

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:20.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.17902 of 2019

Venkataraj

...Petitioner

Vs.

1.The State of Tamil Nadu,
rep. By its Principal Secretary,
Higher Education Department,
Secretariat, Chennai - 9.

2.The Commissioner,
Directorate of Technical Education,
No.53, Sardar Patil Road,
Guindy, Chennai - 25.

3.The Director,
Directorate of Sugars,
No.690 Periyar EVR Building
Anna Salai, Nandanam,
Chennai - 35.

4.The Principal,
Dharmapuri District Cooperative
Sugar Mills Polytechnic College,
Now Government Polytechnic College,
Palacode - 636 808.

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India, for issuance of Writ of Mandamus directing the respondents 1 and 2 to implement the recommendation of 3rd respondent in his letter dated 23.03.2018 in Na.Ka.No.1891/ST2/2015, by absorb the petitioner who is working as a Lecturer on daily wages in the Government Polytechnic College, Dharmapuri within the 43 teaching post sanctioned by G.O.Ms.No.26, (Higher Education B2 Department) dated 30.01.2018 as regular lecturer on time scale pay in the 4th respondent Polytechnic College.

For Petitioner : Mr.R.Ezhilarasan

For Respondents : Mr.V.Kathirvelu

Special Government Pleader

ORDER

The petitioner is working as Lecturer in the 4th respondent Polytechnic College. Originally the 4th respondent College was managed by Dharmapuri District Co-operative Sugar Mills Limited, Palacode. The College was run by self supporting basis based on the revenue generate by the fees paid by the students. Thereafter, the Sugar Mill approached the Government and requested the Government to take over the Institution as the Society was not able to run the Institution due to severe financial stress. The Government viz., the 1st respondent accepted the request and converted the 4th respondent Polytechnic College into Government Polytechnic College and after conversion, a Merger Committee was constituted to decide the terms and conditions of absorption of the staff hitherto employed by the College.

2.According to the petitioner, he has completed Post Graduate Degree in M.Sc., Maths and B.Ed., Course. He was originally recruited in the 4th respondent College as Lecturer on 08.06.2012. The recruitment was made through regular selection process after a paper publication and following the guidance and norms fixed by the AICTE. The petitioner was paid daily wages in view of the financial crisis faced by the management and according to him, he was requested to continue his job by the management in the interest of students. Therefore, the petitioner continued as Daily Wage Lecturer for the last 7 years.

3.At the time when the College was converted, a resolution was passed on 20.10.2017 by the Sugar Mill recommending for absorption of all staff employed in the College. The petitioner was also sent an individual representation to the Government for his absorption, since he has been continuously employed for 7 years and has been discharging his duties without any complaints. After the conversion, the Government has issued G.O.(Ms)No.26 dated 30.01.2018 sanctioning 43 teaching posts and out of the sanctioned post, the petitioner is eligible to be absorbed

as regular Lecturer. Recently, the petitioner has also sent a written representation on 13.05.2019. Though it was received, there was no response from the Government and hence, he is before this Court seeking for issue of writ of mandamus directing the Government to absorb his service as Lecturer in the 4th respondent College.

4.The learned counsel for the petitioner at the outset would submit that the 3rd respondent has recommended his absorption on 23.03.2018 and the petitioner sought his absorption within the sanctioned teaching staff by the Government. According to the petitioner, he has been continuously employed and his name finds in the list of Daily Wages Staff Seniority List maintained by the 4th respondent College. According to the petitioner, many of the persons who had been appointed and working like the petitioner had been subsequently absorbed after the Government took over the Institution. Therefore, a similar benefit is required to be extended to the petitioner herein as well.

5.After notice, Mr.V.Kathirvelu, learned Special Government Pleader has entered appearance and the learned Special Government Pleader would submit that the petitioner herein, being a Daily Wager, cannot seek for the absorption, since he was not working in any sanctioned post. According to the learned Special Government Pleader, the petitioner was not one of the identified staff working in the sanctioned post for the purpose of absorption. According to him, at the time of conversion of the College, the College was maintaining the list of regular staff and staff on daily wages. Only the regular staff were given the benefit of absorption and not the staff like the petitioner herein. According to him, unless the petitioner is appointed against the second vacancy, he cannot claim for absorption in Government Service. The learned Special Government Pleader would also submit that he was not regularly selected and appointed in 2012 and hence, his claim is legally untenable and cannot be considered by this Court.

6.At this, the learned counsel for the petitioner would submit that recently this Court, considered similar claim and has allowed writ petition in W.P.No.17572 of 2018 dated 18.06.2018. This Court, while allowing the writ petition, has considered similar objections on behalf of the respondents, yet allowed the writ petition. The petitioner therein was also a Lecturer like the petitioner herein in

the 4th respondent College. This Court considered every aspect of the issue and ultimately accepted the claim of the petitioner therein for his absorption in Government service.

7.The arguments advanced by the learned counsel and ultimate conclusion reached by this Court from paragraphs 4 to 17 would be a complete answer to the objections raised on behalf of the respondent herein. The said paragraphs are extracted herein.

"4.Shri.V.Prakash, the learned Senior counsel appearing for the petitioner would submit that for all practical purposes, the petitioner was treated as a regular Lecturer and the very fact that he was continuously employed since 2015 till date would amply show that the post in which he is functioning is sanctioned as 'regular' and there is a requirement of Lecturer (Computer Engineering) in the institution.

5.According to the learned Senior counsel, the factum of the employment of the petitioner is not in dispute at all, since the fifth respondent institution has given a certificate of his continuous employment. He would draw the attention of this Court to the documents filed along with the typed set of papers to vouch the said fact. Moreover, the learned Senior counsel would also submit that the staff details have been notified by the College on 30.04.2014, in which, the name of the petitioner figures as the 'Lecturer in Computer Science and Engineering' along with other teaching staff in various other Engineering subjects. The learned Senior counsel would also draw the attention of this Court to a letter issued by the second respondent recommending the case of absorption of Lecturers, who were employed on consolidated basis. In fact, the learned Senior counsel would also draw the attention of this Court to the case of one Lecturer, viz., K.Anitha and would submit that she was also employed on consolidated basis and subsequently made as a 'regular staff'. The seniority list showing her appointment as a 'regular staff' is enclosed along with the letter of the second respondent dated October 2017. The learned Senior Counsel would, therefore, submit that leaving out the petitioner from the benefit

of absorption is per se discriminatory, arbitrary and in violation of Articles 14 and 16 of the Constitution of India.

6. According to the learned Senior counsel, the petitioner is fully qualified and only on the basis of his qualification, he was selected for appointment and he has been continued for 14 years. The College having extracted work from the petitioner in the interest of the students, cannot continue the petitioner on consolidated basis and also leave him in continuous state of uncertainty of his career. The learned Senior counsel would therefore urge this Court to allow the writ petition.

7. Mr. V. Kathirvelu, learned Special Government Pleader entered appearance for R1 and R3 and Mr. L. P. Shanmugasundaram, learned Special Government Pleader entered appearance for R2, R4 and R5.

8. The learned counsel appearing for the fourth respondent would submit that the petitioner himself has given an undertaking on 23.09.2011 in a stamp paper that he would not claim any benefit on he being temporarily employed. According to him, by virtue of his undertaking, he has accepted to serve the institution on temporary basis and has given up all his claims towards absorption or other financial benefits.

9. The learned Special Government Pleader appearing for the third respondent would contend that the petitioner was employed only as a Guest Lecturer in Computer Engineering Department and according to him there are not enough students today, justifying the continuance of employment of the petitioner on consolidated pay, in Computer Engineering Department. According to the learned Special Government Pleader, the Merger Committee has recommended 27 regular and qualified teaching and non-teaching staff and submitted a proposal to that effect. According to him, the 5th respondent College has not recommended the petitioner's name, as he was not a regular staff. Moreover, he would submit that

the Computer Engineering course was not sanctioned in that college and therefore, the post of Lecturer, in which the petitioner was employed, was also not sanctioned. Therefore, according to the learned Special Government Pleader for the 3rd respondent, no relief ever be granted to the petitioner, since he is working in a post which is not sanctioned by the Government as on date. Unless there is a sanctioned post, the question of considering absorption of the petitioner would not arise at all.

10. Considered the submissions made by the learned Senior counsel appearing for the petitioner and also the counsels appearing for the respondents.

11. The fact of the petitioner being continuously employed, whether as a Guest Lecturer or a regular Lecturer since 2005, is not in dispute. The point for consideration before this Court is as to whether the petitioner is entitled to be absorbed in Government service as that of other Lecturers, on the basis of his continuous employment for 14 years or not.

12. No doubt, for staking a claim for absorption to a particular post, the person has to demonstrate that there is a sanctioned post and he is fully qualified to hold that post. In this case, according to the respondents, the post is not sanctioned. But at the same time, this Court cannot also ignore the very crucial fact that the petitioner, despite the non-sanctioning of the post, has been continuously employed in Computer Engineering from 2005 till date. It is not a small spell of employment where it can be ignored by this Court when such relief of absorption is prayed. But in this case, the petitioner has been employed for 14 years, which fact alone has to outweigh the other objections raised on behalf of the respondents.

13. The petitioner's continuous employment since 2005 would be a point in his favour that there exists requirement of Lecturer in Computer Engineering. If the post is not sanctioned, then it is open to the authorities concerned to submit

a proposal and have it sanctioned. The petitioner cannot be continuously employed on a consolidated basis, as that would not subserve the interest of justice. The petitioner cannot be made to work on a consolidated pay for an indefinite period of time clouding his tenure in a perpetual state of uncertainty.

14.After all, if a person is employed continuously for a period of 14 years, such person would hope that his services will be regularised one day and such hope cannot be allowed to be extinguished on technical objections. It is also a matter of fact that several teaching posts were sanctioned and absorption have taken place in respect of several teaching staff employed in the Society, after the Government took over the institution in 2018. When such benevolence is shown to several teaching staff by the Government, this Court trust that the same benevolence shall be shown to the petitioner as well, when the petitioner has discharged his duty as Lecturer (Computer Engineering) for the last 14 years.

15.The learned Senior counsel Mr.V.Prakash would also point out about the other teaching staff, viz., Mrs.Anitha, who was serving on consolidated basis, was subsequently absorbed and in which event, the Court finds that there cannot be any impediment to extend the same concession to this petitioner as well and give him parity of treatment in regard to the benefits conferred on the other similarly placed persons. Moreover, the contention regarding the undertaking given by the petitioner is too naive an argument to be accepted by any Court much less a Constitutional Court. Such argument is bound to be rejected outright. No citizen of this country can part away his Constitutional right by giving such undertaking and if any such undertaking is obtained and relied on, it must be discountenanced outright.

16.For the aforesaid reasons, this Court is of the considered view that the petitioner is entitled to the relief as prayed for.

Accordingly, the writ petition is allowed and a direction is issued to respondents 1 to 3 to absorb the petitioner as Lecturer (Computer Engineering) on a regular basis and regularise his services in terms of the benefits as conferred on the other similarly placed employees of the 5th respondent College, in pursuance of G.O.(D) No.26, dated 30.01.2018, Department of Higher Education, (B2), Tamil Nadu. The petitioner is also entitled to the benefits as given to the other similarly placed persons on his absorption.

17.In case, the post is not available to accommodate the petitioner for his absorption, the first respondent is directed to sanction the post considering the fact that the petitioner has been continuously employed since his appointment on 07.02.2005. The Respondents 1 to 3 are directed to initiate and complete the entire exercise within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

8.The learned counsel for the petitioner would therefore submit that since the present and claim is identically placed, similar direction may be passed in this writ petition as well.

9.This Court is entirely in agreement with the submission made on behalf of the petitioner. The issue raised in this writ petition is squarely covered by the decision of this Court. In the said decision, as rightly contended by the learned counsel for the petitioner, all the objections were considered and ultimately this Court felt that the claim of the petitioner therein was justified under similar circumstances. Therefore, the petitioner herein cannot be treated differently in the matter of absorption, as the petitioner herein has also put in 7 years of continuous service as Lecturer. Once the petitioner has been continued in service as a Lecturer in order to uphold the interest of the Polytechnic students, there can be a valid presumption that his services are required in the College and his appointment therefore has to be construed as regular and permanent in nature.

10.In the above circumstances, this Court is of the considered view that the extract of the recent order passed

by this Court would hold good for the present petitioner as well and the direction as contained therein would also cover the present claim of the petitioner herein.

11. In the said circumstances, the Writ Petition is allowed and the directions, as found in paragraphs 16 and 17 in the aforementioned case, shall hold good for the present petition as well.

12. It is clarified that the petitioner can be considered for absorption in the post in which he has been employed for 7 years. The respondents 1 to 3 are directed to initiate and complete the entire exercise within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

Sgl
To

1. The Principal Secretary,
The State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai - 9.
2. The Commissioner,
Directorate of Technical Education,
No.53, Sardar Patil Road,
Guindy, Chennai - 25.
3. The Director,
Directorate of Sugars,
No.690 Periyar EVR Building
Anna Salai, Nandanam,
Chennai - 35.

4.The Principal,
Dharmapuri District Cooperative
Sugar Mills Polytechnic College,
Now Government Polytechnic College,
Palacode - 636 808.

+1 cc to Government Pleader Sr.No. 72125

+1cc to Mr.R.Ezhilarasan , Advocate SR.No. 71650

W.P.No.17902 of 2019

mr (CO)

A.SK(14/10/2019)