The grievance of the petitioner is that by virtue of the implementation of new Rule, the eligibility of the petitioner for promotion to the post of Workshop Instructor had been taken away on two aspects viz., qualification of VIII standard with 7 years experience in the Workshop and Diploma holders in Electronics and Communications was not prescribed as eligible criteria.

7. On 17.05.2010, the petitioner submitted a representation seeking promotion as Workshop Instructor. By the impugned Memo dated 29.04.2011, the first respondent stated that the petitioner is not within the list of empanelment as on 01.09.2009 when the new Rule came into force and, therefore, he could not be promoted. Challenging the same, the petitioner has filed the writ petition.

8. The first respondent filed the counter stating that the next avenue of promotion for the post of Skilled Assistant is the post of Workshop Instructor. The petitioner was not considered for inclusion in the panel as he did not complete the required seven years experience in a recognised Workshop. The Diploma holders in Mechanical or Electrical Engineering was only eligible for the post of Workshop Instructor and the petitioner, who had possessed Diploma in Electronics and Communication Engineering which was not prescribed in the Rules as the qualification for the post of Workshop Instructor. It is stated that though the petitioner acquired seven years experience qualification on 28.02.2003 for the post of Workshop Instructor as per the Rules in force before 06.07.2009, his name was not included in the panel due to his lower order of seniority among the post of Skilled Assistant. The last person who was promoted as Workshop Instructor was senior to the petitioner in the post of Skilled Assistant as that person joined in the post of Skilled Assistant on 02.11.1992. According to the first respondent, persons possessing Diploma in Electronics and Communication Engineering could not be promoted as Workshop Instructor and prayed for dismissal of the writ petition.

9. The learned counsel for the petitioner submitted that though the petitioner was eligible to be promoted in February 2003, the promotion was not given and he was working all along as Skilled Assistant till now. He submitted that the new Rule cannot be applied to deny promotion to the petitioner on the ground that he is not holding the prescribed Diploma and the denial of promotion to the petitioner is violative of Article 14 of the Constitution of India.

10. The learned Special Government Pleader appearing for the respondents submitted that the petitioner possessed Diploma in Electronics and Communication Engineering and as per the revised Rules, he is not eligible to be considered for promotion to the post of Workshop Instructor and therefore, the petitioner cannot claim notional promotion as of right.

11. I heard Mr.Su.Srinivasan, learned counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents and also perused the materials available on record.

12. The petitioner was appointed on compassionate grounds on 28.02.1996 as Skilled Assistant by taking into consideration the eligibility criteria of VIII standard, though he pursued Diploma in Electronics and Communication. On 28.02.1998, the services of the petitioner were regularised and he completed seven years of service on 28.2.2003.

13. According to the petitioner, several persons including juniors were promoted from the petitioner's batch by calculating seven years and at that time the petitioner had completed only 6 years and 11 months and therefore, he was not considered.

14. It is seen that on 06.07.2009, the Government issued G.O.No.220, superseding G.O.No.2100, dated 18.09.1981 with eligibility criteria for the post of Workshop Instructor as Diploma in Mechanical or Electrical and Electronics Engineering / Electrical Engineering on ITI/NTC/NATC Certificate holders in Mechanical/Electrical subjects with practical experience for a period of not less than 3 years in recognised Mechanical/Electrical workshop not below the rank of Skilled Operative/Assistant.

15. The grievance of the petitioner is that similarly placed few others including juniors were promoted to the post of Workshop Instructors on 18.08.2010. However, the same was denied to the petitioner on the ground that he belongs to the trade of Electronics and Communications by citing G.O.No.220, dated 06.09.2009. Admittedly, G.O.No.220, dated 06.09.2009, does not mention about the Diploma holders of Electronics and Communications.

16. As per the Special Rules for the Tamil Nadu Technical Educational Subordinate Service issued in G.O.No.2100, Education, dated 18.09.1981, for promotion to the post of Workshop Instructor, the following are the required qualification:

- (i) A pass in 8th Standard in a recognised School;
- (ii) Experience as skilled operator for a total period of not less than seven years in a recognised Workshop, of which at least two years service must be actually in the Workshop of a technical educational institution.

17. As per the new Rule issued in G.O.No.220, Higher Education Department, dated 06.07.2009, for promotion to the post of Workshop Instructor, the following are the qualifications prescribed:

- a) Diploma in Mechanical or Electrical and Electronics Engineering or Electrical Engineering;
 - (b) (i) An Industrial Training Institute Certificate / National Trade Certificate / National Apprenticeship Training Certificate in Mechanical/Electrical subjects;
 - (ii) Practical experience for a period of not less than three years in a recognised Mechanical/Electrical Workshop not below the rank of skilled Operative/ Assistant;
- Provided appointment shall be made to the post from among the holders of (i) Diploma qualification and (ii) Non-Diploma qualification mentioned above in the ratio 1:4 subject to the availability of adequate number of Diploma holders.

18. A perusal of the Special Rules dated 06.07.2009, shows that nowhere it is stated that the said Rules are applicable with retrospective effect. It is specifically stated in the said Rules itself that the said Rules shall come into force on 06.07.2009. Therefore, the respondent authorities were not right in denying promotion by citing the new Rules in G.O.No.220, dated 06.09.2009. When the new Rule does not mandate retrospective effect, then the Rule applicable for promotion will be in terms of G.O.No.2100 dated 18.09.1981 and in the case on hand, in the given facts, G.O.No.2100, dated 18.09.1981 is taken for deciding the issue involved.

19. The petitioner had completed seven years experience on 28.02.2003 and the petitioner's completion of seven years experience on 28.02.2003 is not disputed by the respondents.

20. According to the petitioner, he was directed to work in Workshop Foundry between 28.02.1996 to 30.01.2003, which shows that he had experience as Skilled Operator in the workshop. The respondents have not filed any contra evidence to show that the petitioner had not worked in the Workshop Foundry from 28.02.1996 to 30.01.2003.

21. In an identical situation, when the petitioner in W.P.(MD) No.14252 of 2010 was denied promotion, he moved the High Court seeking to promote him as Workshop Instructor in Government Polytechnic, Thoothukudi. By an order dated 30.03.2012, this Court held as under:

"13. Thus, the reason stated in the impugned order for not considering petitioner's name for promotion as Workshop Instructor is contrary to the well settled principle of law. The Adhoc rules issued on 6.7.2009 is applicable to future vacancies after the issuance of the said Adhoc rules. Nowhere in the said rules it is stated that the said rules are applicable with retrospective effect. In the said rules it is specifically stated that the said rules shall come into force on 6th July, 2009.

14. The petitioner has made out a case for considering his name for inclusion in the panel for promotion for the post of Workshop Instructor in the second respondent Polytechnic. Petitioner having retired on 30.9.2011, respondents 1 and 2 are directed to give notional promotion to the petitioner from the date on which his junior was given promotion i.e., with effect from 1.12.2010 and promote him notionally enabling him to get revision of pension. Since the petitioner has not served in the promotional post, he is not entitled to get difference in salary from the date of notional promotion till his retirement, i.e, from 1.12.2010 to 30.9.2011."

22. The above said decision is squarely applicable to the case on hand. Nothing has been placed on record by the respondents refuting the applicability of the said decision. It is also not stated as to whether any appeal has been filed against the above said decision. In such circumstances, it can only be inferred that the above said decision has attained finality.

23. Applying the decision in W.P.(MD) No.14252 of 2010, dated 30.03.2012, the writ petition is liable to be allowed and the impugned Memo dated 29.04.2011 issued by the first respondent is liable to set aside.

24. In the result:

(a) this writ petition is allowed and the impugned order in Memo No.O.Mu.5888/B6/2010 dated 29.04.2011, on the file of the 1st respondent, is set aside;

(b) the respondents are directed to give notional promotion to the petitioner as Workshop Instructor from the date

on which his juniors were given promotion i.e., on 18.08.2010, and promote him notionally enabling him to get revision of pay and all attendant benefits;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order;

(d) it is made clear that these observations are made on the facts and circumstances of the present case and are not to be treated as a precedent. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

vs

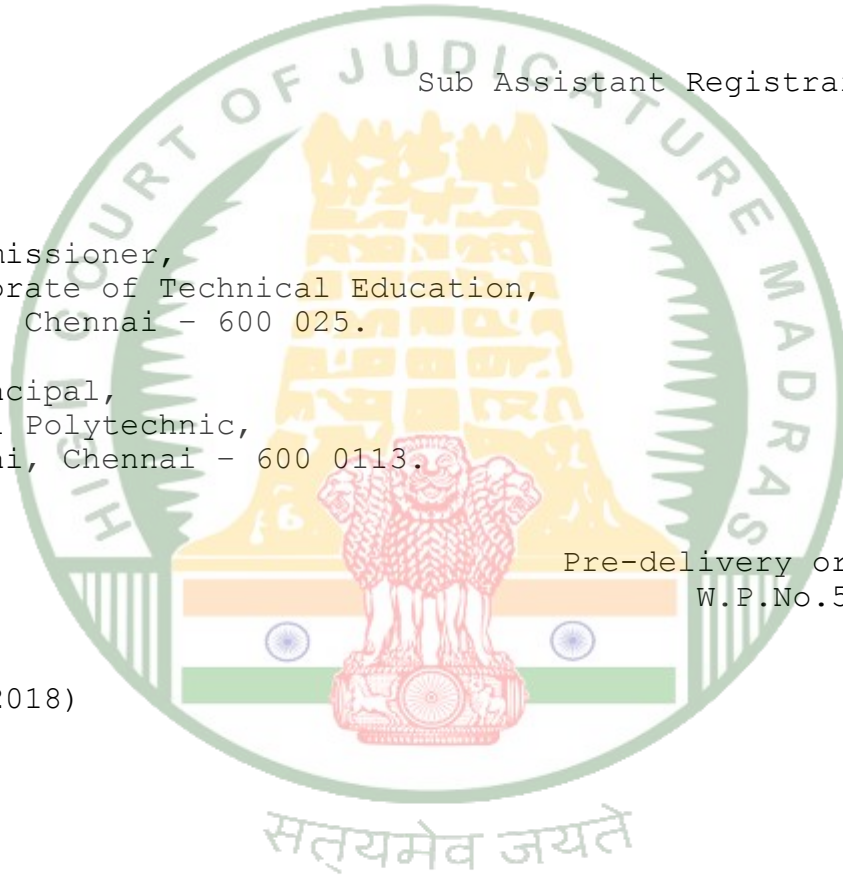
To

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

2.The Principal,
Central Polytechnic,
Taramani, Chennai - 600 0113.

Pre-delivery order made in
W.P.No.5290 of 2013

mr (CO)
TR(18/06/2018)



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