



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.10.2019

CORAM :

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.16323 of 2017

and

W.M.P. (MD)Nos.12996 and 12997 of 2017 and 377 of 2018

G.Ravi Ubald Prakash

... Petitioner

vs.

1.The Secretary to Government,
Higher Education (C2) Department,
Fort St. George,
Chennai - 600 009.

2.The Additional Director (Polytechnic),
Directorate of Technical Education,
Guindy,
Chennnai - 600 025.

3.The Secretary/Correspondent,
Kamaraj Polytechnic College,
Palavilai, Nagercoil,
Kanyakumari District.

4.K.M.Thiruvassagam,
Lecturer (Self-finance) in Automobile Engineering,
NMS Kamaraj Polytechnic College,
Palavilai, Nagercoil - 629 501,
Kanyakumari District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent, pertaining to its order bearing No.NMS/MP/0238/2017, dated 26.07.2017, quash the same and a consequential direction to the respondents to promote the petitioner to the post of Head of the Department of Mechanical Engineering with retrospective effect from 20.03.2008, by considering the representation of the petitioner, dated 14.07.2017, within a time limit to be fixed by this Court.

For Petitioner : Mr.PL.Narayanan
for Ms.P.Kalaiyarasi Bharathi
For R1 and R2 : Mr.VR.Shanmuganathan
Special Government Pleader



For R3
For R4

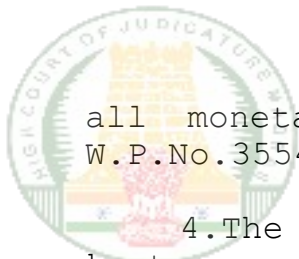
: Mr.V.Panneer Selvam
: Mr.R.Gowri Shankar

ORDER

This Writ Petition has been filed seeking to quash the impugned selection order of the third respondent, bearing No.N.M.S.K.B./0238/2017, dated 26.07.2017 and a consequential direction to the respondents to promote the petitioner to the post of Head of the Department [Mechanical Engineering] with retrospective effect from 20.03.2008, by considering the representation of the petitioner, dated 14.07.2017.

2. According to the learned counsel appearing petitioner, the petitioner was appointed as Workshop Instructor on 20.03.1985 and joined the services of the third respondent on the said date as Workshop Instructor. From 12.12.1985 onwards, the petitioner is eligible to be promoted as Instructor by virtue of his Diploma qualification and previous experience. As per G.O.Ms.No.1146, Education Department, dated 25.11.1992, he is eligible to be promoted as Upgraded Associate Lecturer with effect from 20.03.1990, on completion of 5 years service in Polytechnic. As per G.O.Ms.No.1081, Education Department, dated 19.08.1989, the petitioner is eligible to be promoted as Upgraded Senior Lecturer with effect from 20.03.2000 on completion of 10 years service. The petitioner has completed B.E. Mechanical Engineering in II Class in November 2000. Thereafter, in April 2005, the petitioner has completed M.E. Degree in Mechanical Engineering in I Class. The petitioner was eligible to be posted as Upgraded Senior Lecturer, but he was not considered. Hence, he preferred W.P.No.9111 of 1997 and this Court, vide order dated 10.09.2004, directed the third respondent to consider the claim of the petitioner in the available vacancy, for being promoted to the post of Instructor, in accordance with the Special Rules, against which, the third respondent preferred a Writ Appeal in W.A.No.1039 of 2006 and the same was dismissed on 01.08.2007. Even thereafter, the respondents failed to consider the petitioner's claim.

3. In pursuance of the abovesaid order, the Government issued G.O.Ms.No.95, Higher Education (C1) Department, dated 26.03.2008, directing the respondents to promote the petitioner as Instructor. In the said G.O., the availability of vacancy criteria was not insisted. As per G.O.Ms.No.1081, Education (J1) Department, dated 19.08.1989, Master Degree with 8 years service is enough to be promoted as Head of the Department [Mechanical]. According to the petitioner, he is eligible to be promoted for the said post with effect from 20.03.2008. In a similar issue, one C.Selvamony, who was working as a Draftsman in the Civil Department of the very same College, granted notional promotion as Instructor, Associate Senior Lecturer after retirement retrospectively with



all monetary benefits, based on the order of this Court, in W.P.No.3554 of 2005, dated 24.11.2010.

4.The Head of the Department [Mechanical] post in the College kept vacant from 30.06.2006. Therefore, the petitioner is eligible to be promoted retrospectively with effect from 20.03.2008. Moreover, as per Directorate of Technical Education Circular, dated 03.01.1989, first priority should be given to internal candidates, if they are available. Accordingly, the petitioner is the only internal candidate and rightful person for being promoted as HOD, Mechanical Engineering.

5.The fourth respondent, who was working as Part-time Lecturer in Automobile Engineering in the Self-Finance Department and has completed M.E. During 2011, has been considered for the post of Head of the Department [Mechanical Engineering]. As per G.O.(Ms).No.111, Higher Education (C2) Department, dated 25.05.2010, for appointment of the Head of the Department, one should possess Bachelor and Master Degree of appropriate Branch in Engineering/Technology with 1st Class or equivalent either Bachelors or Master level with minimum of 10 years relevant experience in teaching or reserach or Industry. Though the petitioner is eligible, he was not considered. Hence, he filed W.P.(MD)No.13260 of 2010 before this Court, to promote him as Instructor from 12.12.1985 and Upgraded Associate Lecturer from 20.03.1990 and Upgraded Senior Lecturer from 20.03.2000 and Upgraded Head of the Department from 20.03.2008. The said writ petition was disposed of and an appeal was filed against the order passed in the said Writ Petition and the said appeal was disposed on 26.07.2017, saying that the petitioner is eligible to get the benefits on par with other four persons, as it has been directed in W.P.No.9111 of 1997.

6.To avoid the promotion avenue available to the person like that of the petitioner, the Management used to promote the candidate of their own choice and only in order to avoid the same, the first respondent has issued a Circular, dated 03.01.1989. As per revised guidelines issued in G.O.Ms.No.563, Higher Education (C2) Department, dated 31.12.2004, the initial recruitment for the cadre of Lecturers will be done by TRB by open advertisement on merit at State Level and for higher post, the method of promotion, as is being adopted will continue. Therefore, the HOD post cannot be filled by direct recruitment.

7.Further, according to the learned counsel appearing for the petitioner, after filing this Writ Petition, the appointment of the fourth respondent was temporarily approved by the Commissioner of Technical Education. The fact remains that the fourth respondent was working in the third respondent College as Part-time Lecturer in the Automobile Department in Self-Finance Course and he is an external candidate as defined in Circular, dated 03.01.1989. It

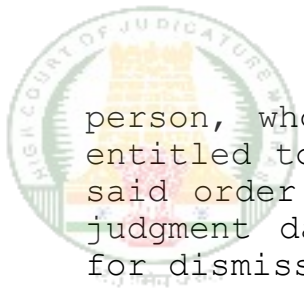


"தற்காலிக அடிப்படையில் பணியாற்றிக் கொண்டிருக்கும் எவரையும் உள்நபர் எனக் கூறுதல் கூடாது. இதை கண்டிப்பாக ஏற்கமுடியாது."

But, the fourth respondent, in his counter affidavit, dated 18.08.2017, filed in the connection Writ Petition in W.P.(MD) No.15345 of 2017, at Paragraph No.19, has falsely alleged that he is an internal candidate.

8.As per the Special / Ad hoc Rules, which was published on 09.03.1984, age of the candidates to be selected for direct recruitment as Head of the Department in Engineering Branch, should not exceed 36 years. The said Rule has not been amended so far and the same has been accepted by the fourth respondent in his counter affidavit, filed in the connected Writ Petition in W.P.(MD)No.15345 of 2017, dated 18.08.2017. Therefore, it is clear that the fourth respondent is not at all eligible for direct recruitment as Head of the Department [Mechanical Engineering], as his age is more than 36 years, which has barred on 06.07.2007. His date of birth is 07.07.1971. But, the third respondent, in his Advertisement, dated 08.10.2016, has called for the candidates to be directly recruited to the post of Head of the Department [Mechanical Engineering], who have not completed 45 years of age as on 01.07.2016. Therefore, the appointment of the fourth respondent needs to be cancelled and the petitioner should be appointed as Head of the Department [Mechanical Engineering] in the third respondent College and prayed for allowing the Writ Petition.

9.The third respondent filed counter affidavit. The learned counsel appearing for the third respondent submitted that the petitioner was appointed as Workshop Instructor on 20.03.1985 and continuing in the same post till date. Based on the orders of this Court, passed in W.P.No.9111 of 1997 and W.P.(MD)No.13260 of 2010, the Government issued G.O.Ms.No.264, dated 31.10.2018, directing the appointment of the petitioner in the post of Instructor with effect from 26.03.2008, by creating a supernumerary post. The said Government Order was forwarded from the Director of Technical Education by letter dated 12.11.2018. When the third respondent College tried to serve the said order on the petitioner on 21.12.2018, he refused to receive the same. In view of the same, the petitioner is still continuing only as Workshop Instructor, which is a non-technical post. Further, the petitioner is not eligible to be appointed as Head of the Department [Mechanical Engineering], as he has no teaching experience and has not participated in the selection process. The petitioner is not challenging any order appointing the fourth respondent as Head of the Department [Mechanical Engineering], but challenging only the information furnished under the Right to Information Act about the qualification of the fourth respondent. The third respondent relied on the order passed by this Court, dated 27.09.2018, made in W.P.No.7321 of 2016, wherein this Court has held that an ineligible



person, who has not participated in the selection process, is not entitled to challenge the selection of a successful candidate. The said order was confirmed by the Division Bench of this Court, vide judgment dated 14.02.2019, made in W.A.No.2617 of 2018 and prayed for dismissal of the Writ Petition.

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10.I have heard the learned counsel appearing for the parties and perused the materials available on record.

11.From the averments made in the affidavit filed by the petitioner, it is seen that the petitioner possessed the Diploma in Mechanical Engineering and he was appointed by the third respondent on 20.03.1985 as Workshop Instructor. According to the petitioner, he is entitled to be posted as Instructor and subsequently, upgraded as Associate Lecturer with effect from 20.03.1990. The petitioner filed W.P.No.9111 of 1997 to promote him as Senior Lecturer. This Court, by order dated 10.09.2004, directed the third respondent to consider the claim of the petitioner in the available vacancy for being promoted to the post of Instructor. Challenging the said order, the third respondent filed W.A.No.1039 of 2006 and the same was dismissed on 01.08.2007. The petitioner has obtained B.E. Mechanical Engineering during November 2000 in second class and M.E. Mechanical Engineering during April 2005. The petitioner is entitled to be promoted as Head of the Department and the respondents 1 to 3 are making efforts to approve the appointment of the fourth respondent without considering the eligible person working in the College.

12.The very same issue was raised by one T.Chandrasekaran in W.P.(MD)No.15343 of 2017. Today, the said Writ Petition was dismissed. The ratio in the said order is applicable to the present Writ Petition also. In addition to the said reason, this Writ Petition is liable to be dismissed on the ground that the petitioner is still working as Workshop Instructor, which is a non-teaching post. The petitioner is claiming that he is eligible to be promoted as Instructor and upgraded Associate Lecturer with effect from 20.03.1990. He was not promoted to the said post. He has no requisite teaching experience to be considered for appointment of Head of the Department [Mechanical Engineering]. He is ineligible person and has not participated in the selection process, as he is ineligible to be appointed. The order dated 27.09.2018 made in W.P.No.7321 of 2016 is squarely applicable to the facts of the present case.



13. For the above reasons, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

To

1. The Secretary to Government,
Higher Education (C2) Department,
Fort St. George,
Chennai - 600 009.

2. The Additional Director (Polytechnic),
Directorate of Technical Education,
Guindy,
Chennai - 600 025.

+1 CC to M/s.P.KALAIYARASI BHARATHI, Advocate (SR-93674[F] dated 22/10/2019)

+1 CC to Mr.V.PANNEER SELVAM, Advocate (SR-93845[F] dated 23/10/2019)

+1 CC to sPL.GP (SR-94057[F] dated 23/10/2019)

W.P. (MD) No.16323 of 2017

22.10.2019

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