

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.08.2019	Delivered on: 30.08.2019
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 28474 of 2018 &
W.M.P.No.33219 of 2018

Mrs.Marykutty Abraham .. Petitioner

versus

1. The Board of Governors,
rep. by its Chairman,
National Institute of Technical Teachers
Training and Research,
Taramani, Chennai-113.

2. The Director,
National Institute of Technical Teachers
Training and Research,
Taramani, Chennai-113.

3. The Secretary,
Ministry of Human Resources Development,
New Delhi. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in its No.NITTTR/2018-19 dated 9.10.2018, quash the same and consequently direct the respondents to appoint the petitioner herein as Associate Professor in Engineering pursuant to the order of appointment dated 2.4.2012 with all attendant and consequential benefits including seniority.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.V.Raghavachari for R2

ORDER

This Writ Petition has been filed by the petitioner, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in its No.NITTR/2018-19 dated 9.10.2018, quash the same and consequently direct the respondents to appoint the petitioner herein as Associate Professor in Engineering pursuant to the Letter of appointment dated 2.4.2012 with all attendant and consequential benefits including seniority.

2. The petitioner has completed her B.Tech. in 1989 and later completed M.E. In 1998. The petitioner has also obtained Ph.D. in 2007. According to the petitioner, she worked initially in the Department of Soil Survey and Soil Conservation, Government of Kerala. She also worked in Sathyabama University from September 2007 to October 2009 and once again, she worked in the Department of Soil Survey and Soil Conservation, Government of Kerala. Thereafter, once again, she joined Sathyabama University and working as faculty in the University. The second respondent Institute is an autonomous body, functioning under the Ministry of Human Resources, Government of India. In July, 2010, an advertisement was issued by the respondents, calling for applications from eligible candidates for filling up of various faculty positions at the level of Professor, Associate Professor and Assistant Professor, etc. For Associate Professor, six posts were called for in different branches of Engineering, viz., Civil Engineering, Engineering and other allied subjects. The advertisement notified that the qualification of the candidates would be evaluated as per the AICTE norms. In response to the said advertisement, the petitioner has applied for the post of Associate Professor in Engineering. The required educational qualification and experience as per the Notification is as follows:

Educational Qualification & Experience:

Qualification:

Ph.D in Engineering/Engineering Education in the relevant Engineering Discipline with First Class at Bachelors and Masters Degree in Engineering / Technology. In case of candidates from Industry / profession - First Class Master Degree in Engineering/Technology. Candidates should have expertise in any one of the following areas:

- Multimedia/ e-Learning content development
- Geotechnical Engineering /Environmental Engg./ Water Resources Engineering
- Flexible Manufacturing Systems/ Mechatronics

- Embedded Systems/Programmable Logic Controllers/Microcontrollers
- Computer Networking and Management

Experience:

(1) 5 years in teaching/industry/research at the level of Lecturer (Pre-Revised)/Assistant Professor or equivalent, of which 2 years post Ph.D experience is desirable.

3. A Selection Committee was constituted consisting of Experts. The candidates were called for to give a Presentation which was followed by personal interview. The selection process was conducted during February, 2011. The Selection Committee, on consideration of the educational qualification and work experience of the petitioner, selected the petitioner for appointment to the post of Associate Professor in Engineering. The second respondent Institute also issued Letter of appointment dated 02.4.2012, appointing the petitioner as Associate Professor in Engineering in the Pay Band of Rs.37,400-67000 with Grade Pay of Rs.9000 plus all allowances. Immediately, the petitioner appears to have given her acceptance of the offer and indicated her willingness to join the post.

4. While so, some of the faculty members who were already working in the Institute filed a Writ Petition in W.P.No.4811 of 2011 before this Court, seeking to quash the advertisement issued by the second respondent Institute. The grievance of those petitioners was that the Institute had hurriedly called for advertisement which was in violation of AICTE norms and it was also intended to exclude eligible candidates already working in the Institute. However, three of the candidates who were selected along with the petitioner, were permitted to join duty and they also joined the post. But the petitioner alone was not permitted to join duty despite her appointment and willingness to join duty and she was informed by letter dated 7.8.2012 that the matter was pending before this Court and after the same was disposed of, consequential action would be taken to permit the petitioner to join duty. In the circumstances, the petitioner was awaiting the outcome of the pending Writ Petition before this Court. While so, the said Writ Petition in W.P.No.4811 of 2011 ultimately came to be dismissed by this Court vide order dated 27.3.2012 and as against the same, a Writ Appeal in W.A.No.680 of 2012 was filed, which was also dismissed on 20.04.2016 by this Court, giving liberty to the appellants therein to approach the learned Judge for clarification.

5. According to the petitioner, in any case, the challenge to the advertisement has reached finality in April 2016. The petitioner, after coming to know the decision in Writ Appeal, approached the second respondent Institute several times and

requested the authority to permit her to join duty in terms of original appointment letter dated 2.4.2012. In this regard, the petitioner has made representations on 20.06.2016, 23.08.2017 and 20.05.2018. At this, the second respondent informed the petitioner to furnish copies of her educational and experience certificates once again. Consequently, the petitioner also submitted all required certificates for scrutiny. Finally, the Institute has issued a letter on 9.10.2018, rejecting the claim of the petitioner on the ground that she did not possess requisite experience for the post of Associate Professor and therefore, it was not possible to offer her appointment. Therefore, the petitioner is before this Court, praying to quash the impugned order of rejection.

6. Shri V.Vijay Shankar, learned counsel appearing for the petitioner would submit that at the time when the petitioner was subjected to the selection by the duly constituted Selection Committee, all the certificates both educational and experience were perused and scrutinized and only on being satisfied, she was issued with the letter of appointment dated 02.04.2012, but unfortunately, due to paucity of time, the Director of the Institute was changed and in the new dispensation, the present order came to be passed as if the petitioner did not have required experience. According to the learned counsel, she fulfilled every aspect of educational qualification and work experience as per the advertisement and without giving her an opportunity, a cryptic order was passed without disclosing as to what was the shortcoming in regard to the work experience of the petitioner.

7. The learned counsel would also submit that all along the petitioner was assured that her offer of appointment would be honoured the moment the pending Writ Petition was finalized and at no point of time, the petitioner was informed about any lack of experience on her part. Even otherwise, once the petitioner was issued with the appointment letter after due consideration of her educational qualification and experience by duly constituted Selection Committee, it was not open to the new Director of second respondent Institute to cancel the appointment recommended by the Selection Committee. Therefore, the present rejection order passed by the Director of the second respondent Institute is arbitrary, unreasonable and cannot be countenanced both in law and on facts.

8. Per contra, Shri V.Raghavachari, learned counsel appearing for the respondent Institute would submit the following in support of the decision taken by the second respondent in rejecting the claim of the petitioner, viz.,

1. that the petitioner's service as Assistant Engineer in the

- Department of Soil Survey and Soil Conservation, Government of Kerala, cannot be considered as equivalent to Lecturer (Pre revised)/Assistant Professor (Re-designated) due to her nature of work and salary drawn since at any point of time, she has not drawn the salary on par with the Lecturer (Pre revised)/ Assistant Professor (Re-designated) of AICTE;
2. that the petitioner's service as Scientist-D in Sathyabama University from 02.08.2007 to 31.10.2009 cannot be treated on par with the post of Assistant Professor (Re-designated) as per AICTE norms and scale of pay;
 3. that as Assistant Engineer of Government of Kerala, the petitioner did not work during four staggered periods, viz., 24.06.1999 to 05.01.2003, 01.06.2007 to 31.07.2007; 02.11.2009 to 04.09.2010 and 05.12.2010 to 26.12.2010 and therefore, she could not have earned experience when she was actually employed with the Kerala Government;
 4. that the petitioner's claim having academic experience as Lecturer/Senior Lecturer for 3 years and 6 months as pre-Ph.D experience and 2 years and 2 months as Assistant Professor, was false as she actually worked as Assistant Engineer in Government of Kerala, whose nature of work and scale of pay were entirely different from the scale of Lecturer/Assistant Professor as per AICTE norms.

Therefore, the learned counsel for the respondents would submit that on review of qualifications and experience of the petitioner, it was decided not to appoint the petitioner since she did not satisfy the qualification and experience as per AICTE norms.

9. On behalf of the petitioner, a detailed reply affidavit has been filed, wherein, each one of the objections raised on behalf of the second respondent has been answered. The learned counsel for the petitioner would draw the attention of this Court to paragraphs 4 to 8 of the reply affidavit filed on behalf of the petitioner, which are extracted hereunder:

"4. In paras 3 to 5, the respondents have admitted that I possess the required qualification for the post but have taken a stand that I do not have the requisite experience of 5 years equivalent to the level of Lecturer/Assistant Professor. I submit that such a contention is misconceived as would seen from what is stated hereinafter. I submit that my service profile is as under.

Organization	Period	Experience	Scale of Pay
Assistant Engineer (AE) Department of Soil Survey and Soil Conservation, Government of Kerala	24.6.1999 to 05.01.2003	3 years, 6 months, 23 days.	Rs.6675-10550 BP 7,200/-

Perused Ph.D from 06.01.2003 to 31.05.2007

Assistant Engineer	Period	Experience	Scale of Pay
Assistant Engineer (AE) Department of Soil Survey and Soil Conservation, Government of Kerala	1.6.2007 to 31.07.2007	2 months	Rs.11,070-18,450 BP 13,990/-
Scientist D Sathayabama University	02.08.2007 to 31.10.2009	2 year 3 months	Appointment in UGC scale of pay BP 28,020
Assistant Engineer (AE) Department of Soil Survey and Soil Conservation, Government of Kerala	02.11.2009 to 31.08.2010	9 months and 29 days	Rs.20,740-36,140 BP 27,140/-

5. From what has been stated above, this Hon'ble Court will appreciate that the respondents have furnished incorrect particulars regarding her salary so as to make appear as if I was drawing lesser pay scale. In fact, it would not be out of place to submit that in the Government of Kerala, the pay scale for the post of Assistant Engineer and Lecturer is identical viz., Rs.11,910-19,350/- which was revised to Rs.20,740-36,140/-. Therefore the post of Assistant Engineer and Lecturer/Assistant Professor carried the same scale of pay, except for minor variations in the increments.

7. In para 7, the respondents have stated that the post of Scientist D which I held in Sathayabama University was not equivalent to that

of Lecturer. Here again the respondents have totally glossed over the fact that Government of India and CSIR treat the post of Scientist C (which is lower to Scientist D) as equivalent to Lecturer/Assistant Professor. A Scientist D, by virtue of the duties attached, carries out intensive research which for all purposes is considered equivalent to that of Lecturer/Assistant Professor. The fact that scales of pay of the two posts do not tally is insignificant and what has to be seen is the nature of duties, responsibilities and the qualifications that are required for both posts. Moreover, my basic pay in October 2009 was more than Rs.28,000/- as Scientist D in Sathayabama University which is much more than the starting pay scale of Lecturer viz., Rs.15,600/-.

8. In para 7, the respondents have alleged that while working in Kerala Government service, it was not possible for me to work in the Sathayabama for such long periods. In this connection I respectfully submit that under the Government of Kerala Leave Rules, an employee is entitled to take Extraordinary Leave upto 20 years and all my periods of leave have been duly approved by the Government of Kerala vide Appendix XIIA of KSR. Therefore the allegation raised on this score by the respondents is uncalled for and thoroughly misconceived."

10. The above averments would dispel the doubts raised by the second respondent with regard to the petitioner's qualification and experience. He would therefore, submit that unfortunately, the petitioner was not called upon to give any explanation before the impugned decision taken and hence by misreading the petitioner's experience and qualification, her appointment was cancelled. He would therefore, submit that the decision to cancel the appointment of the petitioner by the new Director, is factually baseless and unfounded. The learned counsel would also enclose the documents in support of his factual contention regarding the salary of the petitioner during her employment in Sathyabama University and also pay scale given to her when she was working with Kerala Government and these documents would disclose that the petitioner was indeed receiving the salary that was made applicable to the post of Lecturer in Engineering (Pre revised). These documents are not in dispute at all. Therefore, the learned counsel would submit that the impugned order of rejection passed by the second respondent, is liable to be set aside and the second respondent Institute is to be directed to appoint the petitioner in terms

of the original appointment letter dated 02.04.2012.

11. Considered the submissions of the learned counsel for the petitioner as well as the learned counsel for the respondent Institute. Perused the materials and pleadings placed on record.

12. Admittedly, the petitioner was subjected to selection by the duly constituted Selection Committee and the Committee, after evaluation and scrutiny of the certificates produced by the petitioner both in respect of educational qualification and work experience, recommended her appointment and on the basis of the such recommendation, the appointment letter was issued to her on 02.04.2012. But unfortunately, due to pendency of litigation before this Court by certain faculty members who were already working in the second respondent Institute, the petitioner alone was not allowed to join duty though few others who were selected along with the petitioners, were permitted to join duty. After disposal of the Writ Petition and Writ Appeal as mentioned above, when the petitioner rightly staked her claim for appointment, due to change in administration, the present Director of the second respondent Institute has taken a decision not to honour the appointment given to the petitioner on 02.04.2012. It appears that on his own, the Director of the second respondent Institute evaluated the certificates of the petitioner behind the back of the petitioner and concluded as if the petitioner was not qualified for the subject post as per AICTE norms. Therefore, her appointment came to be cancelled by the impugned order of rejection, stating that she was not having required experience for the post.

13. First of all, such decision which is adverse to the interest of the petitioner in the face of the fact that she was originally selected by duly constituted Selection Committee and she was given appointment letter dated 02.04.2012, cannot be taken unilaterally behind the back of the petitioner. Such decision without affording the opportunity to the petitioner, has to be interfered with on the ground of principles of natural justice. In any event, though no reasons were spelt out in the impugned order as to the basis of the finding of the Institute about her lack of experience, several reasons have been stated in the counter affidavit filed before this Court, which objections were extracted above. A detailed reply statement has been filed on behalf of the petitioner, wherein, every such objection has been adequately met and answered. In fact, the reply statement which clarified the objections raised on behalf of the Institute, would unequivocally establish the academic credentials and the work experience of the petitioner, which unfortunately could not be presented before the Institute in the absence of notice to the petitioner, calling for her objections. From the records and the pleadings as disclosed, this Court has

to necessarily come to the conclusion that the petitioner herein has requisite educational qualification and experience as per the Notification issued by the Institute and unfortunately, the new Director who assumed the office, has not considered these factors which are stated in the reply affidavit filed on behalf of the petitioner. Therefore, the decision taken by the second respondent, cannot be countenanced either in law or on facts. In the reply affidavit filed by the petitioner, each one of the objections raised in the counter affidavit filed on behalf of the second respondent Institute has been clarified clearly with factual details which have not been disputed by the second respondent Institute. In fact, according to the petitioner, this information was made available and furnished by the petitioner at the time when she appeared before the Selection Committee and only after due appraisal of the eligibility of the petitioner, the Selection Committee recommended her appointment. When such duly constituted Selection Committee thought it fit to recommend the appointment of the petitioner, unless, some grave error has crept in in the matter of evaluation, it is not open to the Director of the Institute to take unilateral decision by way of a review without due appreciation of the actual experience/educational qualification and the salary and allowances earned by the petitioner. In fact, the impugned order does not speak about actual shortcomings of the petitioner in terms of her experience or her educational qualification, it is only in the counter affidavit, several details have been furnished for the first time for which suitable answers were provided for by the petitioner by way of her reply statement.

14. As regards objection that the petitioner worked outside Kerala Government service during the staggered periods, viz., 24.06.1999 to 05.01.2003, 01.06.2007 to 31.07.2007; 02.11.2009 to 04.09.2010 and 05.12.2010 to 26.12.2010 wherein, a doubt has been raised in regard to veracity of claim of the petitioner, the learned counsel for the petitioner would draw the attention of this Court to the Kerala Service Rules, which provide that the Officers are eligible to be sanctioned leave for a period upto 15 years without allowances. Rule 6 found in Appendix XII A of the Rules is relevant, which is extracted as under:

"6. The maximum period of leave that may be sanctioned to officers under these rules, including the leave sanctioned under Appendix XII C, if any, during their entire service shall be limited to fifteen years. If the officer who has availed himself of the leave without allowances for a total period of 15 years, whether continuously or in broken periods does not return to duty immediately on the expiry of the leave, his service shall be terminated after following the procedure

laid down in Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. This condition shall be incorporated in every order sanctioning such leave."

Therefore, the learned counsel would submit that the petitioner had availed leave and leave was also sanctioned by the Government of Kerala. Therefore, he would submit that the doubt raised by the Institute is without any basis and the same is liable to be rejected.

15. Finally on behalf of the respondent Institute, reliance was placed upon by the learned counsel to a decision reported in "(1990) 3 SCC 655 (District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another versus M.Triupura Sundari Devi)". This Court does not think that this decision would apply to the factual matrix of the case since it was related to an inadvertent appointment being made which was subsequently cancelled on finding that the certificates originally produced were found not qualified. In this case, certificates produced by the petitioner in regard to both her educational qualification and experience are in compliance with AICTE norms and advertisement, but it is the second respondent Director who has not applied his mind properly while passing the impugned order of rejection. Therefore, the decision relied upon by the learned counsel for the second respondent Institute does not advance the case as against the petitioner.

16. On going through the materials, this Court is satisfied that the petitioner is fully qualified for the appointment to the subject post in terms of the Notification issued by the second respondent Institute and therefore, the impugned order passed by the second respondent cannot stand the test of judicial scrutiny and therefore, the same liable to be set aside.

17. For the foregoing reasons, the Writ Petition is allowed and the impugned rejection order, dated 9.10.2018 passed by the second respondent in proceedings No.NITTR/2018-19 is hereby set aside. Consequently, the second respondent Institute is directed to appoint the petitioner as Associate Professor in Engineering pursuant to the original Letter of appointment dated 02.04.2012 with all attendant and consequential benefits including seniority, etc. However, it is made clear that the petitioner is not entitled to her salary and allowances for the period in question. The second respondent Institute is directed to pass appropriate orders in this regard within a period of

four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

Suk

To

1.The Chairman,
The Board of Governors,
National Institute of Technical Teachers
Training and Research,
Taramani, Chennai-113.

2. The Director,
National Institute of Technical Teachers
Training and Research,
Taramani, Chennai-113.

3. The Secretary,
Ministry of Human Resources Development,
New Delhi.

+1cc to Mr.V.Vijay Shankar, Advocate SR.No.75421

+1cc to Mr.V.Raghavachari, Advocate SR.No.75019

WP.No.28474 of 2018

BR(CO)
GMY(11/10/2019)

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