

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-02-2018

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.7775 of 2012

R.Elangovan

.. Petitioner

vs.

1.Government of Tamil Nadu,
Represented by its Secretary,
Tourism and Culture Department,
Fort St. George,
Chennai-600 009.

2.Commissioner,
Department of Art and Culture,
Greenways Road,
Chennai-600 028.

3.Principal,
Government College of Architecture and Sculpture,
Mamallapuram,
Kancheepuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, after calling for the concerned records from the second respondent, quash the order of the second respondent dated 15.2.2012 bearing Na.Ka.No.5167/B3/2010 conveying the decision of the first respondent as illegal, arbitrary, in violation of Article 14 of the Constitution of India and consequently direct the respondents to upgrade the petitioner in the post of Lecturer from the date he acquired the Bachelor's degree with all monetary benefits.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader.

O R D E R

The petitioner joined the third respondent-College in 1982 as a Skilled Assistant. In 1992, he was granted Selection Grade and in 2000, he was promoted as an Instructor. The petitioner also obtained a Bachelor's Degree in Fine Arts (B.F.A.) in July 2001. According to the petitioner, he has been working as a Lecturer and taking classes for B.Sc., (Sculpture) in the third respondent-College.

2. Originally, at the time of his appointment, the petitioner was in possession of a Diploma in Traditional Sculpture and Architecture for having obtained the same in 1978. In view of the qualification obtained by the petitioner i.e., a Bachelor's Degree in Fine Arts, the petitioner is entitled to be appointed as a Lecturer in terms of G.O.Ms.No.430, Education Department, dated 11.4.1991.

3. According to the petitioner, he is entitled to be appointed as a Lecturer on a regular basis with effect from the date on which he acquired the B.F.A qualification. While-so, the first respondent issued G.O.Ms.No.67, Art, Culture and Tourism Department, dated 6.4.2010 by regularising the services of the petitioner as a Lecturer from the date of issuance of the Government Order with monetary benefits.

4. The grievance of the petitioner is that in respect various Technical Institutions functioning under the control of the Government, upgrading the post of Instructor as Lecturer has been uniformly done from the date when the Instructor concerned acquired the Bachelor's Degree qualification. Unfortunately, only in respect of the petitioner herein, the Government has restricted the benefit of regularisation and monetary benefits only from the date of issuance of the Government Order i.e., from 6.4.2010. This, according to the petitioner, was per se, discriminatory, arbitrary, unjust, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

5. In regard to his grievance, the petitioner submitted periodical representations, seeking extension of benefit of upgradation from July 2001, when he acquired the necessary qualification. However, his representation did not evoke any response from the authority concerned. Therefore, he was constrained to approach this Court in W.P.No.26082 of 2010 along with two others, who were similarly placed and this Court by order dated 25.2.2011, directed the first respondent herein to consider the representation and pass orders on merits. Thus, the time was stipulated by this Court.

6. In pursuance of the directions passed by this Court in

the aforesaid writ petition, the second respondent passed an order on 15.2.2012, conveying the decision of the first respondent stating that as per G.O.Ms.No.534, Higher Education Department, dated 19.11.2004, the pay has to be fixed only from the date of issuance of the order of promotion. But, in the petitioner's case, he was granted the benefit only from the date of issuance of the Government Order dated 6.4.2010 and the said date has been reckoned for the purpose of grant of benefit of regularisation and monetary benefits. Challenging the rejection order dated 15.2.2012, the petitioner is before this Court.

7. Shri Balan Haridas, learned Advocate, appearing for the petitioner, would contend that the regularisation of services of the petitioner in 2010 and not from the date when the petitioner had acquired the necessary qualification for being appointed as a Lecturer, cannot stand the test of judicial scrutiny and the same is also violative of Articles 14 and 16 of the Constitution of India.

8. The learned counsel for the petitioner would submit that in identical circumstances, in pursuance of implementation of the order passed by this Court in W.P. No.21724 of 2015 dated 21.7.2015, the second respondent granted the benefit of regularisation to one Shri R.Neelamegam from the date on which he acquired the qualification in 2001. The said R.Neelamegam is also working along with the petitioner in the same College, namely, the third respondent herein. This fact has not been disputed by the respondents.

9. Upon notice, Shri T.M.Pappiah, learned Special Government Pleader, entered appearance on behalf of the respondents and filed the counter-affidavit.

10. The learned Special Government Pleader, appearing on behalf of the respondents, would submit that, in fact, the second respondent had recommended the claim of the petitioner and two others for upgradation, as they were serving as such for a long period of time. This submission is made on the basis of the averments contained in paragraph-5 of the counter-affidavit, which is reproduced below:-

"5. It is humbly submitted that the second respondent had sent proposal to the first respondent stating that the petitioner and two other Instructors were working in the post of Instructors in Government College of Architecture and Sculpture, Mamallapuram, have qualified themselves in the basic educational qualification of degree and considering the long teaching experience had requested that their posts may be upgraded as

Lecturers. The second respondent further requested the first respondent to upgrade their posts of Instructors as Lecturers as a special case due to the non-availability of vacant post of Lecturer in the Government College of Architecture and Sculpture, Mamallapuram."

11. The learned Special Government Pleader, appearing on behalf of the respondents, would also submit that in consideration of recommendation and the experience of the petitioner and two others and their qualification, the Government ultimately passed an order vide G.O.Ms.No.67, Tourism and Culture Department, dated 6.4.2010, by granting them regularisation, however, restricting the eligibility for monetary benefits from the date of issuance of the Government Order. In the counter-affidavit, it is also admitted that the petitioner and two others have obtained the requisite qualification for being appointed as a regular Lecturer and in the counter-affidavit, the petitioner is stated to have qualified in a Bachelor's Degree in November 2000. However, it appears that the Certificate was issued in July 2001.

12. From the consideration of the legal submissions, the relevant materials and the pleadings placed on record, this Court has to come to a conclusion that the petitioner having acquired the necessary qualification in July 2001, he is entitled to a regular appointment as Lecturer from the said date. When the admitted fact is that the similarly placed Lecturer has been granted regularisation from 2001, when he was acting as a Lecturer, there is absolutely no justification for the respondents to treat the petitioner differently in the matter of regularisation. Even in the counter-affidavit, there is no whisper about the fact that how the petitioner can be denied regularisation from the date of his obtaining the qualification in Bachelor's Degree in Fine Arts.

13. Moreover, it is to be seen that the respondents themselves have implemented this Court's direction in respect of a similarly placed Lecturer Shri Neelamegam from 2001. Such being the case, the said benefit cannot be denied to the petitioner also.

14. Therefore, the petitioner has made out a case for grant of a relief. In the above circumstances, the impugned order of the second respondent in Na.Ka.No.5167/B3/2010 dated 15.2.2012, is set aside and the respondents are directed to grant the benefit of regularisation with effect from the date when the petitioner qualified in Bachelor's Degree in Fine Arts (B.F.A.) with all attendant benefits. This exercise shall be carried out

by the respondents/competent authorities, within a period of eight weeks from the date of receipt of a copy of this order.

15. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

Svn
To

- 1.The Secretary,
Government of Tamil Nadu,
Tourism and Culture Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner,
Department of Art and Culture,
Greenways Road,
Chennai-600 028.
- 3.The Principal,
Government College of Architecture and Sculpture,
Mamallapuram,
Kancheepuram District.

+1cc to Mr.BALAN HARIDAS, Advocate, S.R.No. 10254
+1cc to the Government Pleader, S.R.No. 10268

W.P.No.7775 of 2012

LRS (CO)
TR(08/03/2018)

WEB COPY