

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.02.2019

CORAM
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

W.A. No. 547 of 2015

A.Natarajan

... Appellant/Petitioner

Vs.

1.The Principal Secretary/Commissioner
Directorate of Technical Education
Chennai - 25.

2.The Secretary to Government
Higher Education Department
Chennai-9.

... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent, praying to set aside the order dated 21.04.2014 made in W.P. No. 23327 of 2009, filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Memo No.27462/B2/2009 dated 17.9.2009 issued by the first respondent -Principal Secretary/Commissioner, Directorate of Technical Education and to quash the same with a further direction to the respondents to promote the petitioner as Instructor as per the Rules with all benefits.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.C.Munusamy
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The respondent granted promotion to one Mr.R.Vijay Kumar and four others, who were juniors to the appellant, taking into account the orders passed by the writ court in W.P. No. 9111 of 1997 and the subsequent decision of the Division Bench in W.A. No. 1039 of 2006. Even though the appellant is similarly situated, his case was rejected only on the ground that by the time the issue was considered the post of Instructor was abolished. The learned Single Judge agreed with the submissions made on behalf of the the State and dismissed the writ petition. The order is under challenge at the instance of the unsuccessful writ petitioner.

2.The appellant was appointed as a skilled assistant in 1971. Subsequently, he was promoted as Motor Mechanic in 1980. The appellant passed Diploma in Mechanical Engineering in 1982.

3.The appellant acquired the qualification for appointment to the post of Instructor (Engineering) in 1991. Though the appellant has been working as Junior Draughting Officer since 1989, and the said post is the Feeder category for promotion to the post of Instructor (Engineering), follow up action was not taken by the respondent for giving him promotion.

4.While so, Thiru.R.Vijaya Kumar and four other employees, who were junior to the appellant filed a writ petition in W.P. No. 9111 of 1997, for issuance of Writ of a Mandamus to promote them as Instructors. The writ petition was allowed and Mandamus was issued to consider the claim of the petitioners therein for promotion to the post of Instructors taking into account the available vacancies. The said order was upheld by the Division Bench in W.A. No. 1039 of 2006. It is a matter of record that pursuant to the said order, the respondents promoted the petitioners in W.P. No. 9111 of 1997.

5.Even though the appellant was senior to the four other employees, he was not given promotion. The appellant therefore filed a writ petition in W.P. No. 12279 of 2009 for issuance of Writ of Mandamus for consideration of his case for promotion.

6.The first respondent pursuant to the order dated 06.07.2009 in W.P. No. 12279 of 2009, considered the case of the appellant and it was rejected on the ground that the Government has already abolished the post of Instructor in Government Polytechnic Colleges. The said order was unsuccessfully challenged by the petitioner in W.P. No. 12279 of 2009.

7.The learned counsel for the appellant contended that the respondents were not correct in denying promotion to the appellant solely on the ground that the post is no longer available. According to the learned counsel, the respondents should have considered the case of the appellant taking into account the date on which his immediate juniors were given promotion, or at least notional promotion taking into account the vacancy.

8.The learned Special Government Pleader contended that promotion was given to the juniors taking into account the court orders. According to the learned Special Government Pleader, the appellant approached the court only after his retirement and as such, his claim was rightly rejected by the first respondent.

9.There is no dispute that the appellant was eligible for promotion to the post of Instructor and there were also

vacancies. The first respondent appears to have not taken any action for giving promotion to the employees, who were eligible for consideration taking into account the qualification and the vacancies available. The employees, who were juniors to the appellant filed a writ petition in W.P. No. 9111 of 1997 and taking into account the order passed in the said writ petition on 10.09.2004, and the judgment of the Division Bench confirming the said order, the first respondent promoted Thiru.R.Vijaya Kumar and others.

10.The respondents have no case that Thiru. R.Vijaya Kumar is senior and as such, the appellant who is a junior, has no justifiable claim for promotion. The counter affidavit filed by the Commissioner of Technical Education, dated 13.06.2011 contains a statement to the effect that the juniors were promoted only on account of the orders passed by the writ court in W.P. No. 9111 of 1997 and the related judgment in W.A. No. 1039 of 2006.

11.The abolition of the post of Instructor is a subsequent event. The post was available when the writ petition was filed by Thiru R.Vijaya Kumar and others. It was only on account of the availability of post the first respondent promoted Thiru. R.Vijaya Kumar and others pursuant to the order dated 10.09.2004. Therefore, the crucial date is the date on which Thiru R.Vijaya Kumar was given promotion and not the date on which the post was abolished by the Government. This fundamental aspect was not considered by the learned Single Judge.

12.It is true that there was some delay on the part of the appellant in approaching the court. However, it is found that immediately after giving promotion to Thiru R.Vijaya Kumar, the appellant has given representation to the first respondent and based on the said representation only, the order impugned in the writ petition in W.P. No. 23327 of 2009 was passed by the first respondent. Therefore, it cannot be said that the appellant is not entitled to the benefit of the order giving promotion to his juniors.

13.The fact that Thiru R.Vijaya Kumar was given promotion only on the basis of the orders passed by the High Court cannot be a distinguishing factor to deny the benefits to a person who is similarly situated. We are therefore of the view that the appellant must succeed.

14.The order dated 13.06.2011 is set aside. The writ petition in W.P. No. 23329 of 2009 is partly allowed.

15.We direct the respondents to promote the appellant as Instructor taking into account the order of promotion in the case of R.Vijaya Kumar and others, the petitioners in W.P. No.

9111 of 1997. The order promoting the appellant should be given effect from the date on which such promotion was given to R.Vijaya Kumar and others. We make it clear that it would only be a notional promotion and the appellant is not entitled to monetary benefits. The respondents are directed to calculate the pension payable to the appellant taking into account his promotion to the post of Instructor. However, we make it clear that the order refixing the pension would have only prospective effect, meaning thereby, he is not entitled to the arrears of pension. Such exercise shall be completed on or before 31 March 2019.

16.The intra court appeal is allowed in part as indicated above. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

may a

To

1.The Principal Secretary/Commissioner
Directorate of Technical Education
Chennai - 25.

2.The Secretary to Government
Higher Education Department
Chennai-9.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.11206

W.A. No. 547 of 2015

VBA(CO)

rrs 21/03/2019

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