

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.15174 of 2016

E. Panchatcharam

..Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Tourism and Culture Department, Secretariat,
Chennai-600 009.

2.The Commissioner of Art and Culture (i/c),
O/o, The Directorate of Art and Culture,
Tamil Valarchi Valagam,
Chennai - 8.

3.The Principal,
Government College of Architecture and Sculpture,
Mamallapuram, Kancheepuram District.

..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records connected with the impugned rejection order passed by the 2nd respondent in Na.Ka.No.4819/AA3/2013-2, dated 07.10.2015 and quash the same in so far as it denies promotion from 2012 onwards and consequently direct the respondents to promote the petitioner as Instructor with effect from 2012 onwards as per rules with all benefits based on the proposal of the 3rd respondent dated 20.07.2011.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.J. Ramesh
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking to call for the records connected with the impugned order of rejection passed by the second respondent in Na.Ka.No.4819/AA3/2013-2, dated 07.10.2015 and quash the same, in so far as it denies promotion from 2012 onwards and consequently, direct the respondents to promote the petitioner as Instructor with effect from 2012 onwards as per the Rules with all benefits, based on the proposal of the third respondent dated 20.07.2011.

2. According to the writ petitioner, he was initially appointed as "Museum Keeper" under Rule 10(a)(i) of the Tamil Nadu General Services Rules on 23.12.1981 by the Director of Technical Education, Chennai and posted in the Institute of Architecture and Sculpture, Mamallapuram. Thereafter, the writ petitioner has passed the Bachelor Degree of Fine Arts in Sculpture. After passing the degree, he made a representation to the respondent(s) requesting to appoint him as Lecturer in Sculpture in the existing vacancy, because, for the said Lecturer post is concerned, the method of appointment is direct recruitment, and recruitment by transfer of other services (non-teaching staff). For the aforesaid post, the qualification prescribed in the Rules is a degree of Bachelor of Fine Arts in Sculpture, with ten years of teaching experience in a particular subject from the above said post. Following the said procedure, the Museum Keeper post can be appointed as Instructor. Thereafter, he made a representation through proper channel to the respondents with a request to appoint him as Lecturer, as he got all requisite qualification for the said post. Based on this, the third respondent/Principal of Mamallapuram College of Architecture and Sculpture has sent a proposal to the second respondent/Commissioner of Art and Culture with a request to issue a posting order so as to appoint the petitioner namely E.Panchatcharam as Lecturer by proceedings in Lr.No.Ne.Mu.Ka.No.391/A/2001, dated 16.04.2001. On receipt of the said proposal, the second respondent has not passed any order. Therefore, he made several representations to the respondents on several dates, but there was no reply from them so far. On 02.05.2003, the third respondent has sent a clarification letter to the second respondent/Commissioner in Na.Ka.No.67/A/2003, dated 02.05.2003, wherein it is stated that the petitioner is eligible and entitled to be appointed as Lecturer in the existing vacancy and also recommended his name for appointment as Lecturer. After receipt of the said letter dated 02.05.2003, there was no response from the second respondent herein and the same is pending with the respondents for the past three years without any progress. Thereafter, he

has filed an Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.1288 of 2004, directing the respondents to consider the claim of the petitioner and pass an order on the proposal sent by the third respondent in Ne.Mu.Ka.No.391/A/2001 dated 16.04.2001 and Na.Ka.No.67/A/2003 dated 02.05.2003, which was addressed to the second respondent with regard to appointment as Lecturer in the existing vacancy within the stipulated time. After hearing both sides, the Tribunal had passed final order on the above said O.A.No.1288 of 2004 dated 25.03.2004. Pursuant to the Tribunal's order, the first respondent had rejected the petitioner's claim by Letter No.14291/Cultural.1/2004-10, dated 23.09.2005, and they did not pass any order on the proposal of the third respondent based on the Tribunal's order. Thereafter, the respondent had rejected the petitioner's request in Letter No.18800/Cultural.1/2005-5, dated 13.01.2006. Challenging the aforesaid orders dated 23.09.2005 and 13.01.2006, the petitioner has filed a writ petition before this Court in W.P.No.7240 of 2006 on various grounds. After hearing both sides, this Court had passed the final order directing the Government to consider the case of the petitioner and if the Government deems fit to give relaxation to Rule-II of the Special Rules of the Tamil Nadu Collegiate Education Subordinate Service in the case of the petitioner and also in the case of similarly placed person for the purpose of being recruited as a lecturer it may do so. After receipt of the order dated 17.07.2008, the Government issued a letter to him in No.4373/Culture-1-1/2008-15, dated 30.12.2008 and also rejected his claim on the ground that since the petitioner is Junior most in service, his request for promotion as a Lecturer by relaxing the relevant Rules, could not be considered and again the writ petitioner has challenged the said rejection order dated 30.12.2008 by filing a writ petition before this Court in W.P.No.6369 of 2009. After hearing both sides, this Court has passed final order on 01.04.2010 allowing the said writ petition and the impugned order was set aside and the respondents were directed to consider the claim of the petitioner for appointment to the post of Lecturer, taking into consideration the proposal dated 16.04.2001 sent by the third respondent, within a period of eight weeks from the date of receipt of a copy of this order. Thereafter, as against the learned Single Judge's order dated 01.04.2010 passed in the said writ petition, the respondent has filed a writ appeal before this Court in W.A.No.1932 of 2010. After hearing both sides, a Division Bench of this Court has allowed the writ appeal with observation by its judgment dated 18.11.2010 that Rule should be framed at the earliest point of time. Thereafter, the Government has framed the Adhoc Rules to the post of Instructor in Sculpture in G.O.Ms.No.423, Education Department, dated 31.03.1986. As per the aforesaid Rules, the petitioner is fully qualified for the post of Instructor. Hence, the petitioner

earlier made a representation to the respondent on 19.04.1996, with a request to consider his name for promotion as Instructor as per the Rules. The respondent replied in memo dated 16.05.1996 that request for promotion as Instructor will be considered only after regularizing his service in the post of Museum Keeper. After his regularization, the petitioner made several representations to the respondent on 04.03.1999 and 03.04.2000, but there was no reply from them. Therefore, the petitioner filed a writ petition in W.P.No.15999 of 2012 to direct the second respondent to consider the proposal made by the third respondent and pass orders on merits. Pursuant to the order of this Court, the proposal was rejected in Na.Ka.No.2004/B3/2011, dated 27.09.2012 on the ground that retrospective promotion as Instructor may not be given to the individual. Again, the writ petitioner filed a writ petition in W.P.No.20574 of 2013 before this Court challenging the order dated 27.09.2012 and consequently, to direct the respondents to promote the petitioner as Instructor as per the Rules based on the proposal of the third respondent. After hearing both sides, this Court passed the final order on 21.07.2015 observing as follows:-

"During the course of the argument, the learned counsel appearing for the petitioner submitted that the impugned order came to be passed on a wrong appreciation of the petitioner's representation, as if the petitioner sought for retrospective promotion, but the petitioner's request itself is to consider his case for promotion with prospective effect atleast from 2012 onwards, the date on which the order of rejection has been passed. The learned counsel further submitted that the petitioner would be satisfied if a direction is issued to the respondents to consider his case for promotion with prospective effect.

In view of the above, the writ petition is disposed of by directing the petitioner to submit a representation to the second respondent through proper channel viz., through the third respondent, within a period of three weeks from the date of receipt of a copy of this order. On receipt of such representation, the second respondent is directed to consider as to whether the petitioner's case can be considered for promotion prospectively, after calling for appropriate remarks from the third respondent, within a period of six weeks from the date on which the remarks are furnished by the third respondent."

Pursuant to the aforesaid order of this Court, the respondent has rejected the claim of the petitioner, without considering the petitioner's request to grant promotion to the post of Instructor with effect from 2012 onwards. According to the learned counsel for the petitioner, the respondent has not considered his claim without giving any valid reasons and simply rejected the request of the petitioner is illegal and the same is liable to be quashed. Therefore, the respondent has not complied with the order of this Court by passing the reasoned orders.

3. Mr.J.Ramesh, learned Additional Government Pleader appearing for the respondents 1 to 3 relying upon the counter affidavit in para No.14 which reads thus.-

It is submitted that taking into consideration the orders of this Court, the representation of the petitioner dated 10.08.2015, the remarks of the Principal, Government College of Architecture and Sculpture, Mamallapuram dated 26.08.2015 and 16.09.2015, the petitioner was appointed by recruitment by transfer to the post of Instructor, vacant in the College, vide proceedings Rc.No.4819/A3/2013, dated 07.10.2015 and joined as Instructor on 09.10.2015. As the petitioner had few months for retirement, his representation for retrospective effect from 2012 could not be considered but atleast appointment was given prospectively on 07.10.2015 to implement the orders of this Court. Hence, as the petitioner had filed several cases and only in W.P.No.20574 of 2013, he had pleaded prospective promotion as Instructor and as he was on the verge of retirement, his plea was considered after getting remarks from the Principal and appointed as Instructor with effect from 07.10.2015 which action was not malafide and vindictive in nature. Subsequent to this, just before his retirement (31.05.2016), the petitioner has filed this W.P.No.15174 of 2016 on 20.04.2016, which shows that he wants promotion by any available method. सत्यमेव जयते

4. Heard Mr.G. Elanchezhian, learned counsel appearing for the petitioner and Mr.J. Ramesh, learned Additional Government Pleader appearing for the respondents 1 to 3 and perused the materials available on record.

5. It appears that the relevant Rules have been framed and consequently, the petitioner's name was considered for promotion, and he was promoted on 07.10.2015, the claim of the petitioner seeking for the appointment with effect from 2012, has not been considered by the respondents and reject his claim without assigning any reasons in the impugned order. On earlier occasion, the writ petitioner has approached this Court with a

limited prayer to consider the petitioner's claim for the appointment to the post of Instructor with retrospective effect in the Tamil Nadu Institute of Architecture and Sculpture, Mamallapuram. This Court, in W.P.20574 of 2013, challenging the rejection order dated 27.09.2012 passed by the second respondent/Commissioner of Art and Culture (i/c), O/o, The Directorate of Art and Culture, Tamil Valarchi Valagam, Chennai - 8, and the said order was quashed by order dated 21.07.2015, had observed as follows:-

- "4. During the course of the argument, the learned counsel appearing for the petitioner submitted that the impugned order came to be passed on a wrong appreciation of the petitioner's representation, as if the petitioner sought for retrospective promotion, but the petitioner's request itself is to consider his case for promotion with prospective effect atleast from 2012 onwards, the date on which the order of rejection has been passed. The learned counsel further submitted that the petitioner would be satisfied if a direction is issued to the respondents to consider his case for promotion with prospective effect.
5. However, for this purpose, first the petitioner has to approach the respondents by way of representation and only thereafter, the same shall be directed to be considered.
6. The learned Additional Government Pleader appearing for the respondents, on instructions, submitted that if the petitioner is ready and willing to submit a fresh representation, a direction may be given to the Authorities to consider his promotion prospectively.
7. In view of the above, the writ petition is disposed of by directing the petitioner to submit a representation to the second respondent through proper channel viz., through the third respondent, within a period of three weeks from the date of receipt of a copy of this order. On receipt of such representation, the second respondent is directed to consider as to whether the petitioner's case can be considered for promotion prospectively, after calling for appropriate remarks from the third respondent, within a period of six weeks from the date on which the remarks are furnished by the third respondent."

6. Despite the above order of this Court, the respondents had rejected the request made by the writ petitioner to grant his promotion with prospective effect from the year 2012 onwards, challenging the said order, the present writ petition has been filed by the petitioner before this Court.

7. The impugned order passed by the respondent is a cryptic order without assigning reason. Thus, this Court is of the considered view that the impugned order passed by the second respondent is liable to be quashed.

8. In view of the aforesaid facts and circumstances of the case, by the ends of justice, this Court is inclined to pass the following order:

(a) The impugned order passed by the second respondent in Na.Ka.No.4819/AA3/2013-2, dated 07.10.2015, is hereby quashed.

(b) The second respondent is directed to consider the petitioner's representation dated 10.04.2013 and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, within a period of twelve weeks (12) from the date of receipt of a copy of this order, by taking into account the earlier order passed by this Court in W.P.No.6369 of 2009, dated 01.04.2009 to consider the claim of the petitioner for appointment to the post of Lecturer. Insofar as its relates to the promotion to be granted with effect from the year 2012.

9. Accordingly, the writ petition is allowed with above terms. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government,
The State of Tamil Nadu,
Tourism and Culture Department, Secretariat,
Chennai-600 009.

2.The Commissioner of Art and Culture (i/c),
O/o, The Directorate of Art and Culture,
Tamil Valarchi Valagam, Chennai - 8.

3.The Principal,
Government College of Architecture and Sculpture,
Mamallapuram, Kancheepuram District.

+1 cc to Mr.G.Elanchezhian Advocate srl05530

+1 cc to Government Pleader sr 106288

W.P.No.15174 of 2016

aa04/08/2020