



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.10.2019**

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

W.P. (MD) .No.13588 of 2009

and

M.P. (MD) .No.1 of 2009

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M.Kumaravel

... Petitioner

/ Vs./

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Secretariat, Chennai-9.

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Dean,
Thanjavur Medical College Hospital,
Thanjavur - 4.

... Respondents

PRAYER: Writ petition - filed under Article 226 of the Constitution of India, to issue a Writ Certiorarified Mandamus, to call for the records on the file of the 3rd respodnent in proceedings Rc.No.13059/E5/06 dated 26-11-2009 and quash the same and consequently direct the respondents herein to post the petitioner herein as Refrigeration Mechanic.

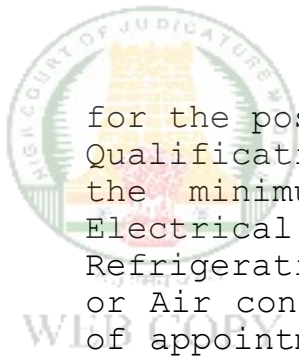
For Petitioner
For Respondents

: Mr.V.Karthikeyan
: Mr.D.Muruganandam
Additional Government Pleader

ORDER

This writ petition is filed for issuing a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respodnent in proceedings Rc.No.13059/E5/06 dated 26-11-2009 and quash the same and consequently direct the respondents herein to post the petitioner herein as Refrigeration Mechanic.

2. The petitioner was appointed as Wireman Grade II by the third respondent on 14.11.1986. It is not in dispute that the appointment of petitioner is in accordance with the Special Rules for Tamilnadu Medical Subordinate Service. It is stated that from the date of appointment, the petitioner was working in the post of Wireman Grade II. The petitioner completed part time Diploma Course in Electrical Engineering in the year 1993. The petitioner has also completed Electrical and Electronics Engineering in first class during April 1993. It is admitted that the petitioner is qualified



for the post of Refrigeration Mechanic which carries a higher scale. Qualification prescribed for the post of Refrigeration Mechanic is the minimum general educational qualification ie., Diploma in Electrical Engineering or any other equivalent qualification with Refrigeration or Air conditioner or a certificate in Refrigeration or Air conditioner from recognized private institution. The method of appointment for the post of Refrigeration Mechanic is either (i) by direct recruitment (or) (ii) by transfer from any other category or class (or) (iii) by recruitment by transfer from any other service.

3. The petitioner was appointed as Refrigeration Mechanic in the Government Hospital, Tanjore by invoking Rule 39 (a) of Tamilnadu State and Subordinate Service Rules. The petitioner's appointment was also approved on 11.01.2008. However, by order dated 12.03.2008, the third respondent reverted the petitioner to the post of Wireman Grade II.

4. Challenging the order dated 12.03.2008 reverting the petitioner from the post of Refrigeration Mechanic to Wireman Grade II without issuing any notice, the petitioner earlier filed a writ petition in W.P.No.3026 of 2008. Said writ petition was allowed by this Court on 01.04.2008 on the ground that the order of third respondent was in violation of principles of natural justice. However, liberty was given to the third respondent to pass orders afresh after issuing notice to the petitioner. In other words, a direction was issued to the third respondent to pass orders after hearing the petitioner on merits.

5. It was thereafter the third respondent issued a show cause notice dated 24.09.2009 calling upon the petitioner to show cause why the petitioner should not be reverted to the post of Wireman Grade II from the post of Refrigeration Mechanic. The petitioner sent a representation on 29.09.2009 explaining how he had qualification to the post of Refrigeration Mechanic and the order of reversion would be illegal and contrary to several precedent by which respondents had relaxed the rules and obtained ratification from the Government through the second respondent.

6. Now, the third respondent passed the impugned order dated 26.11.2009 reverting the petitioner to the post of Wireman Grade II without any personal hearing. Once again, the petitioner has approached this Court with this writ petition challenging the order of third respondent dated 26.11.2009.

7. Learned counsel for petitioner submitted that the impugned order ignoring several precedent in the past is irregular, improper, arbitrary and opposed of Article 14 of the Constitution of India. Learned counsel further submitted that the petitioner's appointment as Refrigeration Mechanic by following the method, that is



same service is permitted by Tamilnadu State and Subordinate Service Rules and that therefore the impugned order is liable to be set aside.

8. Learned counsel for the petitioner also submitted that the impugned order passed by the third respondent is not after hearing the petitioner, as it was directed by this Court in the earlier writ petition filed by the petitioner. Hence it was further submitted that the impugned order is liable to be quashed for absence of procedural fairness and for non observance of specific direction of this Court.

9. Learned Additional Government Pleader appearing for respondents relying upon the counter affidavit filed on behalf of respondents 1 to 3 contended that in view of Rule 15B of Tamilnadu State and Subordinate Service Rules the method of appointment ie., appointment by transfer from one category to another category is impermissible in the present case as the post of Refrigeration Mechanic and Wireman Grade II carries different scale of pay. As per Rule 15 B of Tamilnadu State and Subordinate Service Rules, a member of service is said to have been appointed by transfer when the appointment is made from one category to another category in the same service carrying identical scale of pay.

10. Learned Additional Government Pleader appearing for respondents submitted that the petitioner whose appointment was illegal cannot rely upon precedent, as there is no equality in illegality. In other words, learned Government Pleader would submit that similar cases relied upon by the petitioner are in different context where the appointments were made due to urgency and the persons appointed had been served for more number of years. It is also submitted by the learned Additional Government Pleader that the petitioner's case was considered by the second respondent who had decided not to relax the rules. Based on the instructions given by the second respondent, the third respondent has passed the impugned order of reversion.

11. Learned counsel for petitioner, relied upon the particulars given by the petitioner in the rejoinder affidavit filed by the petitioner. In Paragraph Nos.4 and 5, the petitioner has stated as follows:

'4.I respectfully submit that the main contention of the respondent herein is that as per 15 (B) of the Tamilnadu State and Subordinate Rules, when the person was appointed by transfer from one category to another category in the same service, then both should have received an identical scale of pay. The scale of pay for the post of Wireman Grade II is Rs. 3050-75-3950-80-4590 and wherein the scale



of pay for the post of refrigeration mechanic is Rs. 4500-125-7000. I respectfully submit that in number of cases the government itself ratified the appointment which were made by adopting the second method by transferring persons from any other category in same service even though they have received different scale of pay in original service and transferred service. The government has issued G.O.No.1244 dated 13/11/2013 whereby ratified the appointment which were made in same service. In the said government order for personal service were regularised by ratifying the rule 15 (B) of the Tamilnadu State and Subordinate Service Rules. The following are the particulars of the said persons.

Sl. No.	Name	Scale of pay of original post	Scale of pay of transferred post
1.	V.Mariappan	Lift Attendant Rs. 5200-20,200 + 1900 GP	Wireman Grade II Rs. 5200-20,200 + 2400 GP
2.	P.Dharma	Life Operator Rs. 4800-10,200 + 1400 GP	Wireman Grade II Rs. 5200-20,200 + 2400 GP
3.	S.Mohanasundaram	Life Operator Rs. 4800-10,000 + 1400 GP	Wireman Grade II Rs. 5200-20,200 + 2400 GP

5. Likewise the government has also issued a G.O.(D)No.1313 dated 19/10/2015 whereby ratified and regularised the appointment of one B.Jegadeesan who was initially appointed as refrigeration mechanic and thereafter by transfer he was appointed as Junior Engineer (steam laundry) in same service. The respondent has ratified the appointment of one P.Selvam initially he was appointed as engine driver and subsequently appointed by way of transfer as refrigeration mechanic. Likewise the respondent herein has also filled up number of vacancies by adopting the second method of transferring from same service. The following are the pay particulars of the said person is as follows:



Sl. No.	Name	Scale of pay of original post	Scale of pay of transferred post
1.	B.Jegadeesan	Refrigeration Mechanic Rs. 9300-34800 + 4200 GP	Junior Engineer Rs. 9300-34800 + 4400 GP
2.	P.Selvam	Engine Driver Rs. 5200-20,200 + 1900 GP	Refrigeration Mechanic Rs. 9300-34,800 + 4200 GP
3.	Nelson Samuraj	Refrigeration Operator Rs. 5200-20,200 + 1900 GP	Refrigeration Mechanic/Supervisor Rs. 9300-34,800 + 4200 GP

12. When it is pointed out by learned counsel for petitioner that Government has ratified several appointments which were not made in terms of Rule 15B of Tamilnadu State and Subordinate Service Rules, it is to be seen that the ratification was on the recommendation of the second respondent accepting the proposal of the third respondent. Even though the appointment by transfer from one category to another category is made without following Rule 15 B of Tamilnadu State and Subordinate Service Rules, learned Government Pleader is unable to convince this Court as to how the petitioner's case was not even considered in the light of Government orders issued earlier for approving appointment of persons by transfer from one category to another category within the service dispensing with Rule 15 B of Tamilnadu State and Subordinate Service Rules.

13. The petitioner has got all the qualification required for the post of Refrigeration Mechanic. The petitioner was appointed as Wireman Grade II in the year 1986. He has acquired further qualifications in 1993. Even after completion of service for more than 33 years, the petitioner's appointment to the post of Refrigeration Mechanic is justified by relaxing Rule 15 B of Tamilnadu State and Subordinate Service Rules as it was done in the case of several persons in the past.

14. In the result, this writ petition is allowed and the impugned order dated 26.11.2009 passed by the third respondent is quashed. The third respondent shall send a proposal with recommendations to the second respondent regarding ratification of the appointment of the petitioner in the post of Refrigeration Mechanic by transfer from one category to another category in the same service. The first respondent shall consider and pass appropriate orders on the proposal forwarded by the second respondent in the light of the observations made by this Court in this order within a period of three (3) months from the date of



receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Secretariat, Chennai-9.

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Dean,
Thanjavur Medical College Hospital,
Thanjavur - 4.

+1 CC to Mr.T.PON RAMKUMAR, Advocate (SR-93747[F] dated 22/10/2019)

+1 CC to SPL GP (SR-94064[F] dated 23/10/2019)

Order made in
W.P.(MD).No.13588 of 2009
22.10.2019

VB(25.11.2019) 6P 6C