

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6394 of 2010

S.Elumalai

... Petitioner

Vs

1. The Principal,
Pondicherry Engineering College,
Puducherry.

2. Mr.N.Dakshinamoorthy Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent dated 31.03.2009 made in PEC/Estt/E-4/Per/2009/1283, quash the same and consequently, direct the respondent to appoint the petitioner in the post of Binder in the first respondent college.

For Petitioner : Mr.S.M.Baskaran

For Respondents: Mrs.N.Mala,
Standing Counsel for R1

O R D E R

This Writ petition has been filed, challenging the order dated 31.03.2009 in PEC/Estt/E-4/per/2009/1283 passed by the 1st respondent, rejecting the representation dated 25.02.2008 sent by the petitioner, seeking for promotion to the post of Binding Assistant / Binder.

2. The facts leading to the filing of this writ petition is briefly narrated hereunder :-

(a) The petitioner joined the first respondent Engineering College as NMR on 01.07.1988. He was later appointed as Helper by an order dated 28.10.1994 and thereafter, he was put on probation for a period of two years and after successful completion of probation, by an order dated 06.10.1998, the petitioner was confirmed in the post of Helper with effect from 28.10.1996.

b) The next promotion to the post of Helper is that of a binding Assistant. Tentative seniority list was published, on which objections were also called for and the final seniority list was issued on 13.01.2000. In the Seniority list which was published on 13.01.2000, the petitioner was shown as junior to 2nd respondent one Mr.Dakshinamurthy. Admittedly, the petitioner did not raise objection and when no one challenged the tentative seniority list, the 1st respondent issued the final seniority list on 13.01.2001.

c) The tentative Seniority list for binding assistant was circulated on 22.05.2003, in which, again the petitioner was shown junior to the 2nd respondent. The petitioner raised his objections. The same was rejected and final seniority list dated 08.07.2003 was published confirming the tentative seniority list.

d) The petitioner thereafter gave a representation to the respondent for promoting him as a binder stating that when the petitioner was confirmed as a Helper, the 2nd respondent has not entered the service and therefore, the petitioner is senior to the 2nd respondent. He further states that the recruitment rules for the post of appointment of helper provides that promotion to the post of helper can be done by way of promotion from binding assistant with five years service or by promotion from helpers who possess Binding (Higher) certificate and have 10 years service in P.E.C Library.

e) Since the representation was not considered, the petitioner filed WP No.25802 of 2008, wherein, this Court by an order dated 19.01.2009, directed the first respondent to consider the representation of the petitioner and pass orders within a period of twelve weeks from the date of receipt of the order.

3. The 1st respondent by an order impugned herein has rejected the representation of the petitioner, which is challenged in this present writ petition.

4. The learned counsel for the petitioner has reiterated the averments made in the writ petition and states that when the petitioner was confirmed as a Binder on 06.10.1998, the 2nd respondent had not entered service. The 2nd respondent therefore could not have been placed higher than the petitioner. He further states that as per the service rules, the petitioner is eligible to be promoted as a binder, since he has served more than 10 years of service as a helper.

5. Per contra, the learned counsel appearing for the respondent would contend that since the petitioner did not

challenge the seniority list dated 13.01.2000, which had attained finality and he cannot now challenge the promotion of the 2nd respondent as illegal. The learned counsel for the respondent would rely upon the recruitment rules of the 1st respondent, which reads thus :-

In case of recruitment by promotion/ deputation / transfer, grades from which promotion / deputation / transfer to be made	Promotion from among the Helpers of PEC having SSLC and Lower grade Binding Certificate with minimum of 5 years of service in the relevant field in PEC. VIII Pass and Higher grade Binding Certificate with 5 years of service in the relevant field in PEC. VIII Standard pass and lower grade binding certificate with 8 years service in relevant field in PEC
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The learned counsel for the respondent further contends that the reason why the 2nd respondent was placed higher to the petitioner in the post of binding assistant was because the rules provided that an helper with SSLC and lower grade binding certificate having minimum five years of service is eligible to be appointed as a binding Assistant and a person who is 8th standard pass with lower grade binding certificate can be promoted only after eight years of regular service as a binding assistant. The learned counsel for the respondent states that since the 2nd respondent possessed SSLC qualification and the petitioner being only a 8th standard pass, the 2nd respondent was placed higher to the petitioner.

6. It is an admitted position of fact that the petitioner did not challenge the seniority lists.

7. The 2nd respondent while passing the impugned order has given the following reasons to reject the representation of the petitioner:-

"a) Thiru S Elumalai in his representation has objected treating Thiru.M.Dakshinamourthy as senior to him under the presumption that probation and confirmation orders in respect of Thiru M.Dakshinamourthy have not been issued so far. In this regard, it is noticed from para 2 of sub. Para III of this order that completion of probation for both of them had been issued with effect from 27.10.96 and also both of them were confirmed in the post of helper with effect from 28.10.96, though the dates of issues

of orders were different. Therefore, the presumption of Thiru. S.Elumalai is not based on facts and hence his objection on seniority does not merit consideration. Moreover orders of Government of India on seniority do not link seniority with probation and confirmation. Hence they do not have any bearing with seniority.

b) It is also noticed vide sub para II and iv of para 2 of this order that on both occasion the final seniority list of helper was issued only after calling for objection if any on the tentative seniority list and Thiru S Elumalai on both occasions has not raised any objection on Thiru M.Dakshinamourthy to be the senior to him. Hence it is noticed that the college has follows the procedure properly in the issue of seniority. It is also noticed that his request for retrospective promotion as binding Assistant by modifying the educational qualification and consequently promotion to the post of Binder has been examined by the college and he was informed that his request could not be considered in accordance with rule and R.R.

4. In view of the foregoing, the undersigned comes to a conclusion that the representation on Thiru.S.Elumalai 25.02.2008 does not have merit consideration as per the rules in respect of seniority and also in respect of R.R for the post of Binding Assistant and Binder. Hence this representation is disposed accordingly.

In any event the petitioner is otherwise was not eligible to the post of binding assistant because the petitioner possess only a lower certificate in binding.

8. This Court does not find any infirmity with the impugned order. Admittedly, the petitioner has not challenged the seniority list which was published on 13.01.2001, wherein, the petitioner was shown junior to the 2nd respondent. He also did not challenge this finality seniority list dated 08.07.2003, where again the petitioner was shown junior to the 2nd respondent. The seniority list dated 08.07.2003 had been finalised after rejecting the objection raised by the petitioner. In the absence of a challenge to the two seniority lists, the petitioner cannot now turn around and say that he is senior to the 2nd respondent on the ground that the 2nd respondent has joined in the service only after the petitioner. Even otherwise a perusal of the rules would show that the petitioner is an 8th standard pass having a lower grade binding certificate unlike the 2nd respondent, who is a SSLC. The 2nd

respondent is therefore has to be considered first for appointment to the post of binder. It is well settled that settled seniority lists cannot be unsettled after a long time. The writ as prayed for therefore cannot be granted. Accordingly this Writ petition is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

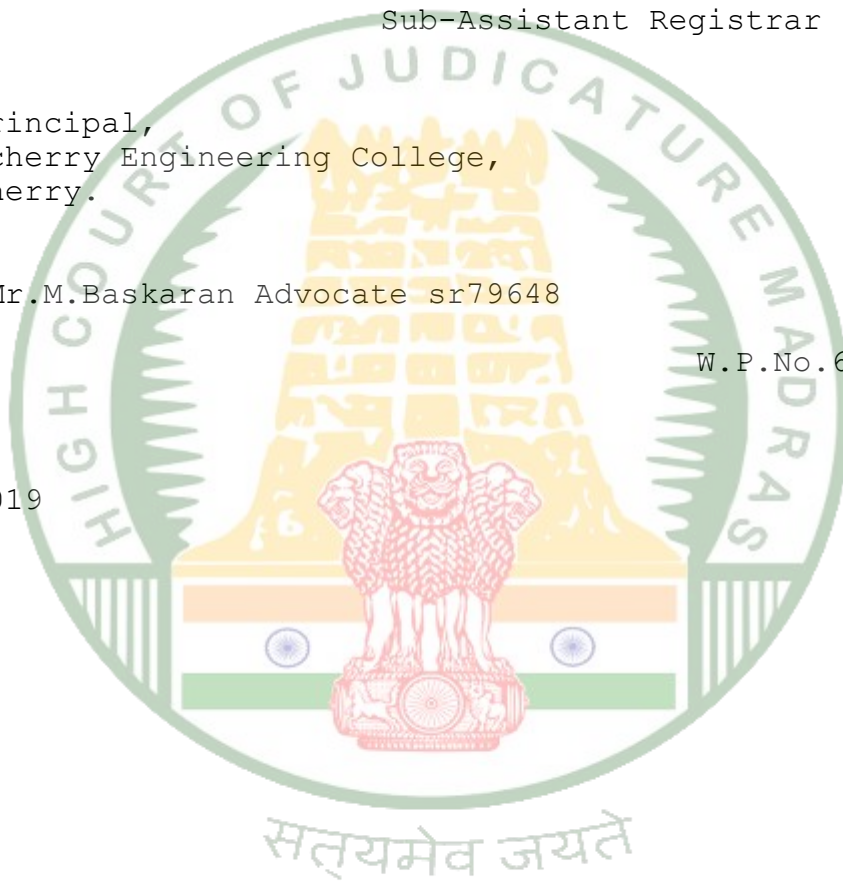
To

The Principal,
Pondicherry Engineering College,
Puducherry.

+1 cc to Mr.M.Baskaran Advocate sr79648

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