

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM :

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3926 of 2019

1. The State of Tamil Nadu
rep. by its Principal Secretary
Higher Education (B2) Department
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Technical Education
Chennai - 600 025.
... Appellants/Respondents 1, 3
- Vs.
1. K.Chinnasamy
.... Respondent/Petitioner
 2. The Director of Sugar Mills
No.690, Anna Salai, Nandanam
Chennai - 600 035.
 3. Dharmapuri District Co-operative
Sugar Mills Private Limited
rep. by its President
Palacode.
 4. The Principal
Dharmapuri District Co-operative
Sugar Mills Polytechnic College
Now Government Polytechnic College
Palakode - 636 808. .. Respondents /Respondents 2,4,5

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 18.6.2019 passed by the learned Single Judge in W.P.No.17572 of 2018.

W.P.NO. 17572 OF 2018: Directing the respondents to absorb the petitioner in service as Lecturer (Computer Engienering) of the Dharmapuri District Cooperative Sugumar Mills Polytechnic College converted as Government Polytechnic College vide G.D. D.No.26 dated 30.01.2018 Department of Higher Education (B2) Tamil Nadu

For Appellants : Mr.S.T.S.Murthi
Addl. Advocate General-IV
assisted by
Mr.V.Kadhirvelu
Spl. Government Pleader
(Higher Education)

For Respondents : Mr.V.Prakash
Senior Counsel
for Mr.M.Kavi Veerappan
for 1st respondent

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This intra-court appeal is directed against the judgment dated 18.6.2019 of a learned Single Judge in respect of the claim of absorption of the respondent/writ petitioner as a Lecturer in Computer Science in the Polytechnic College that was earlier run by Dharmapuri District Co-operative Sugar Mills Private Limited and has now been taken over by the Government.

2. A dispute arose after the Polytechnic College was taken over and the staff of the erstwhile Polytechnic came to be absorbed in terms of G.O.(Ms) No.26, Higher Education (B2) Department, dated 30.1.2018. A copy of the teaching staff details, as relied on by the respondent/writ petitioner, indicates that the respondent/writ petitioner claimed himself to be a Lecturer in Computer Science and Engineering in the Department of Computer Science and Engineering.

3. The contention, however, is that the respondent/writ petitioner had been working upon being engaged and continued for almost 14 years, according to the respondent/writ petitioner, in that capacity, even though on consolidated wages. The respondent/writ petitioner, therefore, claimed that he also deserved to be absorbed and there was no reason to eliminate him keeping in view the three streams of Diploma Courses that were to be run after the taking over by the Government, namely, Mechanical Engineering; Civil Engineering and Electronics and Communication Engineering.

4. The sum and substance of the claim of the respondent/writ petitioner was that he was also entitled to be absorbed at par with other employees, as he had been working against a post that had to be counted against the sanctioned strength, as it was within the framework of the courses that were being run by the Polytechnic.

5. On the other hand, the learned counsel for the appellants has urged that with only three streams defined under the Government Order dated 30.1.2018, there was no scope for consideration of the absorption of the respondent/petitioner inasmuch as neither the department in which he was claiming continuance was envisaged to be continued after the taking over of the institution, nor there was any sanctioned post in relation to the said subject in which the respondent/ petitioner was claiming his continuance.

6. It is also the case of the appellants that the respondent/ petitioner was on consolidated wages and, therefore, he could not be treated as a permanent staff of the erstwhile Polytechnic so as to claim his continuance or absorption after the taking over of the institution. The contention, therefore, of the appellants is that in view of the provisions of the Government Order dated 30.1.2018, there was no occasion for considering the absorption of the respondent/petitioner by the Merger Committee as constituted under Clause (6) of the Government Order, referred to herein above.

7. On the basis of the pleadings that have been brought forth before us, the aforesaid facts upon an assessment lead us to the conclusion that the respondent/petitioner's claim was not put forth before the Merger Committee and as per the learned counsel for the appellants, the respondent/petitioner was not entitled to be absorbed keeping in view the fact that neither there was any Department of Computer Science or stream of course envisaged to be run by the institution after it being taken over by the Government and secondly, there was no sanctioned post for the same.

8. We find that the learned Single Judge has proceeded to assume the existence of a post on account of the claim of the respondent/petitioner continuing in the institution, without examining the aforesaid aspects of the matter in terms of the Government Order dated 30.1.2018. To that extent, the learned Single Judge does not appear to be justified in saying that if the post is not sanctioned, then it is open to the authority concerned to submit a proposal and have it sanctioned. We say this because the terms of the Government Order were not under challenge before the learned Single Judge and consequently, keeping in view the scheme provided under the Government Order, the learned Single Judge could have utmost issued a direction for the consideration of the claim of the respondent/ petitioner by the Merger Committee in case he could be assessed for considering his claim for absorption as a Lecturer in Computer Science in the institution.

9. We, therefore, find that the learned Single Judge

exceeded in issuing the mandamus for absorbing the respondent/petitioner after sanctioning the post without taking into account the terms and conditions of the Government Order dated 30.1.2018.

10. We, therefore, allow this appeal and set aside the impugned judgment of the learned Single Judge dated 18.6.2019, but at the same time we dispose of the writ petition of the respondent/petitioner with liberty to the respondent/petitioner to get his claim assessed and considered by the Merger Committee constituted in terms of Clause (6) of the Government Order dated 30.1.2018 and in the event, such a claim is put forth, it shall be open to the Merger Committee to take appropriate decision in the matter and intimate the respondent/ petitioner expeditiously, preferably within a period of two months from the date of production of a copy of this order.

In the result, the appeal stands allowed with the above directions. No costs. Consequently, C.M.P.No.24694 of 2019 is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sasi

To

1. The Principal Secretary,
Higher Education (B2) Department
Fort St. George, Chennai - 600 009.
2. The Commissioner of Technical Education
Chennai - 600 025.

+1cc to Mr.M.Kavi Veerappan, Advocate, S.R.No. 96381

W.A.No.3926 of 2019

RK(CO)
GN(17/12/2019)