

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.7991 of 2013

A.Chandirasegaran

... Petitioner

Vs

Pondicherry Institute of Post-Matric Technical Education,
(PIPMATE)
rep. by its Member Secretary,
PIPMATE Building,
Lawspet, Puducherry-605 008.

...Respondent

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records from the respondent relating to the order dated 1.7.2011 bearing Ref.Memo No.A/ 13/1/4/ PIPMATE/2008/A1/510 and quash the same insofar as it relates to granting promotion to the petitioner as HOD (Computer Engineering) only w.e.f. 5.7.2011 and not w.e.f. 3.6.2008 as the same is illegal, arbitrary, discriminatory in violation of Article 14 and 16 of the Constitution of India and consequently direct the respondent to promote the petitioner as HOD (Computer Engineering) from 3.6.2008 with monetary benefit, service, seniority and other attendant benefits.

For Petitioner : Mr.K.Srinivasamurthi
for M/s.Row & Reddy

For Respondent : Mr.T.P.Manoharan
Senior Counsel
for Mr.K.P.Jotheeswaran

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records of the respondent dated 1.7.2011 granting promotion to the petitioner as Head of Department (Computer Engineer) with effect from 5.7.2011 and to quash the same and consequently, direct the respondent to promote the petitioner as Head of Department (Computer Engineering) from 3.6.2008 with monetary benefits, service, seniority and other attendant benefits.

2. Brief facts are that the respondent is running five Government Polytechnic Colleges in Puducherry Union Territory. On 3.6.1998, the petitioner joined as Lecturer in the respondent Institute and posted at Dr.Ambedkar Polytechnic College, Yanam. After five years of service as Lecturer, the petitioner was entitled to promotion as Senior Lecturer. But due to administrative delay, he was promoted on 16.11.2007 as Senior Lecturer. According to the petitioner, on 3.6.2008, he became eligible for being promoted as Head of Department (for short, 'HOD') on completion of 10 years of service as Lecturer and Senior Lecturer put together and the post of HOD (Computer Engineering) was vacant from 1988. Though the post of HOD was vacant and the petitioner was eligible to be promoted as such, there was an administrative delay in issuing promotion orders.

3. According to the petitioner, he was posted as HOD in-charge from 29.6.2007 and the official communication in this regard was sent on 17.7.2007. The petitioner was posted as Principal of Indira Gandhi Polytechnic College, Mahe from 3.1.2008 and continued as such till 23.1.2011 when the regular Principal was posted. Since the respondent has not taken steps to complete the promotion process, the petitioner and others have filed W.P.No.27689 of 2010 before this Court alleging that as far as the petitioner is concerned, there was clear vacancy and there was no impediment for being promoted him as HOD and further, he was functioning as HOD incharge of Computer Engineering Department apart from being Principal incharge from 3.1.2008 to 23.1.2011. By an order dated 12.4.2011, the said writ petition was allowed by directing the respondent to complete the promotion process within a period of two months. Despite promoting the petitioner from 3.6.2008, promotion order was given on 1.7.2011 granting promotion with effect from 5.7.2011.

4. The case of the petitioner is that in 2007, Senior Lecturers of Civil, Mechanical, EEE and ECE were given promotions with retrospective effect when they became eligible and vacancy was also there. But in the case of the petitioner, the respondent did not grant promotion with retrospective effect even though, he became eligible on 3.6.2008 itself. Despite several representation given by the petitioner, the respondent did not issue the amended order of promotion making it retrospectively from 3.6.2008. On 4.2.2013, the petitioner sent a reminder and till date his grievance has not been redressed. Hence, the petitioner has filed the writ petition.

5. Resisting the averments in the petition, the respondent filed counter stating that on 9.6.1992, the Pondicherry Institute of Post-Matric Technical Education (for short, 'PIPMATE') has framed recruitment rules for all the posts, including to the post of Lecturer, Senior Lecturer, Head of

Department and Principal. Thereafter, as per the AICTE guidelines, the PIPMATE has amended the recruitment rules for the post of Senior Lecturer on 28.12.1995 by prescribing the method of recruitment to the said post as by promotion failing which by direct recruitment. Again, the AICTE changed the method of recruitment to all the teaching posts i.e. from the post of Lecturer to the post of Principal as direct recruitment through open advertisement at National level. Accordingly, on 18.12.2000, the PIPMATE has amended the recruitment rules for all the teaching posts, including the post of Senior Lecturer and HOD by prescribing the method of recruitment as by direct recruitment.

6. It is stated that as per the amended recruitment rules, there was no promotional avenues to the teaching staff of the PIPMATE. On 31.5.2004, with a bona fide intention to provide promotional avenues to its teaching staff, the PIPMATE has proposed to provide promotional avenues to them as available to the teaching staff of Motilal Nehru Government Polytechnic College, Puducherry by way of amending the method of recruitment in the recruitment rules framed both for Engineering and non-Engineering disciplines.

7. According to the respondent, in its 25th Meeting held on 6.3.2007, the Government body of the PIPMATE has considered and ratified the same. Accordingly, the method of recruitment prescribed in the recruitment rules have been amended as by promotion failing which by deputation failing both by direct recruitment. Hence, only on and from 6.3.2007 the eligible Lecturers working in the PIPMATE acquire the right to consider for promotion to the post of Senior Lecturers and HOD as and when vacancies arise in the said posts and also subject to the intervening circumstances.

8. Further case of the respondent is that without waiting for the time to be taken for following the procedures and making promotions to the post of Senior Lecturer as per the amended recruitment rules, in accordance with the norms prescribed by the AICTE under the Career Advancement Scheme, the respondent has considered the names of the petitioner and 21 other Lecturers to give time bound promotion equivalent to the post of Senior Lecturer and placed them as Lecturer (Senior Grade) with effect from 3.6.2004. According to the respondent, as per the AICTE norms, such placement was equal to that of the substantive posts, the petitioner was not entitled for further promotion to the post of Senior Lecturer within 5 years.

9. It is stated in the counter that as per the recommendations of the Departmental Promotion Committee (for short, 'DPC'), the PIPMATE promoted 13 Lecturers, including the petitioner to the vacancies to the post of Senior Lecturer and

all of them have accepted the said promotion and the date of such promotion, joined duty on various dates and working in the posts of Senior Lecturer. Therefore, the petitioner is estopped from claiming retrospective promotion.

10. Similarly, in the year 2007, the respondent has also proposed to fill up vacancies in the post of HOD in Engineering and non-Engineering disciplines with the eligible Senior Lecturers. The respondent collected service particulars of all the eligible Senior Lecturers and placed before the DPC. As per the recommendations made by the DPC, the respondent promoted 6 Senior Lecturers, including K.Francies and D.Sandanasamy to the post of HOD in the disciplines ECE, Civil Engineering, Electrical and Electronics Engineering, Mechanical Engineering and Commercial Practice. At that time, there was no eligible Senior Lecturers available as per the recruitment rules in the disciplines of Computer Technology, Information Technology, Architectural Assistantship and Electronics and Instrumentation Engineering for promotion to the post of HOD in those disciplines. Hence, the respondent was not able to take action and give promotions to the Senior Lecturers, including the petitioner working in those disciplines.

11. According to the respondent, again in accordance with the norms prescribed by the AICTE, the respondent with bona fide intention to give benefits to them has considered the names of the petitioner and 23 other Senior Lecturers/Lecturer (Senior Scale) to give time bound promotion equivalent to the post of HOD and by an order dated 9.4.2010, it has placed all of them in the Selection Grade in the pre-revised scale of pay of Rs.12000-42-18300 (as far as petitioner is concerned with effect from 3.6.2008) and paying the same scale of pay and other monetary benefits to them. Hence, the petitioner is not entitled for further promotion to the post of HOD within 10 years. According to the respondent, the petitioner has suppressed the material particulars and his placement as Lecturer (Senior Scale) and having regard to the fact that he had received Selection Grade and the higher scales of pay, he has no right to file the writ petition. In fact, the petitioner has filed the writ petition with incorrect and untenable averments. Hence, prayed for dismissal of the writ petition.

12. I heard Mr.K.Srinivasamurthi for M/s.Row and Reddy, learned counsel for the petitioner and Mr.T.P.Manoharan, learned Senior Counsel for Mr.K.P.Jotheeswaran, learned counsel for the respondent and also perused the materials available on record.

13. The learned counsel for the petitioner submitted that the respondent ought to have given promotion to the petitioner with effect from 3.6.2008 with all service benefits. Even though the respondent initiated action on 16.9.2008 for giving

promotion, due to administrative delay, the promotion order was given to the petitioner only on 1.7.2011. He would submit that in 2007 when the respondent gave promotion to the other Senior Lecturers with retrospective effect from the date they became eligible and the vacancy was available, there was no justification in not extending the same benefit to the petitioner, admittedly, when vacancy was available on 3.6.2008. Since the petitioner was discharging his duties as HOD incharge and Principal in-charge, he ought to have been promoted with effect from 3.6.2008 and that the respondent was not justified in promoting the petitioner with effect from 3.6.2008. In support, the learned counsel placed reliance upon the decision of the Hon'ble Supreme Court in P.N.Premchandran v. State of Kerala and others, reported in (2004) 1 SCC 245.

14. Per contra, the learned Senior Counsel for the respondent submitted that in accordance with the norms prescribed by the AICTE, the respondent has given two time bound promotions equivalent to the post of Senior Lecturer and HOD to the petitioner. He would submit that the respondent has placed the petitioner as Lecturer (Senior Scale) in the pre-revised scale of pay and also placed him in the Selection Grade in the pre-revised scale of pay and paying the said scales of pay and other monetary benefits to him. The learned Senior Counsel submitted that as per AICTE norms, such placements are equal to that of the substantive posts. Hence, the petitioner is not entitled for further promotion to the post of HOD within 10 years and there is no merit in the grievance of the petitioner seeking promotion to the post of HOD retrospectively with effect from 3.6.2008.

15. The Government of Puducherry has established the PIPMATE for the purpose of imparting post-matric technical education in the Union Territory of Puducherry. It is a Society registered under the Societies Registration Act. The PIPMATE has established four Polytechnic Colleges in the four regions of the Union Territory of Puducherry and running the same. In accordance with the norms and standards prescribed by the AICTE, the PIPMATE has framed recruitment rules and amending the same from time to time, constituting Staff (Teaching) Selection Committee as per its rules and regulations and making recruitments, promotions etc. to all the posts.

16. The grievance of the petitioner is that he joined as Lecturer in Computer Technology with PIPMATE on 3.6.1998 at Dr.B.R.Ambedkar Polytechnic College, Yanam and promoted as Senior Lecturer on 14.11.2007 and had worked at Indira Gandhi Polytechnic College, Mahe. According to the petitioner, as per the impugned order, he was promoted as HOD (CT) and posted at Women's Polytechnic College, Puducherry and was working as such. Further grievance of the petitioner is that on 3.6.2008 itself

he became eligible for being promoted as HOD i.e., on completion of 10 years of service as Lecturer and Senior Lecturer put together. Hence, he seeks for retrospective promotion and consequential monetary benefits.

17. Placing reliance upon the decision of the Hon'ble Supreme Court in P.N.Premachandran v. State of Kerala and others, supra, the learned counsel for the petitioner submitted that there was administrative delay to complete the promotion process and the petitioner cannot suffer to such administrative delay and lapse on the part of the PIPMATE and therefore, he is entitled to be promoted retrospectively.

18. In P.N.Premachandran v. State of Kerala and others, supra, the Hon'ble Supreme Court held:

"It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Directors, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect."

19. The specific case of the PIPMATE is that by an order dated 16.7.2007, it has placed the petitioner as Lecturer (Senior Scale) in the pre-revised scale of pay of Rs.10000-325-15200 with effect from 3.6.2004 and was paying the revised scale of pay and other monetary benefits to him from the said date. According to the PIPMATE, as per the AICTE norms, such placement is equal to that of the substantive posts. Therefore, the petitioner is not entitled for further promotion to the post of Senior Lecturer within five years. It is also the specific case of the respondent that in the year 2007, when PIPMATE has proposed to fill up the vacancies in the post of HOD, as there

was no eligible Senior Lecturers available as per the recruitment rules in the discipline Computer Technology, Information Technology, Architectural Assistantship and Electronics & Instrumentation Engineering for promotion to the post of HOD in those disciplines, with an bona fide intention to give benefits to them, the PIPMATE has considered the name of the petitioner and other 23 Senior Lecturers/Lecturer (Senior Scale) to give time bound promotion equivalent to the post of HOD. Accordingly, by an order dated 9.4.2010, the PIPMATE placed the petitioner in the Selection Grade in the pre-revised scale of of Rs.12000-420-18300 with effect from 3.6.2008 and paying the said scale of pay and other monetary benefits to him from the said date. As per the AICTE norms, the said placement is equal to the substantive posts. Therefore, he is not entitled to further promotion to the post of HOD within 10 years.

20. It appears that earlier the petitioner and six other persons have filed W.P.Nos.18608, 27689, 27709 and 27909 of 2010 before this Court. The present petitioner had filed the writ petition being W.P.No.27689 of 2010, wherein he had sought the following relief:

"Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records in order No.13/1/14/PIPMATE/2007/A1/846, dated 14.11.2007 and quash the same and direct the respondent to promote the petitioner from the date the petitioner became eligible to be promoted as Senior Lecturer i.e., on 3.6.2003 and consequently promote the petitioner as Head of Department on regular basis from June 2008 and pay all attended benefit."

21. By the common order dated 12.4.2001, the learned Single Judge of this Court disposed of all the writ petitions. In paragraph 7, this Court observed as under:

"7.In the light of the above said submission of the counsel for both sides, without expressing any opinion on merits, PIPMATE is directed to complete the process of promotion to the post of Head of Department within a period of two months from the date of receipt of a copy of this order. It is needless to state that while considering the case of all eligible persons, whether they approached this Court by filing writ petition or otherwise, it is incumbent upon PIMPATE to consider the claim of the individuals on merits and in accordance with law."

22. It is seen from the counter of the PIMPATE that pursuant to the orders of this Court in the aforesaid writ petitions, it

has placed the service particulars of the petitioner and eight other Senior Lecturers before the DPC. In its meeting held on 21.6.2011, the DPC has considered the service particulars, educational qualifications of the individuals and made its recommendations for promotion to them to the post of HOD in the order of their seniority. The PIMPATE accepted the said recommendations and issued the impugned order dated 1.7.2011 promoting the petitioner and other eight Senior Lecturers to the post of HOD in their respective disciplines on regular basis with an immediate effect.

23. It appears that aggrieved by the impugned order, on 7.7.2011, the petitioner has made a representation to the respondent requesting to consider for promotion to the post of HOD with retrospective date i.e., from 3.6.2008. On 15.12.2011, the petitioner sent another representation to the respondent seeking the similar prayer. Finally, on 04.2.2013, the petitioner submitted a representation to the respondent seeking to consider for promotion to the post of HOD with retrospective date. According to the petitioner, all the aforesaid representations have been received by the respondent, but till date, none of the representation was considered by the respondent.

24. Though the petitioner has contended that similarly placed persons have been given retrospective promotion, the petitioner alone was deprived from granting retrospective promotion.

25. It is the case of the petitioner that pursuant to the official communication dated 17.7.2007 issued to him, he was posted as HOD in-charge from 29.6.2007. The petitioner also contended that he was acted as Principal in-charge of Indira Gandhi Polytechnic College, Mahe as per the order dated 02.01.2008 and he was continued as Principal in-charge till 23.1.2011 when regular Principal was posted. When such being the plea of the petitioner, it is the bounden duty of the respondent to redress the representations of the petitioner by a reasoned order.

26. It appears that in the impugned order dated 1.7.2011, along with the petitioner, eight other Senior Lecturers were given promotion to the post of HOD in their respective disciplines on regular basis and posted in the Institution mentioned against each with an immediate effect. The impugned order reveals that totally nine persons were given promotion as HOD in different disciplines. Out of nine persons, the four persons including the petitioner are in the discipline Computer Technology. It is seen that the petitioner alone challenged the impugned order on the ground that the petitioner was already hold the post of HOD and hence, the petitioner alone approached

this Court and seeking the prayer as sought for in this writ petition for granting promotion as HOD (Computer Engineering) from 03.06.2008 with monetary benefits.

27. When the petitioner was holding the post of H.O.D. in-charge from 29.06.2007 and also acted as Principal in-charge of Indira Gandhi Polytechnic College, Mahe, as per the order dated 02.01.2008 and continued as Principal in-charge till 23.01.2011, when the regular Principal post was filled up, this petitioner ought to have been given promotion as H.O.D. (Computer Engineering) from 03.06.2008 with monetary benefits, since the petitioner is fully eligible for the post of H.O.D. from 03.06.2008.

28. The reason given by the respondents through the impugned order is not acceptable one and the same is liable to be quashed, since the petitioner makes out his case before this Court for his prayer in this writ petition as H.O.D. (Computer Engineering) from 03.06.2008, with all monetary benefits.

29. In the result:

(a) the writ petition is allowed by setting aside the order dated 01.07.2011 by granting promotion to the petitioner as H.O.D. (Computer Engineering) with effect from 05.07.2011 is quashed;

(b) the respondent is directed to promote the petitioner as H.O.D. (Computer Engineering) from 03.06.2008 with all monetary benefits, service, seniority and other 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. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Member Secretary,
Pondicherry Institute of Post-Matric
Technical Education,
PIPMATE Building,
Lawspet, Puducherry-605 008.

+1cc to M/s.Row and Reddy, Advocate, S.R.No.64400
+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No.64661

W.P.No.7991 of 2013

rrs 05/12/2018