



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MS.JUSTICE P.T.ASHA
W.A.No.2652 of 2018

1.Government of Tamil Nadu,
rep. By its Secretary,
Public Works Department (C2),
Fort St.George,
Chennai 9

2.The Chief Engineer (Buildings)
Public Works Department,
Chepauk, Chennai 5.

... Appellants /Respondents

Vs

K.Eswari

... Respondent/Petitioner

Appeal filed under Clause 15 of Letter Patent Act against the order passed by this Court dated 4.12.2017 in WP No.23522 of 2008.

WP.NO.23522/2008:

This Writ Petition filed under Article 226 of the Constitution of India, praying to calling for records of the 1st respondent in connection with G.O.(Ms) No.334 Public Works Department dated 19.10.2007 and quash the same insofar as the petitioner is regularized in the category of Works Inspector Grade III with effect from 01.01.2002 and direct the 1st Respondent herein to regularize the petitioner as a Technical Assistant with effect from 16.03.1996.

For appellant : Mrs.A.Srijeyanthi, Spl.G.P.

For Respondents : Mr.V.Prakash, Senior Counsel,
for Mr.M.Suresh

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The learned Single Judge after quashing the order dated 19 October 2007, regularizing the services of the respondent in the post of Work Inspector Grade III, directed regularization of her



services in the post of Technical Assistant Grade III with effect from 16 March 1996 and to pay her all the attendant benefits. The order is under challenge at the instance of the State primarily on the ground that the respondent was not in possession of the educational qualification prescribed for the post of Technical Assistant as on the date on which she was initially appointed.

2. The name of the respondent was sponsored by the employment exchange for appointment to the post of nominal muster roll worker. The sponsorship was on 6 February 1986. The respondent was having only the qualification of SSLC at that point of time. The respondent obtained Diploma in Civil Engineering during April 2006. The technical educational qualification was entered in her service register on 12 March 2008.

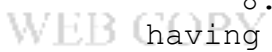
3. The service of the respondent was regularized in the post of Work Inspector III from 1 January 2002 taking into account her qualification.

4. The respondent made a claim before the appellants that she was qualified for regularization in the post of technical assistant. Since there was no consideration of the said request, the respondent filed a Writ Petition in W.P.No.23522 of 2018. The learned Single Judge found that the respondent had been working as Technical Assistant. The learned Single Judge was of the view that the respondent passed the Diploma Course in 2006 and as such, she should have been appointed in the post of Technical Assistant Grade III. The learned Single Judge therefore directed the appellants to regularize the services of the respondent in the post of Technical Assistant Grade III with effect from 16 March 1996, notwithstanding the fact that she was not in possession of the required educational qualification as on the said date.

5. We have heard the learned Special Government Pleader on behalf of the appellants. We have also heard the learned senior counsel for the respondent.

6. There is no dispute that the initial appointment of the respondent was only as a nominal muster roll. The respondent was having only SSLC at that point of time. She obtained the Diploma in Engineering only in 2016.

7. The respondent was engaged as technical assistant on daily basis to a particular project. Since there was no sufficient work, her services were dispensed with on 25 March 1988. Subsequently, she was given appointment once again. The



8. The core question is as to whether the respondent was having the qualification for appointment to the post of Technical Assistant.

10. We have perused the Technical Assistants ad hoc rules. The rules clearly provide that for appointment to the post of Technical Assistants under regular establishment, the candidate must have passed DCE, DME or DEEE awarded by the Technological Diploma Examinations Board, Madras, or similar Diploma awarded by the University or Institutions recognized by the University Grants Commission.

12. The Diploma in civil engineering was entered in the service register of the respondent only on 12 March 2008. The respondent was not having the requisite qualification for appointment to the post of technical assistant as on 17 March 1986 or on 16 March 1996. The qualification acquired at a later point of time would not give her a right to claim appointment to the post of Technical Assistant which requires Diploma in Engineering.

<https://hcservices.ecourts.gov.in/hcservices/>



14. The learned Single Judge proceeded as if the appointment of the respondent was initially to the post of Technical Assistant. She was given appointment as Technical Assistant only temporarily. It was a project work. The wages were paid in accordance with PWD Standard Rates. Even according to the respondent, she was transferred as Technical Assistant on daily wages to Kudaganaru project and thereafter, due to lack of work, she was relieved from duty with effect from 25 March 1988.

15. The learned Single Judge was of the view that a candidate who failed in the Diploma Course is also eligible for appointment to the post of Technical Assistant Grade III. The basis for such a finding was the P.W.D. Standard Schedule of Rates. The qualification prescribed for payment of P.W.D. Rates of wages has nothing to do with the qualification for appointment to the post of Technical Assistant.

16. The appointment to the post of Technical Assistant is governed by the Tamil Nadu Engineering Subordinate Service Rules. The candidate must have an engineering Diploma, awarded by the University for making him/her eligible for appointment to the post. Since the respondent was not having the said qualification as on the date on which she was initially appointed, the learned single Judge was not correct in setting aside the order impugned in the Writ Petition. We are therefore of the view that the appellants must succeed.

17. The order dated 4 December 2017 on the file of the writ court is set aside. The Writ Petition in W.P.No.23522 of 2008 is dismissed.

18. In the upshot, we allow the intra court appeal filed by the State. No costs. Consequently, C.M.P.No.21620 of 2018 is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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TO:

1.The Secretary,
Government of Tamil Nadu,
Public Works Department (C2),
Fort St.George,
Chennai 9

2.The Chief Engineer (Buildings)
Public Works Department,
Chepauk, Chennai 5.

+1cc to Mr.K.Sudalaikannu, Advocate sr.57078
+1cc to Government Pleader sr.58062

W.A.No.2652 of 2018

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nr 28/08/2019