

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 29566 of 2019

and

WMP.Nos. 29443 and 29445 of 2019

D.Gnanavel

..Petitioner

vs

1. The Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Building, Teynampet,
Chennai - 600 006.

2. L. Thirunandan,
Assistant Commissioner of Labour,
Krishnagiri.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or direction in the nature of writ or order or orders by calling for the proceedings of the 1st respondent in No.E2/117/2019-1 and E2/117/2019-2 dated 30.09.2019 and quash the same.

For Petitioner : Mr. Karthik

For Respondents : Mr. A.N. Thambidurai, Spl.GP -R1
Mr.L. Chandra Kumar- R2

O R D E R

Writ Petition is filed for issuance of a Writ of Certiorari or direction in the nature of writ or order or orders by calling for the proceedings of the 1st respondent in No.E2/117/2019-1 and E2/117/2019-2 dated 30.09.2019 and quash the same.

2. The case of the petitioner is that the petitioner joined the Labour Department as Assistant Inspector, later promoted as Deputy Inspector of Labour and thereafter as Inspector of Labour, which came to be re-designated as Assistant Commissioner of Labour. The petitioner was posted as Assistant Commissioner of Labour (Enforcement) at Krishnagiri and joined the said duty on 27.09.2017. The post of Assistant Commissioner of Labour

(Enforcement) carries with it an additional duty in the form of Deputy Controller of Legal Metrology. Legal Metrology Act, 2009 was introduced with effect from 01.04.2011. Petitioner satisfies the conditions laid down in sub rule 1 & 2 required for the post of Legal Metrology Officer as he possess the qualification of B.Tech Degree, he undergone training course at Indian Institute of Legal Metrology, Ranchi and has also successfully completed the said course in the year 2003 itself. The petitioner was discharging the functions under the Legal Metrology Act 2009 in the capacity of Deputy Controller of Legal Metrology. As per G.O. Ms. No. 67, Labour and Employment (M1) Department dated 03.06.2018 all Assistant Commissioners (Enforcement) were notified under section 14(1) (3) of the Legal Metrology Act as Deputy Controllers of Legal Metrology. The requirement that officers of the Labour Department notified to exercise functions under the legal metrology act have to fulfill the requirements as to qualification and experience under Rule 28 of the Legal Metrology (General) Rule 2011 has been upheld by this Court in its order dated 09.04.2019 in W.A.No. 1275 of 2019. While being so, the petitioner was transferred from Assistant Commissioner of Labour (Enforcement) Krishnagiri to Namakkal as Assistant Commissioner of Labour (Social Security Scheme). The 2nd respondent who was working as Assistant Commissioner of Labour, Krishnagiri has been posted in the petitioner's place as Assistant Commissioner of Labour (Enforcement), Krishnagiri. The 2nd respondent was appointed as direct recruit Labour Officer in the year 2012 i.e. after coming into force of Legal Metrology Act and he has not undergone the basic training Course offered at Indian Institute of Legal Metrology, Ranchi. Challenging the said impugned transfer proceedings dated 30.09.2019, the present writ petition is filed.

3. Mr. Karthik, learned counsel appearing for the petitioner would submit that the 1st respondent has transferred the petitioner out of Krishnagiri during non transferable period by replacing with a person who is not qualified to function the dual role of Deputy Controller of Legal Metrology. The petitioner has also made detailed representation. Without considering the same, the petitioner was forced to handover the charge. However, the same was given without prejudice to his rights.

4. The learned Special Government Pleader appearing for the first respondent submitted that the transfer order challenged by the petitioner was issued on administrative grounds and the 2nd respondent is fully qualified to hold the post of Assistant Commissioner of Labour (Enforcement), Krishnagiri as per Special Rules for Tamilnadu Labour Service.

5. The learned Special Government Pleader further submitted that as per rule 2 of the Special Rules for Tamil Nadu Labour

Service, an official holding the post in the cadre of Assistant Commissioner of Labour can be transferred on completion of 12 months in the existing post. The petitioner and the second respondent were transferred and posted on completion of more than one year of service in their existing posts, on the administrative reasons. Therefore, the averments made by the petitioner is unsustainable.

6. The learned Special Government Pleader further submitted that the 2nd respondent submitted a request letter for his transfer to any other post in Krishnagiri, as he has completed more than one year of service in his present post. Moreover, the 2nd respondent possess a Degree of B.Sc with ancillary subjects of Physics and Maths and acquired sufficient knowledge in implementing the Legal Metrology Act and Rules, while he was working as Assistant Commissioner of Labour (Enforcement), Salem and Assistant Commissioner of Labour (Plantations), Gudalur. Hence, the 1st respondent herein considered the request of the 2nd respondent on administrative grounds transferred him to the post of Assistant Commissioner of Labour (Enforcement), Krishnagiri. The enforcement of Legal Metrology Act and Rules is one of the statutory functions added to the post. The second respondent is fully qualified to hold the post of Assistant Commissioner of Labour (Enforcement) which is governed by the Special Rules for Tamil Nadu Labour Service. It is further submitted that the transfer order challenged by the petitioner has not been issued on the pressure of the 2nd respondent as alleged by the petitioner and therefore it is not liable to be rejected.

7. The learned Special Government Pleader further submitted that since the 2nd respondent has possessed the requisite educational qualification and acquired the sufficient knowledge in implementing the Legal Metrology Act and Rules, while he was working as Assistant Commissioner of Labour (Enforcement), Salem and Assistant Commissioner of Labour (Plantations), Gudalur, he was transferred to the post of Assistant Commissioner of Labour (Enforcement), Krishnagiri and joined in the said post on 09.10.2019.

8. Mr. Chandrakumar, learned counsel appearing for the 2nd respondent would submit that the functions of weights and measures and Legal Metrology came to be handled by the Labour Department in Tamil Nadu, whereas the subject of Legal Metrology falls under the Department of Consumer Affairs under the Government of India. In most of the states including Tamil Nadu, the personnel of the Labour Department are appointed to handle the role of LMOs in addition to other principal functions of Control, Inspection, Enforcement and Adjudications under several Labour Laws. In the State of Tamil Nadu, on the recommendation of the High Power Committee on Economy and

Administrative Re-organisation, the Tamil Nadu Government vide G.O.Ms.No. 2533, Industries, Labour and Housing Department dated 14.06.1966, entrusted the enforcement of Tamil Nadu Weights and Measures Act to the Labour Department as a measure of economy as Inspectors of Labour Department were inspecting almost all the Trading Establishments under several Labour Laws, to avoid duplication of visits for the same establishments by the Inspectors of different to eradicate the Inspector Raj.

9. The learned counsel appearing for the 2nd respondent further submits that since then the implementation and Enforcement of the Laws in respect of Weights and Measures including the latest, The Legal Metrology Act, 2009, vests with the Labour Department, presently Labour Department, under the administrative control of Commissioner of Labour, Government of Tamil Nadu. Presently the Hierarchy of positions from the top at the Labour Department, in so far as it is relevant to this case are Commissioner, Additional Commissioners, Joint Commissioners, Deputy Commissioners and Assistant Commissioners of Labour. The present hierarchy of enforcement officers in ascending order are, Assistant Inspector of Labour, Deputy Inspector of Labour, Assistant Commissioner of Labour (Enforcement), Joint Commissioner of Labour and Additional Commissioner of Labour (Enforcement).

10. The learned counsel further submitted that the Legal Metrology Act, in respect of the Intra State Trade, the State Government is empowered under Section 14 to appoint a Controller of legal metrology, Additional Controller, Joint Controller, Deputy Controller, Assistant Controller, Inspector and other employees, in the State for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to Intra-State trade. They shall exercise such powers and discharge such functions in respect of such local limits as the State Government may, by notification, specify. In continuation of the Practice and Rules of Business, the Personnel of the Labour Department have been notified as Legal Metrology Officers (LMOs). Accordingly vide G.O.Ms.No. 67, Labour and Employment (M1) dated 03.06.2019, the officers notified are as follows:-

Position in Labour Department	Notified position under Legal Metrology Act, 2009	Local Limits of Jurisdiction	Number of Positions
Additional Commissioner of Labour (Inspections)	Controller of Legal Metrology	Entire State of Tamil Nadu	1

Position in Labour Department	Notified position under Legal Metrology Act, 2009	Local Limits of Jurisdiction	Number of Positions
Regional Joint Commissioner of Labour	Additional Controller of Legal Metrology	Local Limits of Districts under their Jurisdiction	9
Assistant Commissioners of Labour (Enforcement) and Assistant Commissioners of Labour (Plantations)	Deputy Controller of Legal Metrology	Local Limits	
Deputy Inspector Labour	Assistant Controllers of Legal Metrology		
Assistant Inspector of Labour and stamping Inspector	Inspectors of Legal Metrology		

11. The learned counsel further submitted that the posts of Assistant Inspectors of Labour is governed by the Special Rules for Tamil Nadu Labour Subordinate Services, wherein no specific qualification has been prescribed to include educational qualifications as mentioned in the Rule 28(1) of Legal Metrology (General) Rules, 2011. The posts in the cadre of Assistant Inspector of Labour are being filled up by Direct Recruitment through TNPSC and by Recruitment by Transfer of service by promotion from among holders of the post of Assistants. It is a fact as explained below that many among the cadre of Assistant Inspector of labour and its promotional post, the Deputy Inspector of Labour do not possess educational qualifications as mentioned in the Rule 28(1) or satisfy the requirement of successful completion of basic training course as prescribed under Rule 28(3) of Legal Metrology (General) Rules, 2011. Prescribed qualifications of Legal Metrology Officer is extracted below;

“ 28. Qualifications of Legal Metrology Officer

(1) No person shall be appointed as Legal Metrology Officer unless he-

(a) Is a graduate of a recognised university in Science (with physics as one of the subjects), technology or engineering or holds a recognised diploma in engineering

with three years professional experience; and
(b) is able to speak, read and write the regional language of the State.

(2). Nothing in Sub-rule(1) shall apply to officials who have been working as Legal Metrology Officers and are also eligible for promotion to the next higher grade of legal Metrology Officer on the date of commencement of these rules.

(3) The person appointed to the post of Legal Metrology Officer shall have to successfully complete the basic training course at the Indian Institute of Legal Metrology, Ranch before his posting.

(4) The Central Government may, in consideration of the practical difficulties faced by the State Government and on its recommendation, relax the qualification specified in sub-rule (1) for the post of Legal Metrology Officers for that State."

12. Admittedly, the petitioner was worked as Assistant Commissioner of Labour (Enforcement) at Krishnagiri from the year 2017 onwards, therefore the 1st respondent is entitled to transfer the petitioner on administrative grounds. Further, the 2nd respondent who was transferred and posted in the place of the petitioner is not experienced to hold the said post and he has not undergone training course at Indian Institute of Legal Metrology, Ranchi as per Rule 28 (1) of the Legal Metrology Rules, which is bad in law.

13. It is pertinent to mention here that the Hon'ble Division Bench of this Court in W.A.No.1275 of 2019 dated 09.04.2019 had categorically held that the person who hold the post of the Assistant Commissioner of Labour (Enforcement) should possess the required qualification as prescribed under Rule 28 of the Legal Metrology (General) Rules, 2011 and accordingly set aside the impugned order passed by the respondent.

14. The learned counsel for the petitioner has produced the records obtained under RTI, wherein it has been stated that there are 45 officers in the cadre of Deputy Controller of Legal Metrology/Assistant Commissioner of Labour who have completed basic training course at Indian Institute of Legal Metrology, Ranchi. In the said list, the name of the petitioner is mentioned at Sl.No. 31. Further, there is also another list of officers in the cadre of Assistant Commissioner of Labour (Enforcement) who have not undergone basic training course at Indian Institute of Legal Metrology (including incharge). In the said list, the name of the 2nd respondent is mentioned at Sl.No.4.

15. In view of the above, the order of the 1st respondent, transferring the 2nd respondent in the place of petitioner as Assistant Commissioner of Labour (Enforcement), Krishnagiri who does not possess the qualifications prescribed under Rule 28(1) and 28(3) of the Legal Metrology Rules 2011 is bad in law.

16. Considering the above circumstances and also considering the fact that the petitioner had relived from the post of Assistant Commissioner of Labour (Enforcement), Krishnagiri and joined in the Namakkal, this Court finds it proper to direct the 1st respondent to appoint an experienced person in the place of the 2nd respondent who possess required qualification as prescribed in Rule 28 (1) and 28(3) of Legal Metrology Rules 2011.

17. With the above observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Building, Teynampet,
Chennai - 600 006.

2.The Assistant Commissioner of Labour,
Krishnagiri.

+1cc to Mr.Menon, Advocate, S.R.No. 92654
+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No. 92099
+1cc to the Government Pleader, S.R.No. 92535

W.P.No. 29566 of 2019
and

WMP.Nos. 29443 and 29445 of 2019

RSV(CO)
GN(27/11/2019)