

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 22.08.2017

PRONOUNCED ON : 15.03.2018

CORAM

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

W.P.No.11126 of 2013

V.Vijayamareeswari

.. Petitioner

Vs

1. The State of Tamil Nadu
rep. by its Secretary to Government
Higher Education Department
Secretariat, Chennai - 600 009.
2. The Commissioner of Technical Education
Directorate of Technical Education
Chennai - 600 025.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified mandamus to call for the records connected in No.10527/b1/2011, dated 30.05.2011 passed by the second respondent, to quash the same and to direct the respondents to promote the petitioner as Head of Department from 2001 onwards and as Principal on par with the petitioner's juniors, i.e., from the year 2006 itself.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mrs.K.Bhuvaneswari
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records connected in No.10527/b1/2011, dated 30.05.2011 passed by the second respondent, to quash the same and to direct the respondents to promote the petitioner as Head of Department from 2001 onwards and as Principal on par with the petitioner's juniors, i.e., from the year 2006 itself.

2. The facts in brief are as under: The petitioner was selected and appointed as Junior Instructor in Electronics under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Service Rules vide order dated 30.01.1975 and she joined with effect from 07.02.1975.

3. The petitioner was thereafter selected through the Tamil Nadu Public Service Commission for appointment as Junior Instructor on 13.08.1975 and was subsequently, promoted as Associate Lecturer with effect from 05.10.1993 and as Senior Lecturer on 14.11.2005 with effect from 1991 and then was promoted as Head of Department and joined on 06.10.2006. She was thereafter promoted as Polytechnic Principal on 26.09.2012 and was allowed to retire from service on attaining the age of superannuation on 30.09.2012.

4. It is averred that even though the petitioner was appointed as Head of Department by an order dated 29.09.2006, as per panel approved, no retrospective effect was given to this panel as was given when she was promoted as Senior Lecturer. It is her plea that the respondents after a lapse of 14 years had drawn the panels.

5. It is stated that despite representations sent by the petitioner and similarly placed persons to send the list of panel for promotion to the post of Principal in Government Polytechnic Colleges, as they were seniors in the post of Heads of Departments, way back on 15.06.2009, the respondents did not pay heed to the same and drew a panel vide G.O.Ms.No.345, Higher Education (I2) Department, dated 28.10.2010 and passed G.O.Ms.No.346, Higher Education (I2) Department, dated 28.10.2010, promoting some juniors to the petitioner to the post of Principal, Government Polytechnic Colleges.

6. It is stated that pursuant to the same, the second respondent vide proceedings dated 30.05.2011 rejected the request of the petitioner holding that she had not fulfilled the requisite conditions for being granted promotion as Principal. Assailing the said proceedings, the present writ petition is filed.

7. It is the contention of the learned counsel appearing on behalf of the petitioner that while the petitioner's name was included in the regular panel for the post of Senior Lecturer during the year 1991-1992, the names of some of the persons promoted to the post of Principal, viz., C.Sankaranarayanan and R.Palanisamy, were included in the panel for the post of Senior Lecturer only in the years 2003-2004 and 2002-2003 respectively and subsequently, they were given promotion as Head of Department only along with the petitioner on 06.10.2006 and,

therefore, the name of the petitioner ought not to have been left out while considering the names of the above said two persons and to this extent, the impugned proceedings are liable to be set aside.

8. It is further contended that the grant of promotion to the petitioner to the post of Senior Lecturer and subsequent promotion was delayed on account of the administrative lapses and that cannot be a reason to deny her the promotion to which she was lawfully entitled to, more so when her juniors had been promoted to the post of Principal and she was denied equal treatment.

9. It is also contended that posts of Principals of Government Women Polytechnics, which were earmarked for appointing Women Principals, were kept vacant from 2001 and the petitioner ought to have been considered for the said vacancy and in any event, the denial of promotion to the petitioner and granting promotion to her juniors, reeks of arbitrariness.

10. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the petitioner had not acquired five years of experience in the post of Head of Department and she has not fully satisfied the qualifications prescribed in the Ad hoc Rules for appointment to the post of Principal.

11. It is further submitted that considering the long service rendered by the petitioner, she was promoted to the post of Principal with effect from 26.09.2012 and the petitioner having retired from service, her claim for promotion as a Government Servant ceases to exist and, therefore, this writ petition deserves to be dismissed.

12. I heard Mr.G.Elanchezhiyan, learned counsel for the petitioner and Mrs.K.Bhuvaneswari, learned Government Advocate for the respondents and perused the documents available on record.

13. In the case on hand, it is beyond any cavil that the petitioner's name was considered for the regular panel for the post of Senior Lecturer for the year 1991-1992 vide G.O.Ms.No.458, Higher Education (F2) Department, dated 14.11.2005. Subsequently, the petitioner was promoted to the post of Head of Department in the Government Polytechnic Colleges vide G.O.Ms.No.334, Higher Education (I2) Department, dated 29.09.2006.

14. Admittedly the post was lying vacant since 2001 and it is the specific case of the petitioner that she was fully

qualified and eligible to be promoted to be considered for such promotion. In the impugned proceedings dated 30.05.2011, it is stated by the respondent authority that though vacancy arose, no qualified person was available for promotion to the post of Head of Department. This Court is at a loss to understand as to why the petitioner, who was fully qualified to be promoted as Senior Lecturer and was considered to be included in the panel for the year 1991-1992, had not been considered for promotion to the post of Head of Department, when a vacancy admittedly existed.

15. Even though it is the stand of the respondents that no junior to the petitioner was promoted to the post of Principal, a perusal of the records shows that the petitioner's juniors, viz., C.Sankaranarayanan and R.Palanisamy, were included in the panel for the post of Senior Lecturer only in the years 2003-2004 and 2002-2003 respectively and subsequently, they were given promotion as Head of Department along with the petitioner on 06.10.2006, and therefore, the act of the respondents in not considering the case of the petitioner for promotion certainly reeks of arbitrariness. The records reveal that the petitioner and the above said two individuals have been promoted on the same day as Head of Department, even though the petitioner was appointed much earlier to the feeder post of Senior Lecturer. The respondents have not placed any material on record to rebut the said allegation made by the petitioner. That apart, no justiciable reason has been stated by the respondents for the delay in granting promotions, when admittedly vacancies exist for years.

16. That apart, a perusal of the government order in G.O.Ms.No.123, Higher Education (I2) Department, dated 15.05.2017, shows that the government had made it clear that services rendered in the post of upgraded Head of Department as equal to the services rendered in the post of regular Head of Department. The operative portion of the said government order reads as under:

"5. The Director of Technical Education has sent proposal requesting to issue orders treating the services rendered by the Lecturers of Government Polytechnic Colleges in the post of upgraded HODs as equal to the services rendered as regular HODs, since all the upgraded HODs possessed the qualification and experience for the post of Principal.

6. The Government after careful consideration of the above request and recommendation, direct that the services rendered by the Lecturers of Government Polytechnic Colleges in the Post of upgraded HODs be treated as equal to the services

rendered in the regular HOD, pending issuance of amendment to the post of Adhoc Rules for the post of HOD such that the feeder category to the post of HOD is Lecturer."

17. In the light of the above said Government Order, if the service rendered by the petitioner as upgraded Head of Department from 28.06.2000 is taken as qualifying service of regular Head of Department for promotion to the post of Principal, the petitioner ought to have been promoted as Principal way back in 2006, in the available vacancy. On this score, the reasoning given by the respondent authority in the impugned order to the effect that the petitioner has not completed five years of service in the post of Head of Department is untenable.

18. For the foregoing reasons:

(a) the writ petition is allowed and the impugned order No.10527/b1/2011, dated 30.05.2011 passed by the 2nd respondent, is set aside;

(b) the respondents are directed to consider the case of the petitioner for promotion to the post of Head of Department and promote the petitioner as Head of Department from 2001 onwards with all consequential benefits;

(c) the respondents are further directed to consider the case of the petitioner for promotion to the post of Principal and promote the petitioner as Principal from 2006 onwards and confer all consequential benefits;

(d) the respondents shall revise the pensionary benefits of the petitioner and pay arrears to which she is lawfully entitled to;

(e) the said exercise shall be done by the respondents authorities within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vs

To

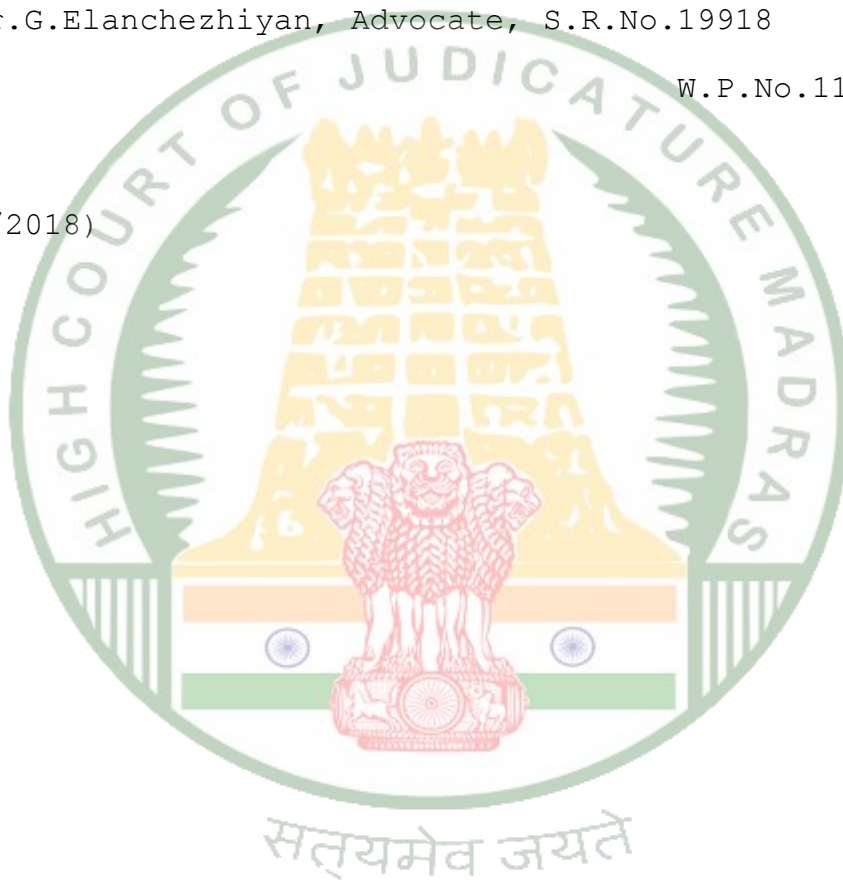
1. The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Technical Education,
Directorate of Technical Education,
Chennai - 600 025.

+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.19918

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SSV(CO)

RRK(05/04/2018)



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