



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.11.2018

CORAM:

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P. (MD) No.848 of 2015

S.Paramasivam,
Lab Attender,
Sankar Institute of Polytechnic College,
Sankar Nagar and Post,
Tirunelveli District.

... Petitioner

vs.

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

2.The Principal,
Sankar Institute of Polytechnic,
Sankar Nagar & Post,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the first respondent herein letter No.43698/C3/2012 dated 01.03.2014 quash the same, and further direct the first respondent herein to approve forthwith the appointment of the petitioner as Lab Attender in the second respondent college w.e.f 21.04.2001 and disburse the grant-in-aid towards salary and allowances.

For Petitioner : Mr.E.V.N.Siva

For R-1 : Mr.A.Muthukaruppan,
Additional Government Pleader.

For R-2 : No appearance

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent.

2.The petitioner herein who is the Lab Attender appointed in the year 1997 on temporary basis in the second respondent's college. He was later relived from the duty on 31.10.2000. His



name was subsequently sponsored by the District Employment Office, Tirunelveli for the post of Lab Attender to the second respondent private aided college vide letter dated 23.02.2001. At that time of sponsoring his name, he had requisite qualification to hold the post of Lab Attender.

3.The Staff Selection Committee found him fit and issued appointment order with effect from 20.04.2001. Accordingly, he has joined the duty as Lab Attender in the second respondent's college on the same day and continued to discharge the duty till date. When his name was sent to first respondent herein for approval, the first respondent citing the moratorium on recruitment issued by the Government vide G.O. (Ms) No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001 has refused to give approval.

4.The moratorium on recruitment was later lifted by G.O (Ms) No.14, Personnel and Administrative Reforms (P) Department, dated 07.02.2006. When the second respondent resubmitted the proposal of approval to the first respondent citing G.O.(Ms).No.131, Higher Education Department, dated 10.07.2012 which has given a privilege of five years age relaxation to the aspirant in view of the ban in recruitment, the first respondent referring G.O(Ms)No.131, Higher Education Department, dated 10.07.2012 and G.O(Ms)No.2100, Education, dated 18.09.1981 re-issued in G.O.(Ms) No.220, Higher Education, dated 06.07.2009, wherein the Tamil Nadu Technical Educational Subordinate Service Rule was amended in which the requisite qualification for the post of Lab Attender/ Skilled Assistant has been prescribed as the certificate in Industrial Training Institute Certificate/National Trade Certificate / national Apprenticeship Training Certificate in the appropriate trade, has informed the second respondent and the writ petitioner herein that the writ petitioner does not possess the requisite educational qualification to hold the post of Lab Attender.

5.The learned counsel appearing for the writ petitioner would contend that when his name was sponsored for the post of Lab Attender by the Employment Exchange on 23.02.2001, the requisite qualification prescribed for the said post was a pass in eight standard and practical experience not less than two years in the workshop and laboratory. As far as the writ petitioner is concerned, he has worked as Lab Attender in the second respondent's college between 14.07.1997 to 31.10.2010 on temporary basis. He has completed 12th standard and being fully qualified to hold the post as on 23.02.2001 his name was sponsored and Selection Committee also appointed him. But for the ban on recruitment imposed by the State Government subsequent to the date of appointment, there is no impediment in approving the application of the writ petitioner. The first respondent ought not to have cited the qualification prescribed subsequently to his appointment, to reject the approval.



6.The learned counsel appearing for the first respondent would submit that the ban on recruitment and subsequent lifting of the ban by the Government was for financial crunch and other administrative reasons. Since the aspirants for the Government job were not provided with any opportunity to get Government employment, the Government has thought fit to give age relaxation for maximum period of five years. Except the age relaxation, the petitioner herein has no other privilege for seeking approval of his appointment on the date of considering his request for approval. He did not possess the requisite qualification namely, certificate in ITI. Hence, the request was rejected.

7.Considering the rival submissions made by the learned counsels and on perusing the records, this Court finds that on the date of sponsoring the name of the writ petitioner, he had requisite qualification to hold the post of Lab Attender. He was also selected by the Staff Selection Committee and the appointment was with effect from 21.04.2001 as Lab Attender in the second respondent's college. While so, the formal approval of his appointment alone was pending which ought to have been done by the first respondent. When the proposal to approve his appointment was forwarded to the first respondent, citing the ban on recruitment the application was rejected. Even at that point of time, there was no higher qualification prescribed for this post. Just because at later point of time the State has thought fit to prescribe the higher educational qualification for the post of Lab Attender, the said amendment cannot have retrospective effect for a person who has already been found fit, eligible and appointment. For the single reason, the communication of the first respondent is liable to be quashed.

8.Accordingly, this writ petition is allowed. The impugned order dated 01.03.2014 passed by the first respondent is set aside. The first respondent is hereby directed to consider the request of the writ petitioner to approve the appointment taking into consideration the education qualification which was prescribed as on the date of his selection and appointment and not the subsequent qualification prescribed, which has come to effect only from 06.07.2009, the date on which the Special Rule for Tamil Nadu Technical Educational Service.

Sd/-

Assistant Registrar (Cr1.Side)

// True Copy //

Sub Assistant Registrar (CS-II)



To

The Commissioner of Technical Education,
Gurukulam, Chennai-600 025.

+1cc to Mr.E.V.N.Siva, Advocate, Sr.No.95751.

W.P. (MD) No.848 of 2015

cp

RAM-ES/RSK/SAR 2/24.12.2018/4P/3C