

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.19439 of 2018

and

W.M.P.Nos.2818 & 2819 of 2020

T.P. Subramaniam

...Petitioner

Vs.

1.The Secretary to Government of Tamilnadu,
Higher Education Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Technical Education,
53, Sardar Patel Road,
Guindy,
Chennai - 600 025.

3.The Merger Committee,
Directorate of Technical Education,
53, Sardar Patel Road,
Guindy,
Chennai - 600 025.

4.The Commisssioner of Sugar,
Periyar Building,
690, Anna Salai,
Nandanam,
Chennai - 600 0235.

5.The Managing Director-cum-Chairman,
Dharmapuri District Co-operative
Sugar Mills Polytechnic College,
Palacode,
Dharmapuri - 636 808.

6.The Principal,
Government Polytechnic College,
Co-operative Sugar Mills Campus,
Palacode,
Dharmapuri - 636 808.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the records of the first respondent in Letter No.7997/B2/2019-1, dated 12.06.2019 and the second respondent communication in letter No.47901/H3/2018, dated 27.06.2019 and quash the same and consequently direct the first respondent to sanction the Junior Draughting Officer/Draughtsman Grade III post and absorb the petitioner as Junior Draughting Officer/Draughtsman Grade III Post in the sixth respondent Government Polytechnic College, Palacode or in any other nearby Government Polytechnic Colleges, along with all the attendant, monetary and other service benefits from the date of first respondent G.O.(Ms)No.26 dated 31.08.2018 with interest.

**(Prayer Amended as per order dated 03.02.2020
made in WMP.No.2817 of 2020 in WP.No.19439 of 2018)**

For Petitioner : Mr.S.Sathiaseelan
For Respondents : Mr.Karthikei Balan, for R1 to R3 & R6
Government Advocate
Mr. Bala Ramesh, for R4
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the first and second respondents rejecting the claim made by the petitioner to absorb him in the sixth respondent Polytechnic College and for a consequential directions to the respondents to absorb the petitioner in the sixth respondent College and to provide him with all service and monetary benefits.

2. The case of the petitioner is that he joined the fifth respondent college in the year 1987 as a Pump Operator and his probation was declared in the year 1989. Thereafter, the petitioner was promoted as Draughtsman by proceedings dated 27.11.2006 and he continued in the same position till the year 2018 and thereafter, he was kept away from service. The claim made by the petitioner is that a notice was issued to all the regular staff, teaching and non teaching, to submit the original records and appear before the Merger Committee, in order to consider for absorption in the sixth respondent college. According to the petitioner, he has submitted all the documents before the Merger Committee. It is during this period, the petitioner was kept away from service from 02.07.2018. Initially, the petitioner had sought for mandamus for a direction to the first respondent to consider the representation made by the petitioner to absorb him in the sixth respondent

college. Since the same was rejected by the first and second respondents, the prayer in the writ petition was amended and the rejection order was also challenged in the above writ petition.

3. The learned counsel for the petitioner submitted that the petitioner has put in service from the year 1987 onwards and he was made as a Draughtsman in the year 2006. The learned counsel further submitted that the sixth respondent even without issuing notice or without specifically assigning any reason, kept the petitioner away from service from July 2018. The learned counsel further submitted that the first respondent ought to have awaited for the report of the Merger Committee and thereafter, a decision should have been taken. Even before the report of the Merger Committee, the impugned proceedings have been passed by the first and second respondents.

4. The learned Government Advocate appearing on behalf of the respondents submitted that the right of the petitioner to get absorbed in the sixth respondent College can be traced only in GO.Ms.No.26, dated 30.01.2018. The learned counsel submitted that the Merger Committee can recommend for absorption only when the concerned staff was working in a sanctioned post. The learned counsel submitted that the Draughtsman was not a sanctioned post and therefore, the petitioner was not entitled to be absorbed in the sixth respondent college. The learned counsel also brought to the notice of this Court the judgment of the Division Bench of this Court in W.A.No.3926 of 2019 dated 20.11.2019, and submitted that the Division Bench had specifically rejected the claim made by the petitioner therein and had directed the Merger Committee to take appropriate decision towards the claim made by the petitioner therein. The learned counsel submitted that the Division Bench judgment of this Court will also squarely apply to the present case. The learned counsel concluded his argument by submitting that the petitioner, without challenging the specific terms of Go.Ms.No.26, dated 30.01.2018, cannot challenge the consequential orders passed by the first and second respondents, who have merely followed the requirements under the said Government order.

5. In reply to the said submissions, the learned counsel for the petitioner submitted that the facts of the case before the Division Bench has nothing to do with the claim made in the present case. The learned counsel submitted that in the facts before the Division Bench, there was neither the department available nor the stream of course that was envisaged to run the institution after it was taken over by the Government. The learned counsel therefore submitted that the case of the

petitioner will have to be considered independently and the first respondent must be directed to take into consideration the continuous service rendered by the petitioner and he must be absorbed in the sixth respondent college.

6. This Court has carefully considered the submissions made on either side and perused the materials available on record.

7. It will be relevant to extract the judgment of the Division Bench which has been cited before this Court:-

6. It is also the case of the appellants that the respondent/petitioner was on consolidated wages and, therefore, he could not be treated as a permanent staff of the erstwhile Polytechnic so as to claim his continuance or absorption after the taking over of the institution. The contention, therefore, of the appellants is that in view of the provisions of the Government Order dated 30.01.2018, there was no occasion for considering the absorption of the respondent/petitioner by the Merger Committee as constituted under Clause (6) of the Government Order, referred to herein above.

7. On the basis of the pleadings that have been brought forth before us, the aforesaid facts upon an assessment lead us to the conclusion that the respondent/petitioner's claim was not put forth before the Merger Committee and as per the learned counsel for the appellants, the respondent/petitioner was not entitled to be absorbed keeping in view the fact that neither there was any Department of Computer Science or stream of course envisaged to be run by the institution after it being taken over by the Government and secondly, there was no sanctioned post for the same.

9. We, therefore, find that the learned Single Judge exceeded in issuing the mandamus for absorbing the respondent/petitioner after sanctioning the post without taking into account the terms and conditions of the Government Order dated 30.01.2018.

10. We, therefore, allow this appeal and set aside the impugned judgment of the learned Single Judge dated 18.06.2019, but at the same time we dispose of the writ petition of the respondent/petitioner with liberty to the respondent/petitioner to get his claim assessed and considered by the Merger Committee constituted in terms of Clause (6) of the Government Order dated

30.01.2018 and in the event, such a claim is put forth, it shall be open to the Merger Committee to take appropriate decision in the matter and intimate the respondent/petitioner expeditiously, preferably within a period of two months from the date of production of a copy of this order.

8. The Division Bench was considering the claim made by a candidate who also suffered the disqualification as he was not appointed in a sanctioned post. The Division Bench on considering the claim made by the petitioner therein, had directed the claim made by the petitioner to be considered by the Merger Committee and the decision to be intimated to the petitioner and the State Government.

9. In the present case, the petitioner was working as a Draughtsman. The Government of Tamil Nadu issued Go.Ms.26, dated 30.01.2018 by which it had taken over the fifth respondent college. The Government order prescribes the various terms and conditions for absorption of the candidates to the sixth respondent college. Clause 6(3) of the Government order is extracted hereunder:-

"(iii) Merger Committee shall be constituted for absorption and accommodation of regular staff of the Dharmapuri District Cooperative Sugar Mills Polytechnic College in the above created post and the Committee shall decide Terms and conditions of their absorption. Staff shall be absorbed only against sanctioned post and excess staff will not be taken over. Till such time the final terms and conditions are decided, the staff will be paid only the existing scale of pay as they are presently drawing."

10. It is seen from the records that the petitioner had already submitted all the necessary particulars before the Merger Committee pursuant to the notice issued by the principal of the fifth respondent college. The first and second respondents could have awaited the report of the Merger Committee since ultimately the Merger Committee will have to consider the claim made by the petitioner in accordance with in Go.Ms.26 dated 30.01.2018. The Government order itself stipulates the condition in which a person can be absorbed into the sixth respondent College. The stand taken by the first and second respondents is to the effect that the post held by the petitioner in the fifth respondent college as Draughtsman is not a sanctioned post and therefore, the petitioner cannot be absorbed in the sixth respondent college. The petitioner had put in service for long number of years and one fine day he was left

in lurch and asked to go away on the ground that the post of Draughtsman held by him cannot be considered for absorption in the sixth respondent college.

11. As held by the Division Bench, this issue should be considered by Merger Committee constituted in Clause(6) of the Government order dated 30.01.2018.

12. In view of the above, there shall be a direction to the petitioner to submit a representation before the Merger Committee along with all the required documents and the Merger committee is directed to take appropriate decision on the claim made by the petitioner within a period of four weeks from the date of receipt of representation from the petitioner. The decision taken by the Merger Committee shall also be placed before the first respondent and the first respondent is directed to pass appropriate orders within a period of six weeks thereafter, if the petitioner is found to be eligible, with all consequential benefits.

13. This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

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Higher Education Department,
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+1 cc to M/s.S.Sathiaseelan,Advocate Sr.No. 12943

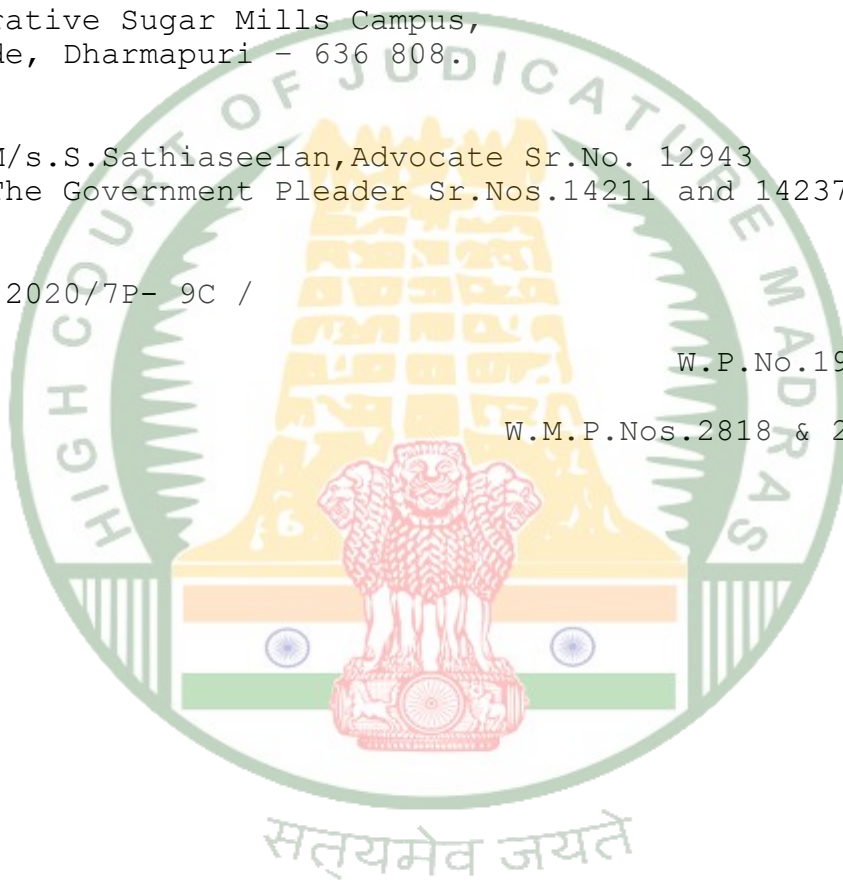
+1 cc to The Government Pleader Sr.Nos.14211 and 14237

AKM/24.02.2020/7P- 9C /

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