



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.14569 of 2010

P.Santhanthoni Prakasam

.. Petitioner

Vs.

1.Principal Secretary/
Commissioner of Technical Education,
Directorate of Technical Education,
Guindy, Chennai.

2.Additional Director (Polytechnic),
Directorate of Technical Education,
Guindy, Chennai.

3.Principal
Government Polytechnic College,
Konam, Nagercoil,
Kanyakumari District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records in the impugned order, intimation No.10662/B2/2010, dated 11.06.2010 of 1st respondent and quash the said order and direct the 1st respondent to promote the petitioner to the post of Head of the Department (Upgraded) with effect from 01.05.2009 in the 3rd respondent Polytechnic College.

For Petitioner : Mr.C.Dhanseelan
For Respondents : Mr.D.Muruganandam for R1 and R2
Additional Government Pleader
R3 - No Appearance

ORDER

This petition is filed for issuance of writ of Certiorarified mandamus to quash the impugned order passed by the first respondent, dated 11.06.2010 and to direct the first respondent to permit the petitioner to the post of Head of the Department (upgraded) with effect from 01.05.2009 in the third respondent Polytechnic.

2.The petitioner was appointed earlier as Boiler Attendant in the third respondent college. His appointment was made permanent on 20.06.1977. The petitioner was promoted earlier as Boiler Foreman on 17.12.1987 and is working as Special Grade Boiler Foreman on 17.12.2007. The petitioner states that the petitioner who has three years of experience as on 1980 in the post of Boiler Attendant and that he ought to have been promoted as Boiler Foreman on 20.06.1980 itself. As per G.O.Ms.No.1363, Education, dated 16.08.1988, the petitioner who has got Diploma in Mechanical Engineering with two years experience as Boiler Attendant is entitled to be considered



for the post of Instructor. The petitioner completed Diploma in Mechanical Engineering in April 1984. By virtue of G.O.Ms.No.1363, dated 16.08.1988, it is submitted by the petitioner that the petitioner is entitled to be considered for promotion to the post of Instructor at least on the date of G.O.Ms.No.1363, dated 16.08.1988.

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3.It is admitted that the post of Instructor was abolished as per G.O.Ms.No.1081, Education, dated 19.08.1989. As per this Government Order, the persons who were promoted and doing service in the post of Instructor should continue in the said post in the same level and that such person, who is continuing in service is also entitled to be considered for the post of Associate Lecturer, if he completes Engineering degree and five years experience. The grievance of the petitioner is that the respondent has denied timely promotion to the petitioner on the ground that the petitioner who did not have two years of experience in the post of Boiler Foreman is not entitled to be considered for the post of Instructor.

4.The respondents have filed a counter affidavit denying all the averments. In para 4 of the counter affidavit filed by the respondent, the first respondent has stated as follows:

"There is also a stipulation that they should served at least for a period of two years in the feeder category. The respondent had acquired Diploma qualification in Mechanical Engineering only on April 1984 and he was promoted as Boiler Foreman on 17.12.1987, the petitioner had completed qualification in the feeder category (i.e., Boiler Foreman) 16.12.1989 for the promotion of Instructor only after issuance of G.O.Ms.No.1081/Education, dated 19.08.1989, so the petitioner had not fulfilled the two years of experience in the feeder category of Instructor Post (i.e., Boiler Foreman) as on 19.08.1989. So the petitioner's representation for promotion as Instructor post is not feasible for compliance, since the petitioner is not in the Zone of consideration."

5.It is relevant to point out that by G.O.Ms.No.1081, dated 19.08.1989, orders were issued abolishing the post of Instructor, which was an entry level teaching post in Polytechnic colleges. The post of Assistant Lecturers was ordered to be the entry level teaching post after the Government order. Even though no further recruitment to the post of Instructor was necessary, the Instructors who were already in service as on 19.08.1989 are entitled to be considered for promotion and appointed as Lecturers as and when they acquire the Degree qualification. It is further stated that as per the proceedings of Principal Secretary/Commissioner of Technical Education, dated 13.07.2009, the Instructors who are in service as on 19.08.1989 can be promoted as Lecturers on completion of five years of service as Instructor.



6.The learned Additional Government Pleader for the respondents submitted that the post of Instructor is abolished with effect from 1989 that and there is no question of giving promotion to the petitioner to the post of Instructor. It is also stated by the learned Additional Government Pleader that the petitioner who has not completed two years of service in the post of Boiler Foreman is not entitled to be considered for the promotion to the post of Instructor.

7.As pointed out by the learned counsel appearing for the petitioner, as per G.O.Ms.No.1363, dated 16.08.1988, the petitioner is entitled to be considered for promotion at least with effect from the date of the said Government order and two years experience as Boiler Attendant is sufficient to ensure eligibility of the petitioner to the post of Instructor. Though the respondents repeatedly say in other proceedings that the promotion to the post of Instructor does not arise in this case, this Court is of the view that the post of Instructor was available till it was abandoned in 1989 vide G.O.Ms.No.1081, dated 19.08.1989. It is also evident that the petitioner became eligible to be considered for promotion to the post of Instructor atleast from the date of G.O.Ms.No.1363, dated 16.08.1988, wherein it is mentioned that two years of experience in the post of Boiler Attendant is sufficient. For convenience the proviso after amendment is extracted as under:

"Provided further that not with standing anything contained in the above rules, persons possessing diploma qualification in the respective branches of Engineering shall be eligible for appointment as Instructor in the respective branches of Engineering by recruitment of transfer from the categories of workshop Instructors/ Draughtsman/Workshop Foreman/Boiler Foreman/Electrical Foreman/Foreman (Auto) and Boiler Attender in the Government Polytechnic and other special institutions including Government Higher Secondary Schools (V.S.) if they have put in more than two years service in the respective posts."

8.Having regard to the admitted facts, the petitioner has acquired Diploma in Engineering in 1984. He made permanent in the post of Boiler Attendant in 1977 and promoted as Boiler Foreman with effect from 17.12.1987. The fact that the petitioner had experience in the post of Boiler Attendant from 1976 to 1987 is not in dispute. By virtue of G.O.Ms.1363, dated 16.08.1988, the petitioner is entitled to be considered for promotion to the post of Instructor at least with effect from the date of the above Government Order. Unfortunately, in the present case, the respondent did not consider the petitioner for promotion only on the ground that the petitioner did not have two years experience as Boiler Foreman. This is quiet



contrary to the Government Orders. When the respondents have come forward with a specific case that the petitioner could not be considered for promotion for want of two years experience in the post of Boiler Foreman, this Court as a necessary corollary deduce that the petitioner was denied promotion in 1988 on a wrong impression that the petitioner was not eligible to be considered for promotion. Though the post of Instructor was abolished, it is admitted that all those who are promoted to the post of Instructor were allowed to continue. The petitioner become eligible to be considered for promotion in 1988. The stand taken by the respondent that the petitioner though eligible to be considered for promotion, could not be promoted for want of vacancy or for other reasons, cannot be accepted as the petitioner was not even considered for promotion. Since the respondent admitted that the petitioner was not considered for promotion at the relevant point of time on the ground that he did not come under the Zone of consideration, this Court is of the view that the promotion to the petitioner was denied illegally and that the petitioner is entitled to be promoted at least with effect from Government order 1363, dated 16.08.1988. It is also admitted that there was vacancy in the post of Instructor as on the date when G.O.Ms.No.1081 was passed. For the above reasons, the impugned order is liable to be quashed, Since the respondents have denied promotion to the petitioner only on the ground that he was not eligible to the post of Instructor for want of two years experience in the post of Boiler foreman.

9.As a result, this writ petition is allowed and the impugned order is quashed. The first respondent is directed to promote the petitioner to the post of Instructor with effect from date of Government order namely, G.O.Ms.No.1363, dated 16.08.1988. Since the petitioner is retired from service, now the notional promotion may be given to the petitioner. The respondents are further directed to pay the service and monetary benefits to the petitioner by giving promotion to the post of Instructor with effect from 1988. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1.Principal Secretary/
Commissioner of Technical Education,
Directorate of Technical Education,
Guindy, Chennai.



2. Additional Director (Polytechnic),
Directorate of Technical Education,
Guindy, Chennai.

3. The Principal
Government Polytechnic College,
Konam, Nagercoil,
Kanyakumari District

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-102297[F] dated 28/11/2019
+1 CC to M/s.SPL GP (SR-102385[F] dated 28/11/2019)

W.P.(MD).No.14569 of 2010.
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