



WEB COPY

W.P(MD)No.4998 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.4998 of 2012

and

M.P(MD)No.1 of 2012

R.Padmanabhan

... Petitioner

vs.

1)The Commissioner of Technical Education,
The Directorate of Technical Education,
Guindy-600 025.

2)The Principal Government Polytechnic,
Thoothukudi District.

... Respondents

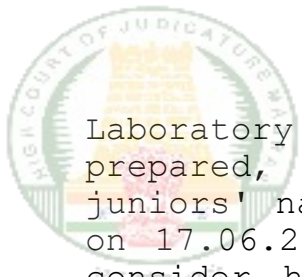
Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order No.19554/B-6/2010 dated 26.07.2010 on the file of the 1st respondent and quash the same and further directing the respondents 1 and 2 to promote the petitioner as the Workshop Instructor in the Government Polytechnic College, Thoothukudi with effect from 01.12.10.

For Petitioner	: Mr.G.Prabhu Rajadurai
For Respondents	: Mr.S.Dhayalan

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order No.19554/B-6/2010 dated 26.07.2010 on the file of the 1st respondent and quash the same and further directing the respondents 1 and 2 to promote the petitioner as the Workshop Instructor in the Government Polytechnic College, Thoothukudi with effect from 01.12.10.

2.Learned counsel for the petitioner would submit that the petitioner on completing SSLC, was appointed as Laboratory Attender in Government Polytechnic, Thoothukudi in February 1975. The designation of the post is only Laboratory Attender and not with reference to any Laboratory. On appointment, the petitioner was assigned duty in Black smiting section which comes under the Mechanical Department. In November, 1978, he was transferred to Civil Department. On 18.04.2009, a panel for promotion of the



Laboratory Assistant to the post of Workshop Instructor was prepared, in which, the petitioner's name was ignored, but his juniors' names were included. The petitioners sent representations on 17.06.2009, 31.07.2009, 30.10.2009 and 16.12.2009 requesting to consider him for promotion. On 06.07.2009, new rules came into force prescribing minimum qualification of diploma of ITI Certificate for the post of Workshop Instructor. However, the promotions were effected as per the old rules.

3.He would further submit that the petitioner filed W.P(MD) No.4927 of 2010 for directing the respondent to consider his representation dated 17.06.2009 and the reminder dated 19.03.2010 seeking to promote him as Workshop Instructor and to pass orders which was ordered by order dated 13.04.2010. Thereafter, the respondents passed an order dated 26.07.2010 stating that previously in 18.04.2009 list, the petitioner was not considered since he had not completed 7 years experience in Mechanical Lab and further stated that the petitioner completed such 7 years experience only on 30.06.2009 by which time, new rules came into effect and he was not considered as per the new rules, since he was not a diploma holder. It is further stated that one M.F.Thangaraja who also issued with the same impugned order along with the petitioner filed W.P(MD) No.14252 of 2010 and this Court by order dated 30.03.2012 quashed the order dated 26.07.2010 and directed the respondents to give notional promotion to the petitioner therein from the date on which his junior was given promotion and to give revision of pension. Thereafter, on reaching the age of superannuation, the petitioner retired as Laboratory Assistant on 28.02.2013 after 38 years of service. Thus, he would pray that the petitioner herein is also entitled to similar order granted in the above writ petition.

4.Learned Government Advocate appearing for the respondents would state that on 01.02.1975 the petitioner was initially appointed as Lab Assistant in the 2nd respondent college and he retired on 28.02.2013 on reaching the age of superannuation. The next avenue of promotion for the post of Lab Assistant is Workshop Instructor / Junior Draughting Officer. As per the then existing Special Rules for the Tamil Nadu Technical Educational Subordinate Service issued in G.O.Ms.No.2100, Education Department, dated 18.09.1981 for promotion to the post of Workshop Instructor, the following qualifications were prescribed among other things:-

'1.A Diploma in Mechanical or Electrical Engineering;

or

2.(i)A technical high school certificate awarded by the State Board of Technical Education and Training, Tamilnadu; and

(ii)Practical experience in a position not below the rank of skilled operative in a recognised Mechanical / Electrical workshop for a period of not less than three years; or



3.(i)An I.T.I Certificate issued by the Department of Industries and Commerce or the Department of Employment and Training, Madras; and

(ii)Practical experience for a period of not less than five years, before or after obtaining the certificates mentioned in item (i) above, in a position not below the rank of Skilled Operative in a recognised Mechanical / Electrical Workshop; or

4.(i)A pass in VIII Standard in a recognised school; and

(ii)Experience as Skilled Operative for a total period of not less than seven years in a recognised Mechanical / Electrical workshop of which at least the two years service must be actually in the workshop of a technical educational institution.''

5.As per the revised Adhoc rules issued in G.O.Ms.No.220, Higher Education Department, dated 06.07.2009 for promotion to the post of Workshop Instructor following are the qualifications prescribed:-

''(a)Diploma in Mechanical or Electrical and Electronics Engineering or Electrical Engineering;

(b)(i)An Industrial Training Institute Certificate / Nation Trade Certificate/National Apprenticeship Training Certificate in Mechanical/Electrical subjects;

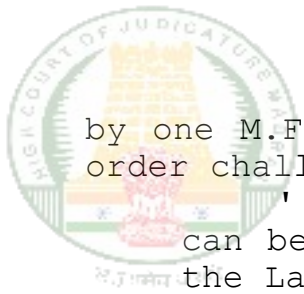
(ii)Practical experience for a period of not less than three years in a recognised Mechanical/Electrical Workshop not below the rank of Skilled Operative Assistant;

Provided appointment shall be made to the post from among the holders of (i)Diploma qualification and (ii)Non-Diploma qualification mentioned above in the ratio of 1:4 subject to the availability of adequate number of Diploma holders.''

6.He would further submit that the crucial date for preparing the annual list of approved candidates for promotion to the post of Workshop Instructor is 1st September of every year as per the above said rules. But the petitioner did not possess the required experience on the crucial date of preparation of panel for promotion to the post of Workshop Instructor i.e., on 01.09.2008 and he acquired the required experience qualification only on 30.06.2009. However, in the meantime, new rules came into force, as per which, the petitioner was not qualified and therefore, he was not considered for promotion. Thus, he would pray that the interference of this Court is not necessary.

7.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

8.Perusal of record shows that in W.P(MD)No.14252 of 2010 filed <https://hcservices.ecourts.gov.in/hcservices/>



by one M.F.Thangaraja who also slapped with the very same impugned order challenged herein, this Court has passed the following order:-

"9. The point in issue is as to whether the petitioner can be blamed for non-possession of required experience in the Lab attached to Mechanical wing, which he acquired only on 30.6.2009.

10. The power of posting of Lab Assistants in a particular department is vested with the Principal of the Polytechnic. Petitioner has no control over the said aspect. It is not the case of the second respondent that the petitioner was offered the posting in mechanical wing and he declined to work in Mechanical Department. In the absence of any such averments in the counter affidavit, the decision relied on by the learned counsel for the petitioner is squarely applicable to the facts of this case.

11. In (2011) 8 MLJ 317 (S.Krishnakumar v. State of Tamil Nadu) I had an occasion to follow the earlier orders and held that for not attending foundation training in Bhavani Sagar Training Institute, which is not the fault of the employee, he cannot be denied placing of his name in the panel for promotion. In the said decision the employee retired and notional promotion was ordered to be granted. The operative portion of the said decision reads as follows:

"6. This Court in W.P.No.13517 of 2009, by order dated 9.4.2010 considered the very same issue and in paragraph 19, it is held as follows:

"19. Going through the issue, this Court pointed out that on no fault of the petitioners but on account of administrative reasons, the petitioners could not complete their service qualification to serve in the category of Rural Welfare Officer Grade I. It was pointed out that even though the petitioners had been in service as Junior Assistant with effect from 1991 and in the post of Rural Welfare Officer Grade I, the petitioners were not considered for further promotion on account of the non-completion of the service requirements. This Court held that when the petitioners had successfully completed the departmental examinations, the petitioner cannot be denied inclusion in the panel on the ground that they did not possess the service qualification - an area which was purely in the hands of the respondents. Referring to the order of this Court dated 9.10.2006 in W.P.No.18501 of 2006 C.Periasamy and Another v. District Collector, Dharmapuri, holding that service qualification cannot be equated to a pass in the departmental test, this Court held: "While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular



post is not within the hands of the individual." In the circumstances, this Court held that the respondents should have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. This Court pointed out that but for the belated regularisation in 1996, the petitioner would have undergone the foundation training in Bhavani Sagar Training Institute, the petitioners were not at fault, they should not have been omitted to be included in the panel."

7. It is also pointed out in the said judgment in paragraph 21 that deputing the petitioner therein for one year training at Bhavani Sagar Institute cannot be attributed to the petitioner and he had not qualified himself though inclusion in the promotion panel for seniority cannot be allowed as it would prejudice the petitioner as he was prevented by the department to undergo the training. Ultimately, in paragraphs 28 to 31 it is held thus:

"28. It is no doubt true that in the case of a person who sleeps over his right consciously, the question of showing any indulgence to disturb a well settled seniority will not arise. As already pointed out, on the appeal preferred by respondents-3 to 5 dismissed, the seniority of the petitioner remained undisturbed at least upto 2001. There was no occasion for the petitioner to entertain any doubt as to the seniority panel to voice his grievance. He came to know of this fact only when the petitioner's name was not included in the panel prepared for the year 2004 onwards. In the background of this fact, when as per the law declared by this Court, the petitioner's name should have been considered in the seniority list, he having successfully completed the examination well ahead of respondents 3 to 5, the delay in challenging the seniority list, by itself, cannot be held against the petitioner, for the simple reason that the delay on the part of the District Collector had caused serious prejudice to the petitioner by his not having deputed the petitioner to undergo the one year stint in the post of Rural Welfare Officer Grade II and for the foundation training in the Bhavani Sagar Training Institute as required under the Service Rules."

12. In the common order dated 4.9.2007 made in W.P.Nos.47872, 47885 of 2006 and 7791 of 2007, in paragraph 8 the said issue is answered as follows:

"8. Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated to the qualification of a pass in the departmental test. While the pass in a departmental test



may be in the hands of the individual, the posting of the individual to a particular post, is not within the hands of the individual. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

The said order is followed in the decision reported in (2012) 1 MLJ 634 (S.Sasisivanandam v. District Collector, Thoothukudi District), wherein it is held that when the matter of posting of an employee to a particular post lies in the domain of the concerned authority, the employee cannot be blamed for non-acquiring of required service qualification and denial of promotion on that ground is not justified.

13.Thus, the reason stated in the impugned order for not considering petitioner's name for promotion as Workshop Instructor is contrary to the well settled principle of law. The Adhoc rules issued on 6.7.2009 is applicable to future vacancies after the issuance of the said Adhoc rules. Nowhere in the said rules it is stated that the said rules are applicable with retrospective effect. In the said rules it is specifically stated that the said rules shall come into force on 6th July, 2009.

14.The petitioner has made out a case for considering his name for inclusion in the panel for promotion for the post of Workshop Instructor in the second respondent Polytechnic. Petitioner having retired on 30.9.2011, respondents 1 and 2 are directed to give notional promotion to the petitioner from the date on which his junior was given promotion i.e., with effect from 1.12.2010 and promote him notionally enabling him to get revision of pension. Since the petitioner has not served in the promotional post, he is not entitled to get difference in salary from the date of notional promotion till his retirement, i.e, from 1.12.2010 to 30.9.2011.

The writ petition is allowed in part as above. No costs. Connected miscellaneous petitions are closed.''

9.In my considered opinion, the said order is squarely applicable to the present case. Therefore, following the said order, the impugned order No.19554/B-6/2010 dated 26.07.2010 passed by the 1st respondent is quashed. Since the petitioner is retired on 28.02.2013, the respondents are directed to give notional promotion to him from the date on which his juniors were given promotion and promote him notionally enabling him to get revision of pension. Since the petitioner has not served in the promotional post, he is not entitled to get difference in salary from the date of notional



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promotion till his retirement from 01.12.10 to 28.02.2013.

With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1)The Commissioner of Technical Education,
The Directorate of Technical Education,
Guindy-600 025.

2)The Principal Government Polytechnic,
Thoothukudi District.

+1 CC to M/s.SPL.GP (SR-1312[F] dated 10/01/2020)

ORDER MADE IN

W.P(MD)No.4998 of 2012

DATED : 09.01.2020

SMA/29/01/2020/7P/4C