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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.34727 OF 2004
AND WPMP NO.41904 OF 2004

A.Sekaran

... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Principal Secretary
Labour and Employment Department
Fort St. George, Chennai - 600 009.

2.The Director / Commissioner
Employment and Training Department
Chepauk,
Chennai - 600 005.

3.The District Employment Officer
District Employment Exchange
Salem - 7.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the orders in Na.Ka.No.65230/THO.Nu.PA.2/2000 dated 26.09.2002 and 05.12.2002 passed by the second respondent and the order in Letter No.23789/P1/2003-5 dated 12.02.2004 passed by the first respondent confirming the orders of the second respondent, quash the same and consequently direct the respondents to appoint the petitioner as Junior Training Officer (Wireman) w.e.f. 07.02.2001 with all consequential benefits.

For Petitioner : Mr.V.Ajoy Khose
For Respondents: Ms.R.Janaki
Additional Government Pleader



O R D E R

The petitioner passed S.S.L.C. and joined Certificate Course in Industrial Training Institute. He was declared as a Wireman by National Council for Vocational Training in July 1993. Thereafter, he registered his trade in the District Employment Exchange, Salem, the third respondent herein. Thereafter, he joined one R.V. Power Engineer as Wireman from 20.10.1993 and worked there upto 05.11.1994. Thereafter, he underwent National Apprenticeship Training in Tamil Nadu Electricity Board, Salem, between 09.01.1995 and 08.01.1996. He sought registration of his experience with the employment exchange. The third respondent made an endorsement to register his experience from 20.10.1993 to 05.11.1994 with one R.V. Power Engineer and the apprentice training undergone with Electricity Board. The third respondent also cross verified the experience gained by the petitioner with the said R.V. Power Engineer. The said employer by his letter dated 20.04.2001 has also confirmed that the petitioner was employed between 20.10.1993 and 05.11.1994. Thereafter, the petitioner had experience as Wireman from 09.01.1996 to 24.12.1998 with one Electrical Contractor by name M/s. Pandian Electricals. This was also entered in the employment exchange.

2. The second respondent called for list of candidates for the post of Junior Training Officer (Wireman). The third respondent also has sponsored the list of candidates. However, the petitioner's experience was found to be lesser than three years. Therefore, his candidature was rejected and he was not given appointment. The reason stated was that the petitioner had experience only for the period between 1996 and 1998 and the seniority started from 10.12.1996 for NAC quota, which did not fall within the cut off date adopted for appointment of NAC holders i.e. on 23.03.1990. Therefore, for lack of experience and that he did not fall within the cut off date, his candidature was rejected, vide letter No.23789/P1/2003-5 dated 12.02.2004, against which, the petitioner made a representation on 18.04.2004. Since no order was passed on his representation, he has approached this Court for setting aside the impugned order of rejection and pray for a direction to appoint him as a Junior Training Officer (Wireman) with effect from 07.02.2001 with all consequential benefits.

3. Per contra, the learned Additional Government Pleader appearing for the respondents vehemently contended that the application for appointment to the post of Junior Training Officer (Wireman) called for by the respondents was of the year 2000. The petitioner should have experience of three years after getting the certificate and the previous experience would not be counted for that purpose. In that view of the matter, the



petitioner had fell short of three years of service, after getting the certificate and therefore, his case was rejected. Hence, the impugned order has been passed on valid grounds and that the selection, being completed in the year 2004 itself, the prayer sought for by the petitioner cannot be granted.

4. I have considered the submissions made on either side.

5. Admittedly, the petitioner is fully qualified to hold the post of Junior Training Officer (Wireman) as per the certificate issued by the National Council for Vocational Training in July 1993. He also had passed the Trade test conducted by the National Council for Vocational Training in May 1996. Thereafter, he obtained experience certificate for the period between 09.01.1996 to 24.12.1998. Thus, he had experience from January 1995 to December 1998, during and after obtaining National Apprentice Certificate. If the said period is counted along with the previous experience held by the petitioner, his experience would be more than three years. It is also pertinent to note that the petitioner had lost his parents and thereby, he fell within the priority category. When there are different categories like General Category, Priority Category, Ex-serviceman Category etc., the petitioner should have been considered with priority. Considering him under the General Category rather than on priority category, would deprive him of his chances for appointment.

6. As discussed above, the petitioner is qualified to be appointed in the General Category itself. If he is taken into consideration on priority category, he would definitely be given appointment. The petitioner had three years experience with National Trade Certificate and two years experience under Electricity Board and obtained National Apprentice Certificate. In both ways, the petitioner is qualified to be appointed as Junior Training Officer (Wireman). Thus, the order passed by the second respondent that he did not have experience, does not appear to be correct. In view of the matter, the impugned order is liable to be set aside and accordingly, set aside. A direction is given to the second respondent to consider the name of the petitioner for the post of Junior Training Officer (Wireman) with effect from the date on which his immediate junior was appointed, if required, by creating a supernumerary post, with notional benefits and pass appropriate orders, within a period of four weeks from the date of receipt of the copy of this order. It is made clear that the principle of "no work no pay" will apply and the petitioner will not be entitled to any backwages.



7. The writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TK
To

1.The Principal Secretary
The Government of Tamil Nadu
Labour and Employment Department
Fort St. George, Chennai - 600 009.

2.The Director / Commissioner
Employment and Training Department
Chepauk, Chennai - 600 005.

3.The District Employment Officer
District Employment Exchange
Salem - 7.

+1 cc to Government Pleader Sr.No. 102926

+1cc to Mr.V.Ajoy Khose , Advocate SR.No. 102065

W.P.NO.34727 OF 2004

A.SK(08/01/2020)