



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.14216 of 2004
and WMP Nos.16804 and 16805 of 2004

Pondicherry Engineering College Employees Union
Pondicherry
Rep. by its President
R.Gajendran
(President substituted as per order dated 17.09.2021
made in Memo (USR.34742)
in W.P.No.14216 of 2004) ...Petitioner

Vs.

1. The Chairman - cum- Chief Secretary to Government,
Government of Pondicherry,
Chief Secretariat, Pondicherry - 605 001.
2. The Chairman - cum- Chief Secretary to Government,
(Education)
Staff Selection (Non-Teaching) Committee
Pondicherry Engineering College,
Chief Secretariat, Pondicherry - 605 001.
3. The Secretary to Government,
Dept., of Personnel and Administrative Reforms,
Chief Secretariat, Pondicherry - 605 001.
4. The Secretary to Government (Law),
Law Department ,
Chief Secretariat, Pondicherry - 605 001.
5. The Principal,
Pondicherry Engineering College,
Pondicherry - 605 014.
6. The Director of Collegiate & Technical Education,
100 ft. Road, Anna Nagar,
Pondicherry - 605 005.
7. Pondicherry Engineering College
Non-Teaching Staff Union,
Rep. by its President L.Kothandaraman

(R7 impleaded as per order dated 24.08.2004

In WPMP No.25485 of 2004)

<https://hcservices.ecourts.gov.in/hcservices/>

... 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 concerned records relating to the Circular No.PEC/E5/Final seniority/2K/2078 dated 21.6.2000 by the 5th respondent and Order No.1587/2004/CS dated Nil passed by the 1st respondent and served on the petitioner by the 5th respondent on 3.3.2004 and quash the same and consequently direct the respondents to make promotions as per the final combined seniority list of helpers (Senior Grade/Helpers) of Pondicherry Engineering College, published by the 5th respondent in his memorandum No.PEC/E3/SC-M/2000./161 dated 13.1.2000.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mrs.N.Mala
Government Pleader (P) - R1 to R6
Mr.V.Ajaya Kumar - R7

O R D E R

The petitioner, Pondicherry Engineering College Employees' Union, challenges Circular No. PEC/E5/Final seniority/2K/2078 dated 21.6.2000 issued by the Principal, Pondicherry Engineering College (hereinafter referred to as 'college') and order dated Nil passed by R1, i.e., the Chairman-cum-Chief Secretary to Government, Government of Pondicherry, served upon the petitioner on 03.03.2004. A consequential direction is sought to respondents to promote its members as per the final combined seniority list of Helpers (Senior Grade/Helpers) in the college, published by R5, vide his memorandum No.PEC/E3/SC-M/2000/161 dated 13.1.2000.

2. The members of the petitioner union, which claims to be a registered trade union, are Helpers in the college. The avenue of promotion available to them is multi-channel, to several higher grades, such as, lab attender, lower division clerk (LDC), store keeper gr.III, mechanic, book restorer, counter assistant, audio visual technician and data entry operator among others.

3. According to the petitioner, the Rules of Recruitment that had originally been in force provide for promotion as aforesaid to all Helpers with five (5) years of regular service. In line therewith, Memorandum dated 13.01.2000 has been published by the College which was the final updated seniority list of Helpers. This seniority list was prepared as per practice prevailing then, based on the date of appointment of the Helpers in the college. The members of the



petitioner seek the benefit given to them under this combined seniority list. It is their say that this is the correct basis to be followed for promotions and that this basis is in tandem with the method of promotion followed by various Ministries/Departments of the Government of Puducherry.

4. While this is so, there was a proposal vide Circular dated 01.12.2000 to revise the seniority list and to change the method of promotion followed in seven identified categories which were, Office Library, DPE, Dispensary, Pump Operators, Electrical Wing, Auto Section, Horticultural Wing, Estate Office (other than Pump Operators) and Engineering Departments.

5. The senior grade Helpers were to exercise an option for consideration of their names for promotion to any one of the aforesaid Departments on or before 29.02.2000. The option exercised shall be final and the condition for promotion was that the employees seeking such promotion should have worked in that section for at least 5 years.

6. Objections were raised by members of the petitioner union, who were of the view that it was discriminatory and restricted the chance of promotion to all on an equal basis. The proposal to change the method of recruitment was questioned before the management of the college. However, the college published a final seniority list of Helpers on 21.06.2000, based on the seniority within the seven Departments as enumerated earlier. Thus, the shift in policy was that, as against the earlier pattern of according seniority based on date of appointment in the college, seniority would now be determined within or intra-department to which they had exercised their option.

7. Several representations were made by members of the petitioner union and the time for exercise of option was also extended till 16.10.2000. Objections were filed contending that no reasons were set forth by the college for deviating from the established principles of service seniority which is, the date of entrance of the employee into the institution. The Helpers had been appointed with the assurance that they would have the benefit of multi-channel promotional opportunities and this was now denied to them and that there is an estoppel cast upon the college to continue the benefit of multi-channel opportunity, which has been violated by a shift to single channel of promotion.

8. The petitioner also stated that the seniority of Helpers should be determined only with respect to other Helpers of whichever Department they may be placed in and the present method which provided for intra-departmental seniority was discriminatory, apart from being unfair and contrary to all settled principles of service seniority. They also stated that they were never consulted prior to such a shift in



9. The petitioner filed W.P.No.21243 of 2000 seeking relief similar to that sought in this Writ Petition. The Writ Petition was disposed on 04.09.2003 directing the petitioner to file a representation before the Chief Secretary and issuing a direction to the latter to give a personal hearing to their representatives and pass appropriate orders in accordance with law. Pursuant to that, the petitioner has filed a representation that has come to be rejected by R1 by his order dated Nil, served upon the petitioner on 03.03.2004. The aforesaid order is challenged in this Writ Petition.

10. The petitioner also points out that during the pendency of the earlier Writ Petition, it had obtained an interim order in its benefit to the effect that the promotions made subsequent to the impugned seniority list shall be subject to the result of that Writ Petition.

11. I am afraid that that benefit will not be available to the petitioner now, since, with the disposal of that Writ Petition, the effect of that interim order also ceases. If at all the petitioner was inclined to have such a similar benefit in this Writ Petition, it ought to have sought and obtained the same by way of a order of this court in this writ petition, which has not been done. Thus, as on date, there is no interim protection that enures to the benefit of the petitioner.

12. The rationale for the shift in the basis for promotion is explained by the respondent that states that each Department has unique and specific promotional opportunities that are, in fact, denied to the Helpers, if they are transferred across Departments without giving them the chance to serve in any one Department and acquire skills unique to that Department.

13. For instance, if a Helper working in the Physics Department is promoted within the Department itself, unique opportunities, such as lab assistant and other opportunities specific to the working of that Department will open up to him, whereas such opportunities will be denied to a Helper who has come on promotion and has not served for a sufficient number of years to acquire the training required for the more senior posts. Some posts require specific and specially trained persons and it is to enable the training and promotion of the Helpers to these senior posts that the change in method was conceived and arrived at.

14. The college has filed a detailed counter in defence of the change in promotion policy and the impugned orders. They would state that initially the Helpers had been employed only on Non-Muster Roll (NMR) on daily wages. As the establishment grew, they were allotted to various Departments without reference to their educational qualifications.



15. Admittedly, the promotions were only on the basis of combined and uniform seniority fixed as per the date of entry into the college. It was on this basis that a tentative seniority list was prepared on 31.12.1999, by which time the Helpers recruited originally had been regularised and brought into main stream establishment.

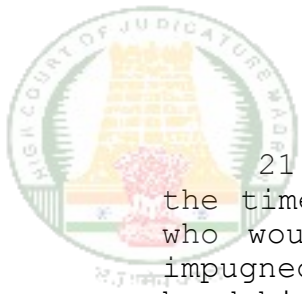
16. While this is so, the college convened a meeting of the office bearers of five associations affiliated to it on 29.01.2000 to discuss the issue relating to seniority of Helpers posted in various Departments. It was felt that since the Departments contained inter alia, avenues for promotion within themselves and also for the reason that the intra-departmental posts required some amount of expertise that would be best acquired if the candidate continued to serve within the Department itself without being transferred to a different Department, the seniority lists should be prepared bearing in mind this aspect and qua each Department.

17. Thus, the college created specific posts, such as lab attender, store keeper, plumber, mason, book restorer, driver and others requiring specific skill sets to cater to specific opportunities and provide an avenue for promotion in these avenues of skill.

18. Recruitment Rules were thus revised to accommodate the aforesaid revised policy, approved in the 47th Governing Body Meeting held on 28.06.2000 after taking into account the opinion, views, objections and consultations with the office bearers of the five affiliated unions. It was only thereafter that the impugned seniority list came to be issued categorising the Helpers in various Departments as per the choice exercised by them.

19. The five unions are the Pondicherry Engineering College Non-Teaching Staff Union, Pondicherry Engineering College Non-Teaching Technical Staff Association, Pondicherry Engineering College Group C & D Staff Welfare Association, Pondicherry Engineering College SC/ST Employees Association and Pondicherry State Government Employees Association. The original deponent who has filed an affidavit in support of the Writ Petition was the President of the Pondicherry State Government Employees Association, and signed the minutes of its behalf.

20. It appears thereafter, that twelve Helpers who were unhappy with the revision in the policy have broken away from the five unions to which they were affiliated forming the petitioner union. Thus the statements and the sentiments put forth in this writ petition represent those of a mere twelve out of a total of three hundred and twenty seven Helpers. According to the respondents, no credence should be given to the same, since they form a miniscule proportion of the entirety of the Helpers who have all consented to the revised policy and consequential revision in seniority.



21. That apart, a categorical assessment was made even at the time when the policy was revised to ensure that any Helper who would be disadvantaged by the coming into force of the impugned revision was accommodated, such that there is no hardship or prejudice caused to him. The respondents also point out that in the absence of any interim protection that has been granted in 2004 or at any time pending Writ Petition, the system has now been in force for nearly 17 years and all the Helpers in service have been promoted, some on multiple occasions. Thus, to revert back to the original stage of seniority would be practically unviable as well as undesirable. They would thus urge that this Court dismiss the Writ Petition and permit the college to continue as it were.

22. I have heard Mr.M.Gnanasekar, learned counsel for the petitioner, Mrs.N.Mala, learned Government Pleader for R1 to R6 and Mr.V.Ajayakumar, learned counsel for R7. All respondents sail together and have presented an unified defence. I have also applied my mind carefully to the contentions advanced by both parties and the pleadings. My decision is as follows.

23. The college from its inception in 1980 has been following the combined seniority method for promotion till 2003, in line with the service rules that require seniority to be fixed as per the date of entry of an employee into service. The college is an autonomous body, governed and managed by a Society, the Engineering College (Pondicherry).

24. The society has complete autonomy in regard to the appointments and discharge of the services of its personnel and all matters incidental and ancillary thereto, such as their emoluments and the terms of their service. It is consequent to such powers that the society has framed Rules and Regulations and by-laws for the conduct of its business including matters relating to appointment promotion and discharge of its employees.

25. The college offers courses both at Bachelors and Masters levels for Engineering & Technology and has all major Departments, such as Civil, Mechanical, Electronics and Communication, Computer Science, Electrical and Electronics, Electronics and Instrumentation and Chemical Engineering, apart from other supporting Departments.

26. Each of these Departments has laboratories and workshops which require skilled and expert technicians and Helpers. Rotating the Helpers from one Department to another would only result in effecting change without ensuring that the personnel stay long enough to acquire the necessary skills.

27. Despite being asked several times, the college has not placed on record the Rules of Recruitment as obtained from the Government of Pondicherry. The college has also not placed on record the Rules of passing of the present Regulation Rules which



have been approved in the 47th meeting of the Governing Body on 28.06.2000. There appear to have been no such Recruitment Rules, at least in regard to Helpers and the method followed for recruiting and transferring of the Helpers was largely unorganised, on a hire and fire basis.

28. The counter states that at inception, Helpers were drawn from the nearby villages on NMR basis. Their integration into college service was gradual and subsequent, as the college grew. The college no doubt prepared a combined seniority list based on the entry of employee into service, but chose to revise this given to believe that the transfer of Helpers indiscriminately from one Department to another would serve neither their interests nor the interests of the college.

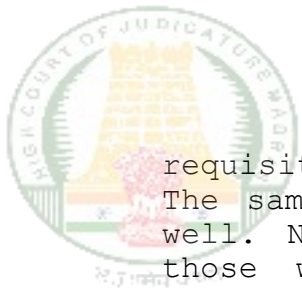
29. The argument of the college that the assignment of Helpers is specific to one Department to enable them to learn the specifics of that Department, equip themselves with the skills needed and grow with that Department cannot be faulted. I find merit in the need for harmonising the working of different Departments in the college and to ensure that the Departments, essentially Engineering Departments, have adequate skilled employees who possess the unique and requisite skill for that particular Department.

30. Interchanging skilled employees between Departments may neither further their interest nor that of the concerned Department and it would be better to have persons with specific skills managing each Department. That apart, the manner in which an institution manages its affairs, and regulates its policies and procedures is best left to that institution unless such actions are shown/seen to be perverse, motivated and not made in the best interests of the institution and its stakeholders, including its employees.

31. The arena of policy is one where the court is not normally likely to interfere unless I am convinced that the change in policy is perverse or motivated to unduly favour one group or section of the employees to the detriment of the others. I will thus address the aforesaid aspects of the matter in the paragraphs to follow.

32. The mainstay of the petitioner's arguments are that by application of the new seniority, junior persons have been favoured and have figured much higher in the seniority list and many senior Helpers have been omitted to be considered. The examples of five such junior helpers have been set out, being S.Rajaram, N.Kumaran, L.Kothandaraman, S.Sivapragasam and S.Murugayan. The aforesaid five persons do not have the qualifying service of 5 years and thus ought not to have been promoted in preference to members of the petitioner union.

33. The petitioner argues that by promoting R.Sethuraman, D.Soundaramoorthy, who did not possess



requisite qualification, eligible Helpers had been ignored. The same allegation is levelled as against one G.Ezhilan as well. No doubt perversity would result if the interests of those who have been adversely impacted is not redressed appropriately.

34. In this case, the impugned order as well as the counter states unambiguously that the interests of all the Helpers was carefully considered and those who might have been impacted adversely have been suitably accommodated or compensated at the time of their posting to the new assignments. Thus, there is nothing brought to my attention that would lead me to a conclusion that the new policy is perverse. No doubt, it has led to some change in the arrangement and deployment of the Helpers but then such change is inevitable upon a revamping of policy in a running institution.

35. The unions have been consulted prior to the revision in policy. Minutes of the meeting dated 29.01.2000 have been placed before the Court, wherein the President of the union (at that relevant time and since deceased) has affixed his signature. The number of individuals before me as part of the petitioner union are only twelve out of a total of three hundred and seventy seven Helpers.

36. Firstly, they represent a very small minority and the challenge put forth by them has not garnered sufficient support from the other Helpers. Secondly, all Helpers have been subject to the revised Rules for the last nearly two decades and in the absence of any perversity or arbitrariness in the revision, I am loathe to upset the apple cart at this stage. Thus, in this particular case, I find the shift in policy in transfer/promotion neither perverse nor arbitrary and reject the argument of the petitioner to the effect that its members have a vested right to promotion as per combined seniority list.

37. The impugned order has taken note of all the contentions advanced by the petitioner and I find no avenue for interference. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

38. There is however, one caveat. I have had, pending the pronouncement of orders in this writ petition, occasion to deal with other writ petitions wherein the recruitment processes followed by the college have come to be questioned. In order dated 27.06.2018, passed by a Division Bench in W.A. Nos.971 & 989 of 2017, judicial notice has been taken on the position that the initial appointment on daily wages and regularisation thereafter appears to be the modus operandi in the Union Territory of Puducherry for legalising the back door appointment.



39. The aforesaid is telling and brings home the fact that the processes for recruitment have not been transparent, effective or efficient. The fact remains that the new Recruitment Rules circulated by the petitioner, (after the direction for their production was reiterated on several occasion) are undated and contain no effective date.

40. I am thus in a quandary as to whether they have been duly executed or put into effect at all. Thus, while in principle, I have found the shift in recruitment policies to be valid and upheld the same, rejecting the challenge thereto, I direct R1 to specifically look into the implementation of the new Rules as well as the recruitments made thereunder and confirm the aforesaid aspects by way of affidavit to be filed before this court within six weeks from today.

Sd/-
Assistant Registrar(CS V)

//True Copy// Sub Assistant Registrar

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To

1. The Chairman - cum- Chief Secretary to Government,
Government of Pondicherry,
Chief Secretariat, Pondicherry - 605 001.
2. The The Chairman - cum-
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