

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5797 of 2010
and MP.No.1 of 2010

R.Prakash

.. Petitioner

.Vs.

1.The Principal,
Institute of Road and
Transport Technology,
Erode-638 316.

2.The Director,
Institute of Road Transport,
Tharamani, Chennai 600 113.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, issue a Writ of Certiorarified Mandamus, to call for records of the 1st respondent in his proceedings in Memo No.1696/IRTT/AD2/EST 4/NTS/2009 dated 23.09.2009 and quash the same and consequentially directing the respondents to regularise the petitioner's service as Skilled Assistant w.e.f.22.08.1992 and to give selection grade pay scale after completion of 10 years as per service rules and all attended benefits.

For Petitioner : Mr.R.Kannan
For Respondents : Mrs.Kala Ramesh
for R1 and R2

ORDER

The writ petition is filed to issue a Writ of Certiorarified Mandamus, to quash the proceedings in Memo No.1696/IRTT/AD2/EST 4/NTS/2009 dated 23.09.2009 and consequently, direct the respondents to regularise the petitioner's service as Skilled Assistant w.e. from 22.08.1992 and to give other consequential benefits.

2.The petitioner was called for an interview for the post of Skilled Assistant in the Institute of Road and Transport Technology, Erode. He was provisionally appointed as a Skilled Assistant on a consolidated monthly pay of Rs.750/-. The order states that the appointment is purely temporary and he is liable

to be terminated at any time without any notice. The record shows that the petitioner was transferred as a Skilled Assistant Grade II From Erode to Perundurai Medical Superintendent IRT-Medical College, Perundurai. The petitioner was thereafter sent back to Erode. The petitioner gave a representation on 12.03.1993 to regularise his services as Skilled Assistant w.e.f. 22.08.1992. Since the representation was not considered, he filed W.P.No.8215 of 2001 and this Court by an order dated 30.06.2009 directed the respondents therein to consider the representation of the petitioner. The representation was rejected by proceedings dated 23.09.2009 stating that his services were regularised with effect from 12.06.1996 and the order also stated that his service was not satisfactory. This order is challenged in this writ petition.

3.The learned counsel for the petitioner states that after completion of 2 years of service, petitioner is entitled for regularisation and the respondents are therefore not justified in regularising the petitioner only from 12.06.1996 and not from 22.08.1992, i.e., the completion of the probation on par with his juniors.

4.The learned counsel for the respondents would state that the services of the petitioner was completely unsatisfactory. The counter affidavit of the respondent stated several incidents to bring out the performance of the petitioner was unsatisfactory.

5.The learned counsel for the petitioner has filed a typed set of papers wherein the petitioner himself has accepted his lapses and promised better performance in future.

6.The learned counsel for the respondent had also relied on rule 2(b) of the Service Rules of the Institute of Road Transport to substantiate the contention that the right to claim time scale of pay, regularly, is not automatic and is dependent upon the performance, conduct and regularity in attendance. Rule 2(b) states as under :

2(b). All First appointment by direct recruitment shall be on consolidated wages only, for a period that may be specified by the management. Such employees shall be brought on to the time scale of pay, regularly, after closely watching the performance, conduct and regularity in attendance. However in special cases, appointment by direct recruitment on regular scales can be made subject to approval by the Governing Council and such employees

shall undergo probation for a period of 2 years within a continuous period of 3 years and the principle guide lines issued by the Government from time to time may be followed in such cases."

(emphasis supplied)

7.The petitioner was appointed in year 1990. The appointment order states that the appointment is purely temporary. Rule 2(b) of the Service Rules of the Institute of Road Transport states that the employee would be brought in, on regular time scale of pay only after closely watching the performance, conduct and regularity in attendance of the employee. It is the matter of record that the conduct of the petitioner was not upto the mark and the petitioner had himself stated that he would improve in future. In view of the fact that the rule itself postulates that the employee would be brought in the regular time scale of pay only based on his performance, it cannot be said that regularisation should automatically be given after completion of the period of probation of two years. The petitioner's service has been regularised in the year 1996 in view of the service rule. It cannot be said that the petitioner can claim the regularisation after completion of two years probation as a matter of right.

Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1.The Principal, Institute of Road and Transport Technology,
Erode-638 316.

2.The Director, Institute of Road Transport,
Tharamani, Chennai 600 113.

+1 cc to M/s.Kala Ramesh, Advocate Sr.No. 79605

AKM/29.11.19/3P-4C /

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