

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.02.2020	Delivered on 06.02.2020
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.33033 of 2019
and
WMP No.33461 of 2019

1.R.Balakrishnan

2.V.Annadurai

3.J.Suresh Babu

4.A.Jambu

5.R.Shanmugam

6.T.Murugan

... Petitioners

.vs

1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd,
No.144, Anna Salai, Chennai 600 002.

2.The Chief Engineer Personnel,
Tamil Nadu Generation and Distribution
Corporation Ltd,
No.144, Anna Salai,
Chennai 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to re-designate the petitioners as Assistant Executive Engineers from the date of their acquiring the decrees in accordance with the orders of the Hon'ble Supreme Court dated 03.11.2017 and in accordance with Annexure-I of the TNEB Service Regulations and all other consequential benefits.

For Petitioners: Mr.V.Prakash, Senior Counsel
for Mr.Gautam S.Raman

For Respondents: Mr.Karthik Rajan
Standing Counsel

O R D E R

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents to redesignate the petitioners as Assistant Engineers from the date of their acquiring B.E. degree in the year 2009 and to consider them for promotion to the post of Assistant Executive Engineers.

2.The case of the petitioners is that they are working as Junior Engineers (Mechanical) Grade-I in the respondent Corporation. As per the regulations of FTANGEDCO, Junior Engineers, who subsequently acquire a degree in Mechanical Engineering, shall be permitted to be redesignated as Assistant Engineers (Mechanical) and appointed to the post of Assistant Engineers (Mechanical), if there are regular vacancies in the said post.

3.The petitioners after being employed as Junior Engineers, enrolled themselves for the course of B.E. Mechanical Engineering through Distance Education Programme at Vinayaka Missions University in the year 2005. The petitioners completed the course in the year 2009.

4.The petitioners made representations to the 2nd respondent to redesignate them as Assistant Engineers and request made by the petitioners was kept pending since the 2nd respondent was not certain about the validity of the degree obtained by the petitioners.

5.A major issue arose before the Hon'ble Supreme Court pertaining to the degrees that were granted by certain deemed Universities and the same was put to question. Vinayaka Mission University was also one among them. Pending the decision of the Hon'ble Supreme Court, all degrees obtained from this University was suspended. Therefore, the petitioners were not able to pursue further with the request made by them for redesignation and they had to necessarily wait for the final verdict of the Hon'ble Supreme Court.

6.The Hon'ble Supreme Court ultimately took up all the cases for final hearing and gave certain directions. The relevant portion of the order is extracted hereunder:

I. 1994 AICTE Regulations, do apply to Deemed to be Universities and the Deemed to be Universities in the present matter were not justified in introducing any new courses in Technical Education without the approval of AICTE.

II. Insofar as candidates enrolled during the Academic Sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their

concerned authorities are set aside.

III. Consequent to aforesaid direction No.II, all the degrees in Engineering awarded by concerned Deemed to be Universities stand suspended.

IV. The AICTE shall devise the modalities to conduct an appropriate test/tests as indicated in Para 47 above. The option be given to the concerned students whose degrees stand suspended by 15.01.2018 to appear at the test/tests to be conducted in accordance with the directions in Para 47 above. Students be given not more than two chances to clear test/tests and if they do not successfully clear the test/tests within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in Paras 46 and 47 above. The entire expenditure for conducting the test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018.

V. Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in Para 47.

VI.If the students clear the test/tests within the stipulated time, all the advantages/benefits shall be restores to them and their degrees will stand revived fully.

7.After the above Orders were passed, AICTE conducted the test and the petitioners also participated in the same and all of them cleared in the 2nd attempt, in the year 2018. A certificate for validation of the degree was also issued by the AICTE to the petitioners during December 2018.

8.The petitioners thereafter made a representation to the 2nd respondent to redesignate them as Assistant Engineers with effect from the date of getting the original degree in the year 2009 and fit them accordingly in the seniority. Since the same was not considered, the present Writ Petition has been filed before this Court.

9.Mr.V.Prakash, learned Senior Counsel appearing on behalf of the petitioners submitted that the directions of the Hon'ble Supreme Court is very clear to the effect that those persons, who clear the test within the stipulated time, will get all the benefits restored to them and their degrees will stand revived fully. The learned Senior Counsel submitted that this clearly indicates the fact that even though the revalidation of

the degree was done in the year 2018, it has to date back to the year 2009 since the degree stands fully revived. The learned Senior Counsel therefore submitted that the petitioners are entitled to be redesignated as Assistant Engineers and they must be given the seniority from the year 2009 onwards.

10.The learned Senior Counsel further submitted that a subsequent Order came to be passed by the Hon'ble Supreme Court in the review petition wherein, the Hon'ble Supreme Court dealt with persons, who have already obtained/got certain advantages by virtue of the degree given by the deemed University and there was an apprehension that the said advantage will be taken away in view of the fact that the degree was held to be invalid. The learned Senior Counsel submitted that in such cases, the concerned candidates were given one opportunity to clear the test conducted by AICTE and validate their degree and failure to do the same will dis-entitle them to continue with the advantages obtained by them. The learned Senior Counsel submitted that this Order passed in the review petition will not apply to the petitioners since the petitioners had not obtained any advantage or benefit based on the original degree granted by the deemed University.

11.The learned Senior Counsel further submitted that the respondents have opposed this Writ Petition only on the ground that the petitioners have approached this Court with a substantial delay and that if the petitioners are placed in the seniority from the year 2009, the same will dislodge a settled seniority and it will have its own repercussions on the right of the other candidates. The learned Senior Counsel submitted that this stand taken by the respondents is totally unsustainable since only now the respondents are in the process of considering the suitable candidates from the year 2008 onwards for the purpose of considering their promotion to the post of Assistant Executive Engineer. Therefore, the learned Senior Counsel submitted that by fixing the seniority of the petitioners with effect from the year 2009, no prejudice will be caused to anyone and it will not unsettle the status of the other candidates, who are yet to be considered for promotion to the post of Assistant Executive Engineer.

12.The learned Senior Counsel submitted that even though, the petitioners were not parties in the proceedings before the Hon'ble Supreme Court, the judgment passed by the Hon'ble Supreme Court is in the nature of a judgment in Rem and it applied to all the affected candidates and that is the reason, why the petitioners were allowed to participate in the test conducted by the AICTE.

13.The 2nd respondent has filed a counter affidavit and

the main stand that has been taken in the counter affidavit is that the petitioners have approached this Court after a substantial delay and if the request made by the petitioners is considered, it will unsettle the settled position of the seniority of Assistant Engineers. The further stand that has been taken in the counter affidavit is to the effect that redesignation is not an automatic process and it requires consideration and availability of vacancies in the post of Assistant Engineers (Mechanical). Therefore, without getting into the zone of consideration, the petitioners will not be entitled for being considered for promotion to the post of Assistant Executive Engineer.

14.Mr.Karthik Rajan, learned Standing Counsel appearing on behalf of the respondents submitted that the petitioners are trying to piggy back on the Supreme Court judgment, even without participating in the proceedings and the petitioners are mere fence sitters, who are trying to take advantage of the Hon'ble Supreme Court judgment and claim for an unsustainable relief. The learned Standing Counsel further submitted that such delayed claims will upset the settled seniority and it has been repeatedly held that such claims should never be entertained. In order to substantiate his submission, the learned Standing Counsel relied upon the judgment of this Court in K.Sundar .v. Tamil Nadu Generation and Distribution Corporation & Others made in W.P.No.14442 of 2019 dated 12.12.2019.

15.The learned Standing Counsel concluded his arguments by submitting that if at all the petitioners are entitled for redesignation, the same can be considered only after the revalidation of the degree in the year 2018 and it cannot date back to the year 2009.

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

17.Before venturing into the issue that has been raised in the present Writ Petition, it is important to understand the nature and purport of the judgment passed by the Hon'ble Supreme Court. Since the petitioners are pitching their rights upon this judgment, this Court has to necessarily go into this issue at the threshold, before considering the claim made by the petitioners.

18.There is no dispute with regard to the fact that the petitioners had joined Vinayaka Mission University in the year 2005 and they have all completed B.E (Mechanical) Engineering through Distance Education Programme, in the year 2009. The degree given by this University and similarly placed deemed Universities, became questionable and the matter ultimately

reached the Apex Court. The Apex Court, after considering the claims and counter claims and also keeping in mind the interest of the students, issued certain directions and the same has been extracted supra.

19.The Hon'ble Supreme Court suspended the degrees of all those students who underwent the course in those deemed Universities and completed the course. The AICTE was directed to conduct a test to all the concerned students, who underwent the course in those deemed Universities. Those students were given two chances to clear the test and if they clear the test within those two chances, all the advantages/benefits was directed to be restored to them and their degrees will stand fully revived.

20.It is true that the petitioners were not parties in the above proceedings. However, the judgment passed by the Hon'ble Supreme Court was in the nature of a judgment in Rem and therefore, it had a binding effect on all those students, who had undergone the course in the concerned deemed Universities. That is the reason why, the AICTE permitted the petitioners to take the test and the petitioners also cleared the same in the second chance. Pursuant to the same, the AICTE also issued a certificate for validation of the degree during December 2018. By granting such a validation, the degrees obtained by the petitioners in the year 2009 from Vinayaka Mission University stood fully revived. This is very clear from the language used by the Hon'ble Supreme Court in the above order. In the considered view of this Court, the subsequent Order passed by the Hon'ble Supreme Court in the review petition, will not have any bearing to the facts of the present case since that Order only covered those persons, who obtained a benefit on the basis of a degree granted by the deemed Universities. Admittedly, in this case the petitioners did not obtain any benefit pursuant to the degree granted to them in the year 2009.

21.The Service Regulations of TANGEDCO provides as follows:

"Junior Engineers (Mechanical) I Grade, who are holders of a diploma in Mechanical Engineering and who have subsequently acquired a Degree in Mechanical Engineering, shall be permitted to be redesignated as Assistant Engineers (Mechanical) and appointed to the post of Assistant Engineers (Mechanical), if there are regular vacancies in the post of Assistant Engineers (Mechanical)".

22.It is clear from the above regulation that the Junior Engineers (Mechanical), who acquire a decree in Mechanical Engineering subsequently are eligible to be redesignated as Assistant Engineers (Mechanical) and are eligible to be appointed in the said post, if there are regular

vacancies.

23. In the present case, the petitioners had made representations to the 2nd respondent from the year 2009 onwards to redesignate them as Assistant Engineers (Mechanical). These representations were not considered by the respondents since the respondents were not sure about the degrees obtained by the petitioners. Subsequently, the issue reached the Hon'ble Supreme Court and therefore, there was no occasion for the respondents to consider the claim made by the petitioners. The petitioners also cannot be blamed and they cannot be found fault on the ground of delay since the entire dispute regarding the degrees obtained by them from Vinayaka Mission University, came to an end only in November 2017 and the petitioners also cleared the test subsequently in the year 2018 and got their degree revalidated by AICTE during December 2018. On the facts and circumstances of the case, this Court is of the considered view that the claim made by the petitioners cannot be rejected on the ground of delay.

24. The next issue that requires consideration of this Court is as to whether by fitting the petitioners in the seniority list with effect from the year 2009, the same will dislodge a settled seniority list and whether it will take away the rights/benefits already obtained by the other candidates. It is clear from the records and also the stand taken by the respondents that only in the year 2019, the process has started for calling upon the list of candidates from the year 2008 onwards, to be considered for promotion to the post of Assistant Executive Engineer. Therefore, it is not as if certain promotions have already been granted and by fitting the petitioners in the seniority list, those benefits will get reversed and will affect the rights of those parties. If that had happened, certainly this Court would have been wary in considering the claim of the petitioners. Since that situation has not arisen in the present case, the inclusion of the petitioners in the seniority list with effect from 2009 will not cause any prejudice to any of the other candidates. That apart, the petitioners are only demanding for their rightful claim and they are not asking for any concession. The judgment relied upon by the learned Standing Counsel appearing on behalf of the respondents, will not have any application to the facts of the present case.

25. In view of the above discussion, there shall be a direction to the 2nd respondent to redesignate the petitioners as Assistant Engineers in accordance with the Service Regulations and consider their seniority from the year 2009 onwards and fit them accordingly, in the seniority list. Appropriate Orders shall be passed in this regard within a period of four weeks from the date of receipt of copy of this order.

This Writ Petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd,
No.144, Anna Salai, Chennai 600 002.
- 2.The Chief Engineer Personnel,
Tamil Nadu Generation and Distribution
Corporation Ltd,
No.144, Anna Salai, Chennai 600 002.

+1cc to Mr.S.Raman, Advocate, S.R.No. 9707

+1cc to Mr.Karthik Rajan, Advocate, S.R.No. 9426

W.P.No.33033 of 2019

MP (CO)
GN (04/03/2020)

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