

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.30559 of 2007

M.Gajapathy

... Petitioner

-Vs-

1.The Director

National Institute of Technical Teacher's
Training and Research, Taramani
Chennai 600 113.

2.Gaudama Raja, Assistant

National Institute of Technical Teacher's
Training and Research,
Chennai-600 113.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in Proc.Ref.No.E1/DP/2007-08 dated 21.08.2007 and quash the same as illegal, incompetent, irregular and without jurisdiction and direct the 1st respondent to appoint the petitioner to the post of Accountant.

For Petitioner : Ms.B.S.Mithranesha
for M/s.V.Raghavachari

For Respondents : No appearance

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in Proc.Ref.No.E1/DP/2007-08 dated 21.08.2007 and quash the same as illegal, incompetent, irregular and without jurisdiction and direct the 1st respondent to appoint the petitioner to the post of Accountant.

2. That the petitioner was working initially as Lower Division Clerk and subsequently promoted as Upper Division Clerk at the respondent Department. It is the claim of the petitioner that, for the post of Accountant, which is a promoted post, he is having more qualification than any other in-service candidates and therefore his candidature should have been considered for the post of Accountant and in this regard, when the candidature of the petitioner was placed before the

Departmental Promotion Committee (hereinafter referred to as 'DPC'), the said DPC, having considered the candidature of the petitioner as well as the second respondent, has found that, the second respondent is more suitable and accordingly the candidature of the petitioner was rejected and this has been reflected in the order dated 21.08.2007, which is under challenge in this writ petition.

3. Heard Ms.Mithranesha, learned counsel for the petitioner, who would submit that, it is not the very length of service alone will be the criteria for fixing the seniority and also, insofar as the educational qualification is concerned, the petitioner is having more suitable and desirable qualification of Post Graduation, whereas the second respondent is only a graduate. Therefore, in both ways, the petitioner would be more suitable for the post of Accountant and therefore, the DPC's decision to reject the candidature of the petitioner and to select the second respondent for the post of Accountant is against the relevant regulations for recruitment in the respondent institution and therefore, the impugned order is bad in law. Hence, she seeks the indulgence of this Court to quash the impugned order and to give a direction to the respondent to promote the petitioner to the post of Accountant with all consequential benefits.

4. I have considered the submissions made by the learned counsel for the petitioner and have perused the materials placed on record.

5. Though there is no representation on behalf of the respondents, the impugned order dated 21.08.2007, which is a detailed one, speaks for itself. In order to appreciate the same, the entire impugned order is extracted hereunder.

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MEMORANDUM

With reference to his representation dated 23.07.2007 requesting, inter alia, to include his name in the DPC Panel List for the post of Accountant, Shri M.Gajapathy, UDC is hereby informed as under:

1. Shri M.Gajapathy may be aware that as per Rule 2.1 of the Recruitment and Service Rules of the Institute, "in the case of non-teaching posts except Senior Administrative Officer, Accounts Officer and Senior and Junior Auditors, the method of appointment for all the posts in Group-B, C and D Categories is by promotion on the basis of seniority, merit and fitness for the post". The post of Accountant falls in Group-B category and therefore has to be filled

- by promotion on the basis of seniority, merit and fitness of the candidate.
2. As per the norms prescribed for the post of Accountant, a candidate has to possess a good degree of a recognized Univ., with 10 years experience in a Government office of autonomous organization with 3 years experience in a supervisory capacity in Accounts/Stores. A desirable experience in maintenance of accounts in an Educational Institution / typing and book keeping is also prescribed.
 3. He may therefore appreciate that a qualification in Commerce either at Graduate level or Post Graduate Level has not been prescribed for the post of Accountant as per Recruitment and Service Rules of the Institute. He may also note that the incumbents of the post of Accountant in the Institute for the past 33 years have never held the qualification in commerce and at least two incumbents holding the post of Accountant were non-graduates.
 4. It is not true that Shri Gajapathy has performed the duties of Accountant for 13 years as is made out in his representation as he was holding the post of LDC initially from the date of appointment till January 1995 and UDC since then.

The representation of Shri Gajapathy was placed before DPC at its 35th meeting held on 10.08.2007 and the Committee perused the representation dated 23.07.2007 and made the following observations:-

"The Committee perused the norms prescribed as per the Recruitment and Service Rules of the Institute for the post of Accountant for the post of Accountant which is as under:-

A good degree of a recognized Univ. with 10 yrs. Experience in a Government Office or autonomous organization with 3 yrs experience in a supervisory capacity in Accounts/Stores.

Desirable:

Experience in maintenance of accounts in an Educational institution / typing, book keeping.

The Committee also noted that as per Rule 2.1 of the Recruitment and Service Rules of the Institute that "in the case of non-teaching posts except Senior Administrative Officer, Accounts Officer and Senior and Junior Auditors, the method of appointment be by promotion on the basis of seniority, merit and

fitness for the post. The post of Accounts Officer, Senior and Junior Auditors will be filled for the post. The post of Accounts Officer, Senior and Junior Auditors will be filled on deputation basis from a panel of names sponsored by the Comptroller and Auditor General on the four AGs offices located in the southern region.

The Committee noted that Shri M.K.Thiagarajan, the senior most Assistant who is eligible for consideration for the post of Accountant, has given in writing that he is not interested to be considered for the post of Accountant. Hence the Committee noted that the next senior eligible candidate in order of seniority is Shri P.Gaudama Raja. He is holding the post of Assistant in the scale of pay of Rs.4500-125-7000 with effect from 10.05.1995 ie., for over 12 years. The Committee also noted that Shri Gaudama Raja possessed a Bachelor Degree in Economics and therefore satisfies the norms prescribed for the post of Accountant. As against the same, the Committee noted that Shri.Gajapathy is only a UDC in the scale of pay of Rs.4000-6000 with effect from 06.01.1995 and has held the post of Assistant only on leave vacancy for a brief period prescribed for the post of Accountant as aforesaid viz., possessing a good degree, more than 10 years experience as an Assistant and with good service records, the Committee is of the opinion that there is no merit in the representation of Shri Gajapathy for considering him by overlooking the candidature of Shri Gaudama Raja, the Committee recommends that Shri Gaudama Raja be promoted to the post of Accountant in the scale of pay of Rs.5500-175-9000". Shri Gajapathy is therefore informed that his representation is devoid of merit, in view of what is stated above."

6. According to the respondents, as per Rule 2.1 of the Recruitment and Service Rules of the Institute, in the case of non-teaching posts except Senior Administrative Officer, Accounts Officer and Senior and Junior Auditors, the method of appointment for all the posts in Group-B, C and D Categories is by promotion on the basis of seniority, merit and fitness for the post. Therefore, according to them, it is not merely on the basis of seniority, but also on the basis of merit and fitness, a decision would be taken by the DPC to select the in-service candidate for giving promotion to the post of Accountant.

7. In this context, it is the stand of the respondents that, the senior most Assistant, which was the feeder category, one

M.K.Thiagarjan had given his willingness in writing that, he is not interested to be considered for the post of Accountant. Hence the Committee noted that the next senior eligible candidate in order of seniority was the second respondent. He was holding the post of Accountant in the scale of pay of Rs.4500-125-7000 with effect from 10.05.1995 ie., for over 12 years. It is the further case of the respondents that, which the DPC also noted that, the second respondent possessed Bachelor Degree in Economics and therefore, satisfied the experience prescribed for the post of Accountant. The DPC also noted that, the petitioner is only a UDC in the pay scale of Rs.4000-6000 with effect from 06.01.1995 and has held the post of Assistant only on leave vacancy for a brief period of 1½ months.

8. In this context, it is the further case of the respondents that, as per the norms prescribed for the post of Accountant, a candidature has to possess good degree of recognized University with 10 years experience in a Government office, or autonomous organization with three years experience in supervisory capacity in accounts / stores and desirable experience in maintenance of accounts in an educational institution, typing and book keeping is also prescribed.

9. Therefore, according to the respondents, the norms prescribed in the relevant service regulations for the post of Accountant is that, a candidate has to possess a good degree from a recognized University with 10 years experience in Government or autonomous organization.

10. This eligibility has already been fulfilled by the second respondent and, he was senior compared to the petitioner and moreover the scale of pay of the petitioner was Rs.4000-6000, whereas the second respondent's pay scale was Rs.4500-7000. Therefore, that itself shows that the petitioner is not senior compared to the second respondent.

11. These reasons have been given by the respondent through the impugned order, as per the decision of the DPC, who, after having considered the requests of the petitioner to consider his candidature, has come to the conclusion that, the second respondent would be the most suitable candidate and accordingly as per Clause 2.1 of the Recruitment and Service Rules of the Institute, the promotion to a post is not based on the basis of seniority, but also merit and fitness for the post. Accordingly, they found the second respondent most suitable than the petitioner. Hence, this Court feels that the petitioner cannot have any grievance against the candidature of the second respondent, who has been selected and posted as Accountant.

12. The said selection, as per the reasons given by the

respondent, which has been explained above, in the considered opinion of this Court, is not against the relevant Service Rules, which has also been mentioned in the impugned order. Therefore, this Court feels that, the petitioner cannot have any plausible reason to successfully challenge the impugned order dated 21.08.2007. Accordingly, this writ petition fails and hence it is liable to be dismissed. Therefore, it is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

KST

To

- 1.The Director, National Institute of Technical Teacher's Training and Research, Taramani
Chennai 600 113.
2. National Institute of Technical Teacher's
Training and Research, Chennai-600 113.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 13055

W.P.No.30559 of 2007

VG II (CO)
GN(30/06/2021)

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